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

In the Matter of **Caremark Rx, LLC,** **Zinc Health Services, LLC,** **Express Scripts, Inc.,** **Evernorth Health, Inc.,** **Medco Health Services, Inc.,** **Ascent Health Services LLC,** **OptumRx, Inc.,** **OptumRx Holdings, LLC, and** **Emisar Pharma Services LLC,** **Respondents.**	**Docket No. 9437**

COMPLAINT COUNSEL'S MOTION TO COMPEL TIMELY PRODUCTION OF DOCUMENTS FROM CAREMARK RESPONDENTS

Complaint Counsel respectfully requests that this Court, pursuant to Rule 3.38(a), order Caremark[1] to produce certain materials responsive to Complaint Counsel's First Set of Requests for Production and require Caremark to produce materials sufficiently in advance of the fact discovery deadline. Rule 3.1 requires that "the Administrative Law Judge and counsel for all parties [] make every effort at each stage of a proceeding to avoid delay." 16 C.F.R. § 3.1. The

[1] This brief uses "Caremark" to refer jointly and separately to Respondents Caremark Rx, LLC, and Zinc Health Services, LLC.

Court's Scheduling Order correspondingly requires that parties "make a good-faith effort to produce responsive documents as expeditiously as possible, including by making productions on a rolling basis." Scheduling Order 6. After more than four months of discovery, however, Caremark has produced relatively few documents, will not commit to providing requested financial documents or data, and will not agree to a production schedule that gives Complaint Counsel sufficient time to complete depositions or prepare expert reports. Given the fast-approaching discovery deadlines, the Court's intervention is necessary to prevent further delay and prejudice to Complaint Counsel.

FACTUAL BACKGROUND

The FTC issued this complaint on September 20, 2024 against the three largest pharmacy benefit managers ("PBMs") and their group purchasing organizations ("GPOs"), including Caremark. Compl. ¶ 3. The complaint challenges the PBMs' and GPOs' role in creating a drug reimbursement system that provides them billions of dollars in rebates and fees while incentivizing drug manufacturers to raise the list price of drugs—causing sick patients to pay significantly more for life-saving medications like insulin. Complaint Counsel issued Requests for Production ("RFPs") to Caremark on October 23, 2024. Decl. ¶ 4. The RFPs requested: (1) organizational and market information about Caremark and its industries; (2) information about Caremark's business practices regarding insulin, rebates and fees, contracting, and client communications; and (3) financial documents and data assessing the impact of these practices. *Id.*

Since receiving the RFPs, Caremark has refused to comply with requests for non-custodial financial documents and certain data. Despite Complaint Counsel's best efforts to resolve these issues without judicial intervention, Caremark will not identify what—if anything—it intends to produce in response to these requests. Decl. ¶¶ 30, 43.

Caremark has coupled this refusal to engage with other delay tactics. After receiving the RFPs, Caremark did not produce basic organizational charts for over two months. Decl. ¶ 9. It then took almost two months to fully respond to Complaint Counsel's proposals for document custodians and search terms. Decl. ¶ 10. And Caremark did not resolve outstanding issues about various document custodians until we raised this potential motion to compel in March. Decl. ¶ 12. Prior to March—after four months of discovery—Caremark had produced only 56 responsive documents. After being notified of this motion to compel, Caremark produced an additional 11,463 documents. Potentially hundreds of thousands of documents remain to be produced. Decl. ¶ 17.

Moreover, Caremark has repeatedly rejected Complaint Counsel's requests for a production timeline that would allow timely completion of fact discovery. Most recently, on January 24, Complaint Counsel requested that Caremark complete non-custodial document production by February 17 and substantially complete its custodial productions by April 4. Decl. ¶ 15. Caremark rejected this proposal, arguing that it is not obligated to produce anything before the June 6 fact discovery completion date, but suggested that it would try to produce most of the documents by early May. *Id.* When Complaint Counsel notified Caremark that it intended to file this motion to compel, Caremark again refused to discuss a date for substantial completion, stating only that it was "amenable in concept" to producing documents for "particular deponent custodians" in advance of their depositions. Ex. E (Letter dated Mar. 5, 2025 from K. Hoover to Counsel) at 3.

