

**UNITED STATES OF AMERICA
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

**ANSWER AND DEFENSES OF RESPONDENTS EXPRESS SCRIPTS, INC.,
EVERNORTH HEALTH, INC., MEDCO HEALTH SERVICES, INC., AND
ASCENT HEALTH SERVICES LLC**

Pursuant to Rule 3.12 of the Federal Trade Commission’s (“FTC” or the “Commission”) Rules of Practice for Adjudicative Proceedings, Respondents Express Scripts, Inc. (“Express Scripts”), Evernorth Health, Inc. (“Evernorth”), Medco Health Services, Inc. (“Medco”), and Ascent Health Services LLC (“Ascent”) (together the “ESI Respondents”¹) file the following answer to the Administrative Complaint (the “Complaint”).

INTRODUCTION

The Complaint disregards the Commission’s decades-long view of the benefits of price competition and consumer welfare, and is rife with inaccuracies, faulty premises, and facially unsupported (and unsupported) conclusions. PBMs like Express Scripts exist to help their plan

¹ The term “ESI Respondents” is used here only for ease of reference to refer collectively to four entities named as respondents in the Complaint: Express Scripts, Evernorth, Medco, and Ascent. The ESI Respondents reserve all rights to make future arguments that one or more of these entities is not a proper party to this action; Medco, for example, is a subsidiary of Express Scripts, and Evernorth is the parent holding company of Express Scripts. The Complaint includes few, if any, specific allegations as to conduct undertaken by these entities.

sponsor clients find and wring out cost savings from the highly expensive, multi-layered structure of the pharmaceutical industry. Others – including drug manufacturers, drug wholesalers, and pharmacies – have created this structure. Drug manufacturers – not PBMs – control the prices of insulin and other drugs. As the FTC itself concluded, PBMs have used exclusive drug lists, or “formularies,” for decades to push manufacturers to compete for business by cutting their prices in exchange for placement of their products on those formularies. Despite the PBMs’ role in pushing manufacturers to compete on price, manufacturers may still choose to grant discounts selectively through rebates to some entities in order to leave higher list prices in place for others.

If the Commission succeeds in hobbling the ability of the ESI Respondents to facilitate this price competition, manufacturers will inevitably increase drug costs. The beneficiaries of the Commission’s efforts in this action would be the drug manufacturers, *not* consumers. Indeed, the Commission has targeted only *three* PBMs out of more than 70 in the market, and the remaining PBMs will have every incentive to step in and serve plan sponsors’ demand for PBM services that reduce their net costs for prescription drugs. In seeking to use Section 5 of the FTC Act to create such perverse results, the Commission has abandoned its once proud commitment to protect competition and consumer welfare.

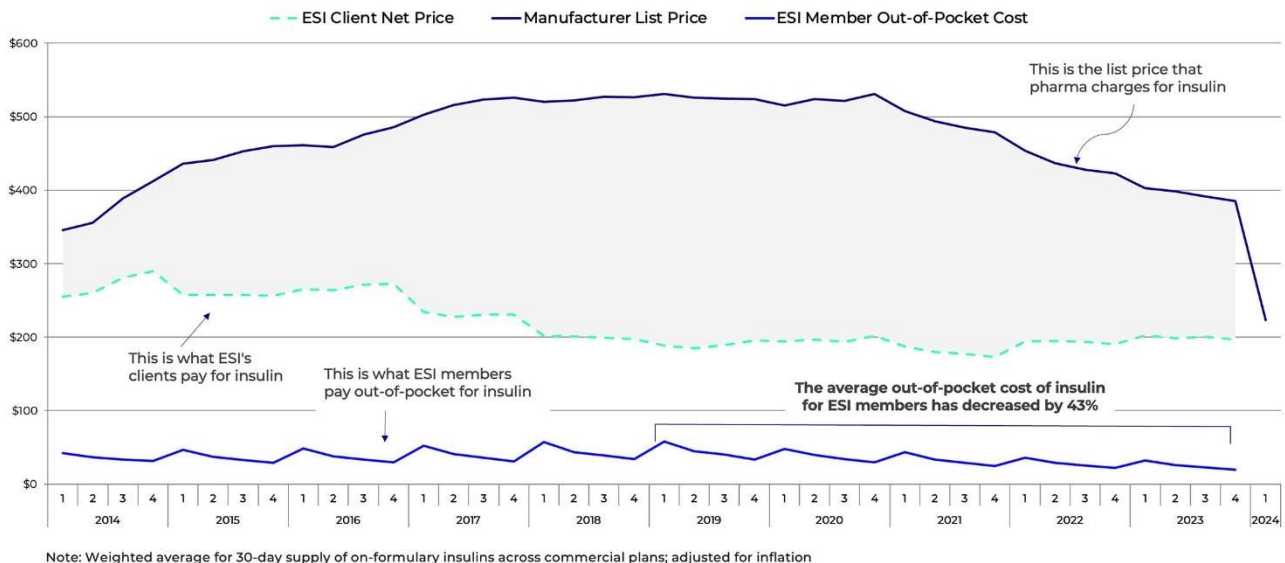
The Commission seeks a fundamental restructuring of prescription drug markets, imposing its own views of what a better system would look like while ignoring the very real competitive forces that shape the market today. It is obviously not an unfair method of competition or an unfair practice to lower drug costs for health plan sponsors (*e.g.*, employers, unions, governments) by using rebates paid by drug manufacturers negotiated through a

competitive process. This is fundamentally pro-competitive and has resulted in enormous benefits for plan sponsors and their members.

Those benefits flow from Express Scripts’ efforts to provide its plan sponsor clients with lower drug costs. The Complaint’s allegation that ESI Respondents “systematically favor” high-list price drugs (or “high-WAC” drugs) is false. Contrary to what the Complaint alleges, Express Scripts’ National Preferred Formulary (NPF) – its most widely adopted standard formulary – prefers the *lowest net cost* drugs, regardless of their list prices or whether they generate the highest rebates. Indeed, Express Scripts already includes low-WAC versions of high-WAC insulin products on the NPF where doing so results in the lowest net costs to its clients.

Express Scripts has saved plan sponsors and their members **billions** of dollars over the last decade by lowering the net cost of insulin and other drugs, a fact wholly ignored by the Commission. Indeed, in the last decade, Express Scripts’ clients have benefited from Express Scripts’ conduct by seeing list prices of insulin go down, the net costs of insulin go down, and average member out-of-pocket costs go down, as the graph below clearly shows.

Insulin Prices Over Time



Ultimately, the evidence will demonstrate that the conduct targeted by the Complaint has in fact lowered drug costs for Express Scripts' clients and for millions of Americans. By seeking to prohibit that conduct, the Complaint's sought-after relief is without precedent in the Commission's past actions and would actually cause drug prices to rise.

Finally, the Complaint is both overbroad and underinclusive. By naming the ESI Respondents in the same action together with its competitors, the Complaint is setting up an unwieldy and unfair proceeding. The Complaint improperly seeks to challenge the conduct of all the respondents collectively even though there is no allegation that any of the ESI Respondents are coordinating or acting in concert with any other respondent. The ESI Respondents cannot be liable for their competitors' independent conduct. But at the same time, the Complaint attacks conduct that is pervasive throughout the industry, making even clearer that this is a flawed industry rule-making masquerading as an enforcement action.

* * * * *

Express Scripts Competes for Plan Sponsor Customers By Lowering Drug Costs

Express Scripts is hired by prescription drug plan sponsors—*i.e.*, employers, unions, and government entities—to help them offer attractive pharmacy benefits to their members. Plan sponsors, not Express Scripts, control the entirety of the prescription drug benefit plans offered to their members. This includes total discretion over all aspects of the plan design, including:

- (1) What formulary to use—*e.g.* whether to use an “open” formulary that covers all clinically indicated drugs or a “closed” formulary that preferences the lowest net cost options, and whether to use a standard Express Scripts formulary or a custom one;
- (2) Whether plan members will have deductibles that are covered by the member, what drug costs are included and excluded from deductibles, and the amount of those deductibles;
- (3) Whether plan members have other cost-sharing obligations such as co-insurance or co-pay obligations and the amounts of those obligations;

(4) Whether members are enrolled in programs to encourage medication adherence by lowering out-of-pockets costs, such as Express Scripts' Patient Assurance Program, preventative drug lists that lower or eliminate out-of-pockets costs for certain medications, and other programs to mitigate members' exposure to list prices;

(5) Whether there are "flat" co-payments depending on the type of drug (brand, generic, retail, specialty, etc.);

(6) Whether to use utilization management ("UM") strategies such as prior authorizations to help control drug costs; and

(7) Whether to pass through rebates or discounts received from manufacturers to members at the point-of-sale.

Express Scripts competes for this business by making available a wide variety of options for plan sponsors to choose from. Express Scripts' success in the competitive PBM industry depends on its ability to provide offerings and optionality that help plan sponsors meet their particular needs.

When a plan sponsor is selecting a PBM to manage the pharmacy benefit for their members, they typically issue a request for a proposal ("RFP") with hundreds of requirements that PBMs must satisfy if they want to be selected. Among many other things, plan sponsors often convey their requirements for the formularies that they intend to use. Plan sponsors can choose one of Express Scripts' standard, "off the shelf" formularies, or they can create their own. Although the allegations contained in the Complaint focus on Express Scripts' standard formularies, the majority of members in plans that use Express Scripts have custom formularies. Even plan sponsors that use Express Scripts' standard formularies have widely varying benefit designs that pair with their choice of formulary.

Plan sponsors generally are focused on the bottom line. They typically care about what they will actually pay at the end of the day rather than the list or "sticker" price of every prescription drug covered by the plan. An important dimension of competition among PBMs is therefore the *net cost* of the drug benefit to the plan sponsor, determined across categories of drugs rather than one drug at a time. Plan sponsors also seek to optimize their healthcare

spending across a variety of other dimensions, recognizing that different health benefits influence each other, such as how improved prescription drug adherence leads to fewer unnecessary hospitalizations.

Plan sponsors decide how to use these cost savings and how to distribute the savings across their member pools. Plan sponsors use drug cost savings (whether realized through rebates or otherwise) in different ways to benefit members and plans overall, including by spreading the savings across the pool of their members. For example, they may use the savings to improve or add other benefits or lower premiums for members generally. As described below, determining the actual net cost of different formulary options is multi-faceted. Plan sponsors generally focus on obtaining the lowest net cost across the drugs included in their drug benefit, based on the formulary structure the sponsor chooses. To compete for plan sponsors' business, Express Scripts attempts to offer the lowest net cost possible given the sponsor's formulary preferences.

Express Scripts Uses Competition Among Drug Manufacturers to Lower Net Drug Costs for Plan Sponsors

As the FTC has long recognized, “competition between pharmaceutical companies for preferred placement on the formulary can lead to lower drug prices.”² When there are multiple drugs available in a particular therapeutic category with equivalent efficacy and safety, plan sponsors can choose formulary designs that prefer certain drugs over others in the same category, or even limit coverage under the plan to certain drugs in the category and exclude others. This choice among therapeutic alternatives creates an impetus for drug manufacturers to compete for a preferred position on the formulary, generally by offering price concessions. Through this

² Letter from Fed. Trade Comm'n Bureau of Competition to Cal. state legislators (Sept. 7, 2004), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-comment-hon.greg-aghazarian-concerning-ca.b.1960-requiring-pharmacy-benefit-managers-make-disclosures-purchasers-and-prospective-purchasers/v040027.pdf.

mechanism, PBMs have helped plan sponsors drive down net costs and drive up the acceptance of available generics (even when that comes at the expense of brand-name drugs subject to rebates). Unfortunately, because insulin drugs are in a classification that is not subject to typical generic competition under federal law, PBMs and plan sponsors cannot replace current insulin offerings with generics.

Drug manufacturers sometimes agree to lower the list prices of their drugs, and they sometimes lower prices by offering discounts – often called “rebates” – to reduce the net costs for plan sponsors. As the Complaint admits, drug manufacturers—not Express Scripts—unilaterally determine their list prices. And not only that, but the Complaint also admits that the reason drug manufacturers have increased list prices is “to preserve [their] own profits.” Manufacturers can reduce list prices whenever they choose. But they do not. And the reason they do not is simple: they like high profits. Regulating the conduct of PBMs will do nothing to change drug manufacturer’s dedicated and single-minded focus on maintaining high profits.

Unlike the manufacturers, who set high prices and directly benefit from those high prices, Express Scripts is committed to lowering the cost of prescription drugs – indeed that is the whole reason that PBMs exist – regardless of whether the lower cost comes through greater rebates, lower list prices, or other methods. For example, Express Scripts includes 99% of generic drugs on its NPF and often prefers them over branded drugs even though generic drugs carry no rebates. To drive more savings for plan sponsors, Express Scripts co-founded a group purchasing organization called Ascent Health Services in 2019, which aggregates purchasing volume of health plans and other entities to negotiate with drug manufacturers on behalf of a larger number of consumers. Negotiating with drug manufacturers to lower net costs for plan sponsors—whether through rebates or otherwise—promotes competition and benefits plan sponsors and

their members, and it is one of several ways that ESI Respondents can help drive lower net costs for plan sponsors and their members.

In addition to negotiating with drug manufacturers and developing drug formularies Express Scripts provides numerous other valuable services to its plan sponsor clients, including prescription claims processing, developing pharmacy networks and negotiating with pharmacies, providing drug utilization management services, and offering specialty and mail-order pharmacies. Plan sponsors can choose from a menu of different mechanisms for compensating Express Scripts for these services, including per-claim or per-member administrative fees, and by allowing Express Scripts to retain a small portion of drug rebates and fees. Plan sponsors have complete control over how they choose to compensate Express Scripts for its services, and they often choose to tie that compensation to drug prices to ensure that Express Scripts has a strong incentive to drive drug costs down.

Determining the Lowest Net Cost Options for Plan Sponsors

While attacking PBMs, the Commission steadfastly ignores the actual process employed by Express Scripts in developing its standard formularies. Express Scripts does not “systematically prefer high list price insulin products” or “chase rebates” as the Complaint alleges. Instead, Express Scripts follows a multi-stage approval process, incorporating therapeutic and clinical considerations first, and financial value for plan sponsors (not ESI Respondents) second. Clinical determinations are ultimately made by Express Scripts’ National Pharmacy and Therapeutics (“P&T”) Committee, a group of independent, actively practicing physicians and pharmacists who are not employed by Express Scripts, who undertake a “clinical first” analysis.

The P&T Committee compares new pharmaceutical products to existing alternatives within the same therapeutic category. The P&T Committee may determine that a particular drug addresses a clinically significant unmet treatment need or has greater efficacy than, or a superior safety profile compared to, existing therapy alternatives. In that case, the drug is designated “include” and placed on standard formularies as a matter of course. Generic drugs are likewise automatically recommended for placement on formularies.

If, on the other hand, the P&T Committee determines that a particular drug is clinically similar to other currently available drug alternatives, the drug is designated “optional.” “Optional” drugs are then reviewed by Express Scripts’ Value Assessment Committee, or “VAC,” which models the net costs for plan sponsors of different formulary scenarios. The VAC does not weigh in on drugs that the P&T Committee deems as “include.”

Determining the lowest net cost options for formulary placement is significantly more involved than simply subtracting the amount of a manufacturer rebate from a drug’s list price. In addition to list price, rebates, and manufacturer administrative fees, additional variables that Express Scripts’ VAC considers include pharmacy network discounts, copays, benefit design, and projections for how patients will shift from certain drugs to others in response to formulary changes. The VAC modeling team considers how different formulary scenarios impact these variables and the resulting projected net cost for plan sponsors.

Importantly, because plan sponsors are typically focused on overall drug costs, the VAC evaluates lowest net costs across a given therapeutic category rather than on an individual drug or unit-cost basis because changes to one drug in a category can cause different usage and/or discounts for other drugs in the category. When making its recommendations, the VAC does *not* consider any financial benefit to the ESI Respondents; it considers only how much plan sponsors

will save. The Commission's allegations that ESI Respondents are "systematically excluding" low-WAC insulin products and "chasing rebates" are provably false: the standard formularies include low-WAC insulin, and Express Scripts' VAC does not consider rebates or fees retained by ESI Respondents at all.

Express Scripts' Efforts to Lower Insulin Costs

The Complaint ignores the net cost savings for insulin that Express Scripts has achieved for plan sponsors and their members over the past decade through formulary development and negotiations with drug manufacturers. By stimulating competition among manufacturers, Express Scripts has dramatically lowered the cost of insulin to plan sponsors. On average, members in plans that use Express Scripts pay less than \$23 for a 30-day supply of insulin.