On February 25, 2025, Complaint Counsel filed a motion with the Commission to move the hearing date five months from August 27, 2025 to January 27, 2026, citing the expansive scope of discovery, the unusually high number of experts, and Respondents' repeated delays in

identifying custodians and producing documents. *See* Mot. for a Later Evidentiary Hearing Date. Caremark, along with the other Respondents, opposed this motion. Respondents' Opp. to Complaint Counsel's Mot. for a Later Evidentiary Hearing Date 9. Caremark argued to the Commission that it "can hardly be faulted" for not agreeing to produce documents by certain dates because "interim discovery deadlines . . . do not exist." *Id.* Caremark suggested that "[i]f Complaint Counsel believe that such interim deadlines would be helpful, they can and should . . . mov[e] the ALJ to modify the schedule if an impasse is reached." *Id.*

ARGUMENT

This Court has the inherent authority to compel timely production of materials responsive to Complaint Counsel's document requests. *See generally* 16 C.F.R. § 3.38. This includes compelling document production and ordering production by a certain date. *See, e.g.*, Order Granting Complaint Counsel's Mot. to Compel Production of Documents 4-5, *In re 1-800 Contacts*, No. 9372 (Dec. 16, 2016). The Court should order Caremark to (1) produce the financial documents and data requested by Complaint Counsel and (2) substantially complete its document productions by the earlier of (a) 60 days before the close of fact discovery or (b) seven days before the document custodian's deposition.

I. The Court should compel Caremark to produce financial documents and data

Part Three litigants "may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1). This Court routinely finds financial documents and data to be "properly discoverable" and "relevant." *In re Daniel Chapter One*, No. 9329, 2009 WL 569694, at *2 (Jan. 9, 2009) (cleaned up); *see also, e.g.*, *In re Intuit, Inc.*, No. 9408, 2022 WL 18389914, at *2 (Dec. 30, 2022); *In re OSF Healthcare Sys. & Rockford Health Sys.*, No. 9349, 2012 WL 588757, at *3 (Feb. 13, 2012).

"Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied." *In re LabMD, Inc.*, No. 9357, 2014 WL 333621, at *1 (Jan. 10, 2014) (cleaned up). To meet this "heavy burden," respondents must "establish that the hardship would be undue and disproportionate to the benefits Plaintiff would gain from the document production." *Manning v. Gen. Motors*, 247 F.R.D. 646, 654 (D. Kan. 2007) ("considerable hardship" is insufficient); *see also* 16 C.F.R. § 3.31(c)(2)(iii). The financial documents and data requested by Complaint Counsel are relevant, and Caremark has failed to show undue burden.

A. **The Court should compel Caremark to produce financial documents**

Complaint Counsel alleges that the rebate-centric system created by Caremark and the other PBMs leads to incentives to inflate rebates and fees. Compl. ¶¶ 168, 172-74. To show how this rebate system works, RFP Nos. 23-29 and 33-35, and 37 seek regularly held accounting and business documents that record and explain the complex transactions between drug manufacturers, Caremark's PBM and GPO entities, and plans. Decl. ¶ 19. These documents include consolidated and unconsolidated financial statements, the company's general ledgers and sub-ledgers, and other supporting accounting records. *Id.* Complaint Counsel's financial expert will analyze this information to show how Caremark uses rebates to profit from these transactions, and to rebut Caremark's claims that it mostly reinvests rebates or passes them through to clients or members. Compl. ¶¶ 51-52. These requests also seek ordinary financial planning documents like budgets, forecasts, and business review or strategy documents. These documents will show that Caremark's business model and decision-making are driven by maximizing rebates and fees—despite the effect on drug prices for patients. Decl. ¶ 27; *see also In re OSF Healthcare Sys.*, 2012 WL 588757, at *3 (ordering production of "highly relevant" documents regarding financial models on which Respondent Cigna relied for decision-making).