Consistent with Express Scripts' goal of including the lowest net cost options for plan sponsors that have adopted the NPF, it has consistently evaluated whether low-WAC versions of insulin products deliver lower net costs than higher-WAC versions of those same drugs. Indeed, Express Scripts was among the first to suggest to and advocate for insulin manufacturers to offer low-WAC versions of their drugs. Unfortunately, the manufacturers chose to launch these drugs alongside the high-WAC versions, while maintaining rebates and other terms that render the high-WAC version less expensive on a net cost basis. By doing so, manufacturers preserved their ability to charge high list prices to some consumers and maintained or increased their margins instead of moving the market to low-WAC alternatives as Express Scripts had envisioned. Since drug manufacturers began introducing low-WAC versions of insulin drugs in about 2019, Express Scripts' formulary modeling has often concluded that these drugs were more expensive on a net cost basis. However, when manufacturers priced their low-WAC products such that the low-WAC versions were *actually* lowest net cost, Express Scripts added them to its standard

formularies. The Commission’s entire case falls apart in the face of this simple – and easily provable – fact: rather than “systematically exclude” low-WAC products from its NPF, Express Scripts has systematically *included* drugs with the lowest net cost for its clients.

For example, in 2021, Express Scripts announced its decision to prefer Semglee on the NPF, because doing so resulted in *net cost* savings for its plan sponsor customers for the first time. Semglee was the first interchangeable biosimilar insulin product approved by the FDA. At the time, Express Scripts publicly estimated that the change would result in more than \$20 million of savings for plan sponsors. Express Scripts also added the low-WAC version of Semglee to its National Flex Formulary (“Flex”) at the same time because, while it had a lower list price than branded Semglee, it had higher net costs. Plan sponsors were then free to choose between the lowest net cost option with the NPF or the Flex formulary, depending on their individual preferences. In the summer of 2024, Express Scripts decided to add the low-WAC version of Semglee to the NPF – again because doing so represented the lowest *net cost* option for plan sponsors.

For still another example, when Eli Lilly announced changes to the list price of one formulation of the low-WAC version of its branded insulin Humalog in 2023, Express Scripts promptly added it as a co-preferred alternative on the NPF.

Express Scripts’ Programs To Reduce Patients’ Out-of-Pocket Drug Costs

Express Scripts understands that certain benefit designs offered by its plan sponsor clients, and members’ health plan choices, can result in some members’ financial obligations being tied to the list prices of drugs, through deductibles and coinsurance, rather than the net costs ultimately borne by the plan sponsors. Express Scripts has provided multiple options to

help plan sponsors address the high list prices set by insulin manufacturers and reduce out-of-pocket costs for plan sponsors' members.

For example, through the Patient Assurance Program ("PAP") plan sponsors can cap a patient's out-of-pocket costs for certain drugs at the point of sale. After it was launched in 2019, Express Scripts successfully enrolled the most popular insulin products into PAP. By capping insulin co-pays at \$25 at the point of sale, plan sponsors' members saved more than \$18 million in 2022 alone. PAP enrollees were also 30% more likely to continue insulin treatment compared with non-PAP enrollees. This improved adherence due to PAP enrollment resulted in a significant reduction in total medical cost, which benefits members and plan sponsors. Express Scripts has steadily increased PAP enrollment over time, reaching 11 million covered lives enrolled in PAP in 2022. Not surprisingly, PAP adoption coincided with decreasing member out-of-pocket payments for insulin.

The value generated for members by Express Scripts' PAP program was also noticed by the federal government, which met with Express Scripts about the program and ultimately implemented a similar system for Medicare, albeit at a higher \$35 capped cost.

* * *

Ultimately, the Commission cannot meet its burden to show that the ESI Respondents' conduct with respect to insulin (or any other drug) is an unfair method of competition or an unfair act or practice. Express Scripts' choice of lowest net cost drugs on its NPF— as demanded by its plan sponsor customers — is self-evidently procompetitive because it results in lower overall prescription drug costs. The practice of choosing lowest net cost drugs has not caused drug list prices to rise, nor has it shifted the burden of higher list prices onto consumers; drug manufacturers and plan sponsors, respectively, control those decisions. Reducing drug costs for

plan sponsors and consumers likewise cannot cause substantial injury to consumers, and any “injury” identified in the Complaint is vastly outweighed by the countervailing benefits to consumers generally and to competition.

The Commission’s proposed relief would cause drug prices to rise because it would require Express Scripts to *ignore* net costs, thus incentivizing drug manufacturers to increase those costs. Far from unfair, optimizing to lowest net cost is procompetitive and consistent with market demand. The Commission should not be permitted to substitute its preferred judgment on formulary construction and plan design for the outcome of a competitive market.

GENERAL RESPONSES TO THE COMPLAINT'S ALLEGATIONS

Except to the extent specifically stated herein, the ESI Respondents deny each and every allegation contained in the Complaint. ESI Respondents do not interpret the headings and subheadings throughout the Complaint as well-pleaded allegations to which any response is required. To the extent such a response is required, ESI Respondents deny all allegations contained in the headings and subheadings of the Complaint. The Commission's unnumbered introductory paragraph asserts legal arguments and conclusions to which no response is required. To the extent such a response is required, ESI Respondents deny the allegations contained in the Commission's unnumbered introductory paragraph.

Unless otherwise defined, capitalized terms shall refer to the capitalized terms defined in the Complaint, but any such use is not an acknowledgement or admission of any characterization the Commission may ascribe to the capitalized terms.

ESI Respondents do not concede the truthfulness of third-party studies, articles, and news sources quoted or referenced in the Complaint. To the extent a response is required, ESI Respondents deny all allegations of the third-party studies, articles, and news sources quoted in or referenced in the Complaint. ESI Respondents lack knowledge about other Respondents and therefore cannot admit or deny allegations about them, except as specifically admitted below, and therefore deny such allegations. ESI Respondents deny that the Commission is entitled to any of the relief sought in the Notice of Contemplated Relief on pages 44-45 of the Complaint. ESI Respondents reserve the right to amend and/or supplement this Answer at a later stage of the proceedings as permitted by the Rules. Each paragraph below corresponds to the same-numbered paragraph in the Complaint.

SPECIFIC RESPONSES TO THE COMPLAINT’S ALLEGATIONS

1. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and therefore deny them.

2. Paragraph 2 sets forth legal conclusions as to which no response is required. To the extent a response is required, ESI Respondents deny the allegations contained in paragraph 2.

3. ESI Respondents admit that pharmacy benefit managers (PBMs) can act as service providers that help plan sponsors manage prescription drug coverage and pharmacy reimbursement. ESI Respondents deny that they “oversee” prescription drug coverage, as plan sponsors are solely responsible for designing, selecting, and providing prescription drug coverage to their members. ESI Respondents deny the remaining allegations contained in paragraph 3.

4. ESI Respondents admit that they create standard drug formularies that are offered to plan sponsors for possible adoption. ESI Respondents deny that they “wield significant influence” over which drugs a plan covers, as plan sponsors are solely responsible for designing, selecting, and providing prescription drug coverage to their members and either adopting a standard formulary or designing a custom formulary. In fact, the majority of members in plans that use Express Scripts have custom formularies. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 and therefore deny them.

5. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and therefore deny them.

6. ESI Respondents admit that drug manufacturers have unilaterally increased the list prices of certain of their drugs, including insulin, over the years. Respondents lack

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6 and therefore deny them.

7. ESI Respondents deny the allegations contained in paragraph 7.

8. ESI Respondents deny the allegations contained in the first sentence of paragraph 8. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8 and therefore deny them.

9. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9, including about other Respondents' confidential information, and therefore deny them.

10. ESI Respondents deny the allegations contained in paragraph 10.

11. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11, including about other Respondents' confidential information, and therefore deny them.

12. Paragraph 12 sets forth a legal conclusion to which no response is required. To the extent paragraph 12 requires a response, ESI Respondents deny the allegations contained in paragraph 12.

13. Paragraph 13 sets forth legal conclusions to which no response is required. To the extent a response is required, ESI Respondents deny the allegations contained in paragraph 13.

14. Paragraph 14 sets forth legal conclusions to which no response is required. To the extent a response is required, ESI Respondents deny the allegations contained in paragraph 14.

15. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 and therefore deny them.

16. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 and therefore deny them.

17. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 and therefore deny them.

18. ESI Respondents admit the first sentence of paragraph 18 and that Express Scripts provides pharmacy benefit management services to its plan sponsor clients. ESI Respondents lack information sufficient to form a belief as to the remainder of the second sentence and third sentence of paragraph 18 and therefore deny them. ESI Respondents admit that Express Scripts, Inc. is a subsidiary of The Cigna Group but otherwise deny the remaining allegation in the final sentence of paragraph 18.

19. ESI Respondents admit the first and second sentences of paragraph 19. ESI Respondents admit that Evernorth Health, Inc. is a subsidiary of The Cigna Group. ESI Respondents deny the remaining allegations contained in paragraph 19.

20. ESI Respondents admit the first sentence of paragraph 20. ESI Respondents admit that Medco Health Services, Inc. is a subsidiary of Express Scripts, Inc., Evernorth Health, Inc. and The Cigna Group. ESI Respondents deny the remaining allegations contained in paragraph 20.

21. Paragraph 21 requires no response.

22. ESI Respondents admit the first sentence of paragraph 22. ESI Respondents admit that Ascent enters into commercial rebate contracts with drug manufacturers and that the cost savings reflected in these rebate contracts can be used by Express Scripts plan sponsors to lower plan costs. ESI Respondents deny the remaining allegations contained in paragraph 22.

23. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 and therefore deny them.

24. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 and therefore deny them.

25. Paragraph 25 requires no response.

26. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 and therefore deny them.

27. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 and therefore deny them.

28. ESI Respondents admit that PBMs can perform a host of services for plan sponsors, including prescription claims processing, formulary development services, and negotiating with drug manufacturers to obtain discounts to lower the prices of branded prescription drugs. ESI Respondents deny the allegations contained in paragraph 28 to the extent they suggest that ESI Respondents negotiate rebates “on behalf of their clients.” ESI Respondents otherwise deny the remainder of the allegations contained in paragraph 28.

29. ESI Respondents admit that Express Scripts acquired Medco Health Solutions in 2012 and aver that the FTC investigated the transaction and concluded that it would not negatively impact competition. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 29 and therefore deny them.

30. ESI Respondents admit that they provide or are affiliated with entities that provide a variety of services, including in private drug labeling, certain pharmacy services, certain GPOs, and certain insurance offerings. The remainder of paragraph 30, to the extent it

relates to ESI Respondents, sets forth legal conclusions to which no response is required or allegations as to other Respondents for which the ESI Respondents lack knowledge or information sufficient to form a belief. To the extent paragraph 30 requires a response, ESI Respondents deny the remaining allegations contained in paragraph 30.

31. ESI Respondents admit that plan sponsors determine their members' out-of-pocket costs at the point of sale and how manufacturer rebates are distributed. The remainder of paragraph 31 sets forth legal conclusions and opinions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief. To the extent the remainder of paragraph 31 requires a response, ESI Respondents deny the allegations contained in paragraph 31.

32. ESI Respondents deny the allegations contained in the first sentence of paragraph 32. ESI Respondents admit that a drug formulary is a list of prescription drugs covered by a health plan, that drugs are often separated into tiers, that plan sponsors can decide whether drugs on "preferred" tiers are cheaper for patients, and formulary design can drive prescriptions toward the lowest tiers. ESI Respondents deny the remaining allegations contained in paragraph 32.

33. ESI Respondents admit the first two sentences of paragraph 33. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 33, and therefore deny them.

34. ESI Respondents admit that they offer many different standard formularies. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 34 and therefore deny them.

35. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35, including other Respondents' confidential information, and therefore deny them.

36. ESI Respondents admit that Express Scripts' National Preferred Formulary is used by plan sponsors with approximately the number of members identified in the first sentence of paragraph 36 and that its Basic Formulary is used by plan sponsors with approximately the number of members identified in the second sentence of paragraph 36. ESI Respondents deny the remaining allegations contained in paragraph 36.

37. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37, including other Respondents' confidential information, and therefore deny them.

38. ESI Respondents admit that drug manufacturers offer price concessions, which can reduce plan sponsor costs. ESI Respondents deny the remainder of paragraph 38.

39. ESI Respondents admit that drug manufacturers offer price concessions, which can reduce plan sponsor costs. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 39 and therefore deny them.

40. ESI Respondents admit that drug manufacturers are solely responsible for setting the wholesale acquisition cost, or "WAC" of the drugs they sell. ESI Respondents further admit that the WAC is often referred to as the drug's "list price." ESI Respondents deny the remaining allegations contained in paragraph 40.

41. ESI Respondents deny the allegations contained in paragraph 41.

42. ESI Respondents admit that Ascent enters into commercial rebate contracts with drug manufacturers that can lower plan costs. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth about the remaining allegations contained in paragraph 42, including other respondents' confidential information, and therefore deny them.

43. ESI Respondents admit that Ascent receives commercial bids from manufacturers that include rebate grids. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 43 and therefore deny them.

44. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44, especially with regard to its competitors' confidential information, and therefore deny them.

45. ESI Respondents admit that Ascent receives administrative fees from certain drug manufacturers. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 45 as to other PBMs and therefore deny them. ESI Respondents otherwise deny the remaining allegations contained in paragraph 45.

46. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46, especially with regard to its competitors' confidential information, and therefore deny them.

47. ESI Respondents admit that Ascent collects fees from certain drug manufacturers in exchange for valuable data services. Ascent negotiates those fees directly with drug manufacturers. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 as to other PBMs and therefore deny them.

48. ESI Respondents admit the second sentence of paragraph 48. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 48.

49. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 as to other PBMs and their confidential information, and therefore deny them. ESI Respondents admit that any fees they negotiate with manufacturers are negotiated individually with manufacturers and can vary but deny the remaining allegations contained in paragraph 49.

50. ESI Respondents admit that clients are free to select their own formularies and to customize their formularies to best fit the needs of their beneficiaries, and that many of Express Scripts' clients choose to implement custom formularies. ESI Respondents otherwise deny the allegations contained in paragraph 50. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 as to other PBMs and the intent and capabilities of unidentified plan sponsors and therefore deny them.

51. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 as to other PBMs and therefore deny them. ESI Respondents admit that Express Scripts claims that it passes on the vast majority of drug rebates to its plan sponsors because it in fact does. ESI Respondents deny the remaining allegations contained in paragraph 51.

52. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 and therefore deny them, except that ESI

Respondents admit that Express Scripts' President testified that "Express Scripts passes 95% of rebates it receives to health plan clients and their customers."

53. Paragraph 53 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 and therefore deny them.

54. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 and therefore deny them.

55. ESI Respondents admit that rebates generally reduce plan sponsor costs but deny the remaining allegations contained in paragraph 55.

56. ESI Respondents admit that patient costs may differ based upon various factors but deny the remaining allegations contained in paragraph 56.

57. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57, including in footnote 1, and therefore deny them.

58. ESI Respondents admit the first three sentences of paragraph 58. The remainder of paragraph 58 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 and therefore deny them.

59. ESI Respondents admit that they provide certain pharmacy benefit management services to certain self-insured and fully insured plan sponsors. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 59 and therefore deny them.

60. ESI Respondents admit that an insured patient's out-of-pocket costs for their prescription drugs are determined by the drug benefit in the patient's health plan, which is determined exclusively by the patient's plan sponsor – not ESI Respondents. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 60 and therefore deny them.

61. ESI Respondents admit that when an insured patient buys a prescription drug at a pharmacy using their pharmacy insurance benefit, the pharmacy typically charges the patient according to the patient's benefit design, which is determined exclusively by the patient's plan sponsor – not ESI Respondents. ESI Respondents deny the remaining allegations contained in paragraph 61.

62. ESI Respondents admit that patients with a flat copay can be indifferent to a drug's list price when using their plan's prescription drug benefit to pay for a given drug. ESI Respondents deny the remaining allegations contained in paragraph 62.

63. Paragraph 63 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 and therefore deny them.

64. Paragraph 64 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 and therefore deny them.

65. Paragraph 65 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 and therefore deny them.

66. ESI Respondents admit that plan sponsors choose whether or not to implement point-of-sale rebates, but deny the allegations contained in paragraph 66.

67. Paragraph 67 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 and therefore deny them.

68. Paragraph 68 states a hypothetical to which no response is required. To the extent paragraph 68 requires a response, ESI Respondents deny the allegations contained in paragraph 68.

69. Paragraph 69 states a hypothetical to which no response is required. To the extent paragraph 69 requires a response, ESI Respondents deny the allegations contained in paragraph 69.

70. Paragraph 70 states a hypothetical to which no response is required. To the extent paragraph 70 requires a response, ESI Respondents deny the allegations contained in paragraph 70.

71. ESI Respondents deny the allegations contained in paragraph 71 to the extent it purports to assert that an insured patient's drug benefit design is the only factor in determining a patient's out-of-pocket cost at the pharmacy counter and that formulary tiering and cost-sharing are the only associated factors. Other factors can influence patients' out-of-pocket costs at the point of sale, including coupons and cash cards.

72. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72, especially with regard to other parties' confidential documents, and therefore deny them.

73. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 73, except to admit that ESI Respondents may assist their clients in understanding their benefit elections.

74. ESI Respondents admit the allegations contained in paragraph 74.

75. Paragraph 75 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 and therefore deny them.

76. Paragraph 76 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 and therefore deny them.

77. Paragraph 77 purports to describe the contents of a document, which speaks for itself. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 and therefore deny them.

78. ESI Respondents deny the first sentence of paragraph 78. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of paragraph 78 and therefore deny them, except to admit that Semglee was launched in 2020.

79. ESI Respondents admit that some insulin products are available in both vial and pen form but otherwise lack information to form a sufficient belief as to the truth of the allegations contained in paragraph 79 and therefore deny them.

80. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 and therefore deny them.

81. ESI Respondents admit the allegations contained in paragraph 81.

82. ESI Respondents admit the allegations contained in paragraph 82.

83. ESI Respondents admit the allegations contained in paragraph 83.

84. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 and therefore deny them.

85. ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 and therefore deny them.

86. ESI Respondents admit the allegations contained in paragraph 86.

87. ESI Respondents admit the allegations contained in paragraph 87.

88. ESI Respondents admit the allegations contained in paragraph 88.

89. ESI Respondents admit the allegations contained in paragraph 89.

90. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 and therefore deny them.

91. ESI Respondents admit the allegations contained in paragraph 91.

92. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 and therefore deny them.

93. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 and therefore deny them. To the extent paragraph 93 purports to describe the contents of a document, the document speaks for itself.

94. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 and therefore deny them.

95. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 and therefore deny them. To the extent paragraph 95 purports to describe the contents of a document, the document speaks for itself.

96. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 and therefore deny them. To the extent paragraph 96 purports to describe the contents of a document, the document speaks for itself.

97. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 and therefore deny them. To the extent paragraph 97 purports to describe the contents of a document, the document speaks for itself.

98. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 and therefore deny them.

99. ESI Respondents admit that the existence of formularies with different drug products on different tiers has increased certain manufacturers' incentives to lower their prices. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 99.

100. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 as to other PBMs and therefore deny them. As to any remaining allegations contained in paragraph 100, ESI Respondents deny them.

101. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101 as to manufacturers and therefore deny them. As to any remaining allegations contained in paragraph 101, ESI Respondents deny them.

102. ESI Respondents deny the allegations contained in paragraph 102 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 as to other PBMs and therefore deny them.

103. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 as to other PBMs and therefore deny them.

104. ESI Respondents admit that drug formularies facilitate competition among drug manufacturers to lower net drug costs. ESI Respondents further respond that the selective quotations of material in Paragraph 104 are taken out of context and are misleading. To the extent paragraph 104 purports to describe the contents of a document, the document speaks for itself. ESI Respondents deny the remaining allegations contained in paragraph 104.

105. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 as to other PBMs and therefore deny them.

106. ESI Respondents admit that plan sponsors are in complete control of their formulary preferences and are free to develop a custom formulary. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 as to other PBMs and therefore deny them. ESI Respondents further deny the remaining allegations contained in paragraph 106.

107. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107 as to other PBMs and therefore deny them, except to admit that Express Scripts' National Preferred Formulary utilizes minor exclusions – less than 3% of FDA-approved drugs – to obtain greater savings for clients.

108. ESI Respondents admit that clients generally receive significant value from their formulary. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 as to other PBMs and therefore deny them. As to any remaining allegations contained in paragraph 108, ESI Respondents deny them.

109. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 109.

110. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 110 as to other PBMs and therefore deny them. ESI Respondents deny the allegations contained in the last sentence of paragraph 110 to the extent they suggest that Express Scripts excluded low-WAC rapid-acting insulin products from the NPF in 2023, when in fact Express Scripts added the low-WAC version of Humalog to the NPF as a co-preferred alternative in 2023. ESI Respondents deny the remaining allegations contained in paragraph 110.

111. ESI Respondents admit that Express Scripts preferred the combination of drugs, including insulins, that it believed generated the lowest net cost for plan sponsors using its National Preferred Formulary. Express Scripts admits that it added the first interchangeable long-acting biosimilar insulin product, Semglee, as a preferred option on the NPF in 2021, a decision that was lauded by Commissioner Slaughter in 2022.³ ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 111.

³ See *Statement of Commissioner Rebecca Kelly Slaughter*, June 7, 2022, available at https://www.ftc.gov/system/files/ftc_gov/pdf/SlaughterStatement-PBM6%28b%29Study6.7.2022_FINAL_.pdf.

112. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 112 as to other PBMs and manufacturers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 112.

113. ESI Respondents deny the allegations contained in paragraph 113 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113 as to other PBMs and manufacturers and therefore deny them.

114. ESI Respondents deny the allegations contained in paragraph 114 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114 as to other PBMs and manufacturers and therefore deny them.

115. ESI Respondents deny the allegations contained in paragraph 115 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115 as to other PBMs and manufacturers and therefore deny them.

116. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116 as to other PBMs and manufacturers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 116.

117. ESI Respondents admit the first, second, and fourth sentences of paragraph 117. ESI Respondents deny the remaining allegations contained in paragraph 117.

118. ESI Respondents deny the allegations contained in paragraph 118 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118 as to other PBMs and manufacturers and therefore deny them.

119. ESI Respondents deny the allegations contained in paragraph 119 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 as to other PBMs and manufacturers and therefore deny them.

120. ESI Respondents admit that Lilly unilaterally increased the list price for Humalog between 2012 and 2017. Respondents lack knowledge or information about the specific numbers contained in paragraph 120 and therefore deny them.

121. ESI Respondents admit that Novo Nordisk unilaterally increased the list price for Novolog between 2012 and 2018. ESI Respondents lack knowledge or information about the specific numbers contained in paragraph 121 and therefore deny them.

122. ESI Respondents admit that Sanofi unilaterally increased the list price for Lantus between 2012 and 2019. ESI Respondents lack knowledge or information about the specific numbers contained in paragraph 122 and therefore deny them.

123. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123 and therefore deny them.

124. ESI Respondents admit that Express Scripts' 2017 Drug Trend Report and related documents stated the quoted language. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 124

pertaining to third-party sources or other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 124.

125. ESI Respondents deny the allegations contained in paragraph 125 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 as to other PBMs and manufacturers and therefore deny them.

126. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 126 as to other PBMs and manufacturers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 126.

127. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 127 as to manufacturers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 127.

128. ESI Respondents deny the allegations contained in paragraph 128 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 128 as to other PBMs and manufacturers and therefore deny them.

129. ESI Respondents deny the allegations contained in paragraph 129 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 129 as to other PBMs and manufacturers and therefore deny them.

130. ESI Respondents deny the allegations contained in paragraph 130 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the

truth of the allegations contained in paragraph 130 as to other PBMs and manufacturers and therefore deny them.

131. ESI Respondents deny the allegations contained in paragraph 131 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131 as to manufacturer pricing decisions and therefore deny them.

132. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132 and therefore deny them.

133. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 133 and therefore deny them.

134. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 134 and therefore deny them.

135. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 135 and therefore deny them.

136. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 136 and therefore deny them.

137. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 137 as to other PBMs' statements and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 137.

138. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 138 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 138.

139. ESI Respondents admit that certain manufacturers have launched unbranded, low-WAC products. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 139 and therefore deny them.

140. ESI Respondents admit that Lilly unilaterally decided to launch an insulin lispro drug with lower list prices than Humalog. ESI Respondents deny the remaining allegations contained in paragraph 140.

141. ESI Respondents admit that Novo Nordisk unilaterally decided to launch an insulin aspart drug with lower list prices than Novolog. ESI Respondents deny the remaining allegations contained in paragraph 141.

142. ESI Respondents admit that Sanofi unilaterally decided to launch an insulin glargine drug with lower list prices than Lantus. ESI Respondents deny the remaining allegations contained in paragraph 142.

143. ESI Respondents admit that insulin manufacturers unilaterally determined which drugs to offer and at what prices. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 143 and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 143.

144. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 144 as to other PBMs and therefore deny them. ESI Respondents deny that they methodically disfavored low-WAC insulin products on their commercial formularies. Express Scripts has included low-WAC versions of insulin products on its National Preferred Formulary when they were part of the scenario that generated lowest net costs for plan sponsors, and low-WAC versions of insulin products have been on its

Flex Formulary for years to provide plan sponsors optionality in standard formularies. ESI Respondents deny the remaining allegations contained in paragraph 144.

145. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 145 as to other PBMs and therefore deny them, except to admit that Express Scripts preferred Lilly insulins in 2019 on its National Preferred Formulary where those products were part of the scenarios that generated the lowest net costs for plan sponsors. ESI Respondents deny the remaining allegations contained in paragraph 145.

146. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 146 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 146.

147. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 147 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 147.

148. ESI Respondents deny the allegations contained in paragraph 148 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 148 as to other PBMs and therefore deny them.

149. Express Scripts admits that it preferred insulin products in 2019 on its National Preferred Formulary where those products were part of a combination of drugs that generated the lowest net costs for plan sponsors. Paragraph 149 otherwise purports to describe the contents of documents, which speak for themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 149

pertaining to third-party sources or other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 149.

150. Paragraph 150 purports to describe the contents of documents, which speak for themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 150 and therefore deny them.

151. ESI Respondents admit that Semglee was launched in 2020 and that Express Scripts preferred the version of Semglee on the National Preferred Formulary that was part of the scenario that generated the lowest net costs for plan sponsors. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 151 as to other PBMs and manufacturers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 151.

152. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 152 and therefore deny them.

153. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 153, especially with regard to other parties' confidential documents, and therefore deny them.

154. ESI Respondents deny the allegations contained in paragraph 154, except to admit that Express Scripts was reportedly the first PBM to prefer the interchangeable biosimilar Semglee on a standard formulary.

155. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 155 and therefore deny them.

156. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 156 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 156.

157. ESI Respondents deny the allegations contained in paragraph 157 to the extent they purport to imply that ESI Respondents have control over plan sponsors' decisions regarding which drugs to cover on their custom formularies. ESI Respondents deny the remaining allegations contained in paragraph 157.

158. ESI Respondents deny the allegations contained in paragraph 158 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 158 as to other PBMs and manufacturers and therefore deny them.

159. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 159 and therefore deny them.

160. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 160 and therefore deny them.

161. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 161 and therefore deny them.

162. ESI Respondents deny the allegations contained in paragraph 162.

163. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 163 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 163.

164. ESI Respondents admit that many of its clients are attracted to cost savings realized through rebates and that Express Scripts passes through rebates and fees in accordance

with its client contracts. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 164 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 164.

165. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 165 as to other PBMs and therefore deny them. ESI Respondents otherwise deny the allegations contained in paragraph 165, except to admit that Express Scripts passes through rebates and fees in accordance with its client contracts.

166. ESI Respondents deny the allegations contained in paragraph 166, particularly to the extent it contains selectively quoted material that is taken out of context and is misleading.

167. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 167 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 167.

168. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 168 as to other PBMs and therefore deny them. ESI Respondents otherwise deny the allegations contained in paragraph 168, particularly to the extent they contain selectively quoted material that is taken out of context.

169. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 169, especially as to other PBMs' confidential documents, and therefore deny them.

170. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 170 as to other PBMs and therefore deny

them. ESI Respondents otherwise deny the allegations contained in paragraph 170, except to admit that rebates are attractive to many clients who wish to save money on their drug plans.

171. ESI Respondents admit that rebate guarantees are often demanded by plan sponsors as part of the RFP process. ESI Respondents deny the remaining allegations contained in paragraph 171 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 171 as to other PBMs and therefore deny them.

172. ESI Respondents deny the allegations contained in paragraph 172 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 172 as to other PBMs and therefore deny them.

173. ESI Respondents deny the allegations contained in paragraph 173 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 173 as to other PBMs and therefore deny them.

174. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 174 as to other PBMs and therefore deny them. ESI Respondents otherwise admit that clients often prefer the cost savings that rebates yield, and Express Scripts offers its Flex formulary as a standard formulary option for those clients that prefer an alternative approach with rebates. ESI Respondents deny the remaining allegations contained in paragraph 174.

175. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 175 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 175.

176. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 176 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 176.

177. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 177 as to other PBMs and therefore deny them. ESI Respondents deny the allegations contained in paragraph 177 to the extent they assert that Express Scripts selects drugs for its National Preferred Formulary based on profit to Express Scripts; the VAC does not consider such facts and instead evaluates the combination of drugs that will generate the lowest net costs for plan sponsors. ESI Respondents deny the remaining allegations contained in paragraph 177.

178. ESI Respondents deny the allegations contained in paragraph 178 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 178 as to other PBMs, especially with regard to other Respondents' confidential information, and therefore deny them.

179. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 179 as to other PBMs, especially with regard to other Respondents' confidential information, and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 179.

180. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 180 as to other PBMs, especially with regard to other Respondents' confidential information, and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 180.

181. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 181 as to other PBMs and therefore deny them. The second sentence of paragraph 181 contains selectively quoted material that is taken out of context, and ESI Respondents deny the allegations contained in paragraph 181 on that basis. ESI Respondents deny the remaining allegations contained in paragraph 181.

182. ESI Respondents admit that they seek to lower the net cost of drugs to better compete for the business of their plan sponsor customers. Paragraph 182 purports to describe the contents of documents, which speak for themselves. To the extent a response is required, ESI Respondents lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 182 and therefore deny them.

183. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 183 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 183.

184. ESI Respondents admit that plan sponsors often use rebates from drug manufacturers to “reduce the amount that employees have to contribute in premiums.” ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 184 as to other PBMs and therefore deny them. ESI Respondents otherwise deny the allegations contained in paragraph 184.

185. ESI Respondents deny the allegations contained in paragraph 185 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 185 as to other PBMs’ confidential information therefore deny them.

186. ESI Respondents deny the allegations contained in paragraph 186 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 186 as to other PBMs' confidential information therefore deny them.

187. ESI Respondents deny the allegations contained in paragraph 187 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 187 as to other PBMs and therefore deny them.

188. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 188 as to other PBMs and therefore deny them. ESI Respondents admit that Express Scripts made the calculation in the fifth sentence of paragraph 188 in 2019 and further admit that since then patients have been increasingly able to limit or cap their out-of-pocket spending on insulin, including through Express Scripts' Patient Assurance Program, which now enrolls approximately 11 million members. ESI Respondents deny the remaining allegations contained in paragraph 188.

189. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 189 and therefore deny them.

190. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 190 and therefore deny them.

191. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 191 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 191.

192. ESI Respondents admit the first sentence of paragraph 192 to the extent that they provide certain modeling and consulting services to certain clients. ESI Respondents deny the

remaining allegations contained in the first sentence of paragraph 192. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remaining sentences of paragraph 191, especially with regard to other respondents' confidential information, and therefore deny them.

193. ESI Respondents deny the allegations contained in paragraph 193. To the extent paragraph 193 references paragraph 186, ESI Respondents incorporate their response to paragraph 186 by reference herein.

194. ESI Respondents deny the allegations contained in paragraph 194 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 194 as to other PBMs and payers and therefore deny them.

195. ESI Respondents deny the allegations contained in paragraph 195 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 195 as to other PBMs and payers and therefore deny them.

196. ESI Respondents deny the allegations contained in paragraph 196 as to themselves, except to admit that plan sponsors choose whether or not to implement point-of-sale rebates. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 196 as to other PBMs and their confidential information and therefore deny them.

197. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 197 and therefore deny them.

198. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 198 and therefore deny them.

199. ESI Respondents deny the allegations contained in the first sentence of paragraph 199. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 199 as to other PBMs and therefore deny them. ESI Respondents deny the allegations contained in the remaining sentences of paragraph 199 on the basis that the quoted information included in the sentences is incomplete, taken out of context, and misleading.

200. ESI Respondents deny the allegations contained in paragraph 200 as to themselves. Paragraph 200 purports to describe the contents of a document, which speaks for itself. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 200 pertaining to third-party sources or other PBMs and therefore deny them.

201. ESI Respondents deny the allegations contained in paragraph 201. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 201 as to other PBMs and payers and therefore deny them.

202. ESI Respondents admit that insulin manufacturers control the price of insulin. To the extent a further response is required, ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 202 as to manufacturers and therefore deny them. ESI Respondents otherwise deny the allegations contained in paragraph 202.

203. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 203 and therefore deny them.

204. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 204 and therefore deny them.

205. ESI Respondents admit that insulin list prices have declined significantly since 2019. ESI Respondents otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 205 and therefore deny them.

206. ESI Respondents admit that insulin list prices have declined significantly since 2019. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 206 and therefore deny them.

207. ESI Respondents admit that insulin list prices have declined significantly since 2019. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 207 and therefore deny them.

208. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first and third sentences of paragraph 208 and therefore deny them. ESI Respondents deny the allegations contained in the second sentence of paragraph 208.

209. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 209 and therefore deny them.

210. ESI Respondents deny the allegations contained in paragraph 210 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 210 as to other PBMs and manufacturers and therefore deny them.

211. ESI Respondents deny the allegations contained in paragraph 211 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the

truth of the allegations contained in paragraph 211 as to other PBMs and payers and therefore deny them.

212. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 212 and therefore deny them.

213. ESI Respondents deny the allegations contained in paragraph 213.

214. Paragraph 214 purports to state conclusions of law to which no response is required. To the extent a response is required, ESI Respondents deny the allegations contained in paragraph 214.

215. ESI Respondents admit that they push drug manufacturers to compete to achieve a lower net price. ESI Respondents deny the remaining allegations contained in paragraph 215 to the extent the allegations pertain to them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 215 as to other PBMs and therefore deny them.

216. ESI Respondents deny the allegations contained in the first sentence of paragraph 216 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 216 as to other PBMs and therefore deny them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 216 and therefore deny them.

217. ESI Respondents deny the allegations contained in the first sentence of paragraph 217 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 217 as to other PBMs and therefore deny them. ESI Respondents lack knowledge or information sufficient to

form a belief as to the truth of the allegations contained in the second sentence of paragraph 217 as to other PBMs and manufacturers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 217.

218. ESI Respondents deny the allegations contained in paragraph 218 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 218 as to other PBMs and therefore deny them.

219. ESI Respondents deny the allegations contained in paragraph 219 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 219 as to drug manufacturers and other PBMs and therefore deny them.

220. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 220 as to other PBMs and payers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 220.

221. ESI Respondents deny the allegations contained in paragraph 221 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 221 as to manufacturers and other PBMs and therefore deny them.

222. Paragraph 222 sets forth legal conclusions to which no response is required. To the extent paragraph 222 requires a response, ESI Respondents deny the allegations contained in paragraph 222.

223. Paragraph 223 sets forth legal conclusions to which no response is required. To the extent paragraph 223 requires a response, ESI Respondents deny the allegations contained in paragraph 223.

224. Paragraph 224 sets forth legal conclusions to which no response is required. To the extent paragraph 224 requires a response, ESI Respondents deny the allegations contained in paragraph 224.

225. Paragraph 225 sets forth legal conclusions to which no response is required. To the extent paragraph 225 requires a response, ESI Respondents deny the allegations contained in paragraph 225.

226. The first, second, third, and fifth sentences of paragraph 226 set forth legal conclusions to which no response is required. To the extent the first, second, third, and fifth sentences of paragraph 226 require a response, ESI Respondents deny the allegations contained therein. ESI Respondents deny the allegations contained in the fourth sentence of paragraph 226.

227. Paragraph 227 sets forth legal conclusions to which no response is required. To the extent paragraph 227 requires a response, ESI Respondents deny the allegations contained in paragraph 227.

228. ESI Respondents admit that Express Scripts' "Patient Assurance Program" program caps a patient's out-of-pocket costs at \$25. ESI Respondents deny the allegations contained in the second sentence of paragraph 228 on the basis that the quoted information included in the paragraph is incomplete, taken out of context, and misleading. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 228 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 228.

229. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 229 and therefore deny them.

230. ESI Respondents deny the allegations contained in paragraph 230 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 230 as to other PBMs and therefore deny them.

231. ESI Respondents deny that they “prioritiz[e] . . . rebates over lower net prices.” ESI Respondents deny the remaining allegations contained in paragraph 231.

232. ESI Respondents deny the allegations contained in the first and second sentence of paragraph 232 as to themselves. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the first and second sentences of paragraph 232 as to other PBMs and GPOs and therefore deny them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 232 and therefore deny them. ESI Respondents deny the allegations contained in the fourth sentence of paragraph 232 on the basis that the quoted information included in the paragraph is incomplete, taken out of context, and misleading.

233. Paragraph 233 sets forth legal conclusions to which no response is required. To the extent paragraph 233 requires a response, ESI Respondents deny the allegations contained in paragraph 233.

234. ESI Respondents admit that insulin manufacturers have lowered list prices on some insulin products and have kept the list prices of other insulin products higher. ESI Respondents admit that insulin manufacturers control the price of insulin. ESI Respondents deny the remaining allegations contained in paragraph 234.

235. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 235 and therefore deny them.

236. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 236 and therefore deny them.

237. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 237 and therefore deny them.

238. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 238 and therefore deny them.

239. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 239 and therefore deny them.

240. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 240 and therefore deny them.

241. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 241 and therefore deny them.

242. ESI Respondents deny any allegations contained in paragraph 242 that pertain to them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 242 as to drug manufacturers and other PBMs and therefore deny them.

243. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 243 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 243.

244. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 244 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 244.

245. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 245 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 245.

246. ESI Respondents admit that Express Scripts' 2024 National Preferred Formulary preferred the versions of Tresiba and Semglee that were part of the scenario that generated the lowest net costs for plan sponsors using that formulary. Respondents deny the remaining allegations contained in paragraph 246.

247. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 247 as to other PBMs and therefore deny them.

248. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 248 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 248.

249. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 249 as to other PBMs and therefore deny them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 249 as to drug manufacturers and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 249.

250. ESI Respondents deny that Express Scripts preferred the high-WAC version of Cyltezo and excluded the low WAC alternative on its 2024 National Preferred Formulary. To the

contrary, Express Scripts included both branded Cyltezo and Adalimumab-adbm, its low-WAC version, on the 2024 National Preferred Formulary. ESI Respondents deny any remaining allegations contained in paragraph 250 that pertain to them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 250 as to other PBMs and therefore deny them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 250 as to drug manufacturers and therefore deny them.

251. ESI Respondents deny the allegations contained in the first sentence of paragraph 251. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 251 as to other PBMs and therefore deny them. The second sentence of paragraph 251 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 251 requires a response, ESI Respondents deny the allegations contained in paragraph 251.

252. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 252 as to other PBMs and therefore deny them. ESI Respondents deny the remaining allegations contained in paragraph 252.

253. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 253 and therefore deny them.

254. ESI Respondents deny the allegations contained in the first sentence of paragraph 254 as it pertains to them. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 254 as to other PBMs and therefore deny them. ESI Respondents lack knowledge or information sufficient to

form a belief as to the truth of the allegations contained in the second sentence of paragraph 254 and therefore deny them. The third sentence of Paragraph 254 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent the third sentence of paragraph 254 requires a response, ESI Respondents deny the allegations contained in the third sentence of paragraph 254.

255. ESI Respondents incorporate their responses to each of the allegations contained in paragraphs 1 through 254 as though fully stated herein.

256. ESI Respondents deny the allegations contained in the first sentence of paragraph 256. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 256 as to other PBMs and therefore deny them. The second sentence of paragraph 256 sets forth a legal conclusion to which no response is required. To the extent a response to the second sentence of paragraph 256 is required, ESI Respondents deny the allegations contained in the second sentence of paragraph 256.

257. Paragraph 257 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 257 requires a response, ESI Respondents deny the allegations contained in paragraph 257.

258. Paragraph 258 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 258 requires a response, ESI Respondents deny the allegations contained in paragraph 258.

259. Paragraph 259 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 259 requires a response, ESI Respondents deny the allegations contained in paragraph 259.

260. Paragraph 260 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 260 requires a response, ESI Respondents deny the allegations contained in paragraph 260.

261. Paragraph 261 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 261 requires a response, ESI Respondents deny the allegations contained in paragraph 261.

262. ESI Respondents incorporate their responses to each of the allegations contained in paragraphs 1 through 254 as though fully stated herein.

263. ESI Respondents deny the allegations contained in the first sentence of paragraph 263. ESI Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 263 as to other PBMs and therefore deny them. The second sentence of paragraph 263 sets forth a legal conclusion to which no response is required. To the extent a response to the second sentence of paragraph 263 is required, ESI Respondents deny the allegations contained in the second sentence of paragraph 263.

264. Paragraph 264 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief

as to other PBMs. To the extent paragraph 264 requires a response, ESI Respondents deny the allegations contained in paragraph 264.

265. Paragraph 265 sets forth legal conclusions to which no response is required. To the extent a response to paragraph 265 is required, ESI Respondents deny the allegations contained in contained in paragraph 265.

266. Paragraph 266 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 266 requires a response, ESI Respondents deny the allegations contained in paragraph 266.

267. Paragraph 267 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 267 requires a response, ESI Respondents deny the allegations contained in paragraph 267.

268. ESI Respondents incorporate their responses to each of the allegations contained in paragraphs 1 through 254 as though fully stated herein.

269. Paragraph 269 sets forth a legal conclusion to which no response is required. To the extent a response is required, ESI Respondents deny the allegations contained in Paragraph 269.

270. Paragraph 270 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 270 requires a response, ESI Respondents deny the allegations contained in paragraph 270.

271. Paragraph 271 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 271 requires a response, ESI Respondents deny the allegations contained in paragraph 271.

272. The first sentence of paragraph 272 sets forth a legal conclusion to which no response is required. To the extent a response to the first sentence of paragraph 272 is required, ESI Respondents deny the allegations contained in the first sentence of paragraph 272. ESI Respondents deny the allegations contained in the second sentence of paragraph 272.

273. Paragraph 273 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 273 requires a response, ESI Respondents deny the allegations contained in paragraph 273.

274. Paragraph 274 sets forth legal conclusions to which no response is required and allegations for which ESI Respondents lack knowledge or information sufficient to form a belief as to other PBMs. To the extent paragraph 274 requires a response, ESI Respondents deny the allegations contained in paragraph 274.

NOTICE OF CONTEMPLATED RELIEF

ESI Respondents deny that any of the relief set forth in the Complaint's Notice of Contemplated Relief, or the subparts thereto, is justified by fact or law, or in equity.

AFFIRMATIVE AND OTHER DEFENSES

ESI Respondents assert the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof or persuasion where such burden rests on the Commission. ESI Respondents have not or intentionally waived any applicable

defenses, and they reserve the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. ESI Respondents reserve the right to supplement their defenses as discovery progresses. The inclusion of any defense within this section does not constitute an admission that ESI Respondents bear the burden of proof on each or any of the issues, nor does it excuse Complaint Counsel for establishing each element of its purported claim for relief.

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint fails to allege any harm to competition.
3. The Complaint fails to allege any harm to overall consumer welfare.
4. The Commission is not entitled to relief as a matter of law.
5. The claims and relief sought are contrary to the balance of equities.
6. The relief sought is overly broad and unrelated to the claims alleged.
7. The Complaint fails to allege any unfair method of competition or unfair act under 15 U.S.C. §§ 45(a), (n).
8. The Complaint fails to allege any substantial injury to consumers.
9. The Complaint fails to allege that ESI Respondents' conduct was the actual or proximate cause of any substantial injury to consumers.
10. The Complaint fails to allege that any alleged injury to consumers was unavoidable.
11. The Complaint fails to plausibly allege that the alleged unfair acts or practices are ongoing or likely to recur.
12. The Complaint fails to allege that ESI Respondents have market power or monopoly power.

13. The Commission's claims are too speculative to support the relief sought.
14. The Complaint is invalid because the full Commission did not vote in favor of the final Complaint.
15. The Complaint is untimely and is barred in whole or part by laches and/or estoppel, based on the Commission's prior investigations of the same conduct alleged in the Complaint and its decisions not to take action.
16. ESI Respondents' decisions to include and/or prefer drugs on its standard formularies based on their net costs to its plan sponsor customers is procompetitive and results in significant cost savings for plan sponsors and their members. These benefits greatly outweigh any and all proffered anticompetitive effects.
17. The Commission's action is moot because ESI Respondents already prefer or co-prefer low-list price versions of insulin drugs on its standard formularies.
18. The Commission's cause of action under Section 5 of the Federal Trade Commission Act is not cognizable to the extent the Commission purports to apply Section 5 beyond the metes and bounds of the Sherman and Clayton Acts.
19. The Commission is not entitled to relief because none of ESI Respondents' conduct identified in the Complaint is actionable—independently or in the aggregate—under the antitrust laws and is otherwise lawful and consistent with public policy.
20. The Commission's enforcement action violates the Administrative Procedure Act, 5 U.S.C. § 1001 *et seq.*
21. The Complaint is a de facto rulemaking and exceeds the Commission's statutory rulemaking authority.

22. The Complaint exceeds the Commission's statutory authority under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

23. Neither the filing of this administrative action nor the contemplated relief is in the public interest, as required by 15 U.S.C. § 45.

24. Section 5 of the Federal Trade Commission Act is unconstitutionally vague and thus void, on its face and as applied, because it fails to provide sufficient notice of prohibited conduct, in violation of the Due Process Clause of the Fifth Amendment.

25. The Complaint reflects improper selective enforcement of the antitrust laws.

26. The Commission's claims are preempted by the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*

27. The Complaint challenges conduct that has implied immunity from the antitrust laws because of the involvement, acquiescence, or approval of governmental entities, or is otherwise related to a regulatory scheme, including the Federal Employees Health Benefits Act.

28. The proceedings are invalid because Section 5 of the Federal Trade Commission Act constitutes an unconstitutional delegation of legislative authority, in violation of Article I of the U.S. Constitution.

29. The proceedings are invalid because the structure of the Commission as an independent agency that wields significant executive power, and the associated constraints on removal of the Commissioners and other Commission officials, including the Commission's Administrative Law Judges, violates Article II of the U.S. Constitution and the separation of powers.

30. The proceedings are invalid because adjudication of the Commission's Complaint by the ALJ and the Commission violates Article III of the U.S. Constitution and the separation of powers.

31. The Commission's procedures violate ESI Respondents' right to procedural due process under the Due Process Clause of the Fifth Amendment.

32. The Commission's joint proceeding against unrelated, non-conspiring respondents violates the Due Process Clause of the Fifth Amendment.

33. The Commission's discretionary authority to commence administrative proceedings or to bring suit in federal district court violates the non-delegation doctrine and ESI Respondents' right to equal protection under the Due Process Clause of the Fifth Amendment.

34. The structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint, violates ESI Respondents' Fifth Amendment Due Process right to adjudication before a neutral arbiter.

35. These administrative proceedings violate ESI Respondents' Fifth Amendment Due Process right to adjudication before a neutral arbiter as applied to ESI Respondents because the Commission has prejudged the merits of this action, and the three Commissioners who did not recuse from this matter and voted to file the Complaint demonstrated that they have prejudged the merits of this matter through their statements and actions.

36. The requested relief is barred by the doctrines of unclean hands, equitable estoppel, and other equitable doctrines because Chair Khan, Commissioner Bedoya, and Commissioner Slaughter have exhibited bias and prejudgment of the issues.

37. The absence of a jury trial in the Commission's administrative proceedings violates Express Scripts' right to a jury trial guaranteed by the Seventh Amendment of the Constitution.

DEFENSES INCORPORATED BY REFERENCE

ESI Respondents incorporate by reference the affirmative and other defenses put forth by each of the other Respondents in their Answers to the Commission's Complaint.

WHEREFORE, ESI Respondents respectfully request that the Administrative Law Judge enter an order:

1. Denying the Commission's contemplated relief;
2. Dismissing the Complaint in its entirety with prejudice;
3. Awarding ESI Respondents their costs of suit; and
4. Awarding such other and further relief as the Administrative Law Judge may deem proper.

Dated: October 9, 2024

Respectfully submitted,

/s/ Charles F. Rule

Charles F. Rule
Daniel J. Howley
Margot Campbell
Derek W. Moore
Justin T. Heipp
RULE GARZA HOWLEY LLP
901 7th Street NW
Washington, D.C. 20001
(202) 843-9280
rule@rulegarza.com
howley@rulegarza.com
campbell@rulegarza.com
moore@rulegarza.com
heipp@rulegarza.com

Jennifer Milici
Perry A. Lange
John W. O'Toole
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, D.C. 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
jennifer.milici@wilmerhale.com
perry.lange@wilmerhale.com
john.otoole@wilmerhale.com

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