Caremark argues that these requests are overbroad and that Complaint Counsel has been "unwilling . . . to articulate what specific financial records [we] are seeking." Ex. E at 4. Complaint Counsel, however, has specifically identified the types of documents it seeks and often identified them by name. Decl. ¶ 28. The requested accounting materials are standard, ordinary course documents, which are frequently centrally stored. Decl. ¶ 26; *see also In re Daniel Chapter One*, 2009 WL 569694, at *2 (finding requests for financial records "not unduly burdensome"). The other requested business documents are routine and are generally prepared in advance of regular business management meetings, such as quarterly business reviews, rebate or trade reviews, and executive leadership meetings. Decl. ¶¶ 23-25. Even if Complaint Counsel has not used Caremark's internal nomenclature for each type of document, these materials should be easily identifiable by Caremark's business personnel. Complaint Counsel, of course, has been willing to work with Caremark to understand the specific types of responsive financial and business documents Caremark possesses. But Caremark has made no effort to clarify what non-custodial financial documents it has, and has not specifically offered to produce *any* of them.

B. The Court should compel Caremark to produce data

Complaint Counsel alleges that Caremark leverages its market share to extract significant amounts of rebates and fees through rebate-sharing compensation models, leading to inflated insulin drug prices and higher out-of-pocket patient costs. Complaint Counsel's economic expert will evaluate the financial effects of this business model by using data requested in RFP Nos. 22, 30-32, and 38-39. These requests seek data relating to Caremark's market share, compensation for PBM and GPO services, earned and retained rebates and fees (for insulin and aggregated across all drugs), insulin drug prices, and cost-sharing amounts paid by insulin patients. Decl. ¶ 32. Despite months of inquiries from Complaint Counsel, Caremark has not specified what—if

any—data it will produce. On March 5, Caremark objected for the first time that Complaint Counsel's data requests were broad in duration (going back to 2010) and scope (seeking data beyond what was produced in the investigation). Neither objection establishes an unreasonable burden.

First, Caremark implemented its exclusive formulary scheme in 2012. Data going back to 2010 will enable our economic expert to do a comparison study that shows how the change to exclusive formularies contributed to higher drug prices and patient out-of-pocket costs for insulin. Decl. ¶¶ 36, 38. Caremark has stated that some of this data is in archived storage, *see* Ex. E at 4, but this Court has found that even spending hundreds of hours retrieving archived data does "not satisfy Respondent's heavy burden of showing why discovery should be denied," *In re HomeAdvisor, Inc.*, No. 9407, 2022 WL 3646010, at *2 (Aug. 16, 2022).

Second, the fact that Complaint Counsel seeks data beyond what was produced during the investigation is of no moment: "[I]nvestigative proceedings and adjudicative proceedings. . . have long been recognized as separate and distinct proceedings serving different functions." *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1387 (5th Cir. 1971). Here the additional data sought is highly relevant: Complaint Counsel seeks aggregated information for total drug rebates, rather than just insulin-specific rebate information, to calculate the overall rate of rebates earned, retained, and passed through to clients. Decl. ¶¶ 32, 39. And Complaint Counsel seeks additional parameters for the data requested to assess how rebating differs by plan or formulary. Decl. ¶ 40.

II. The Court should order Caremark to substantially complete its document production 60 days before the end of fact discovery

FTC Rule 3.1 requires that "the Administrative Law Judge and counsel for all parties . . . make every effort at each stage of a proceeding to avoid delay." 16 C.F.R. § 3.1. More than halfway through fact discovery, and more than four months after receiving Complaint Counsel's

RFPs, Caremark has only produced limited documents and vaguely suggested it will aim to complete its production by early May. An earlier and firmer substantial completion date is necessary for several reasons.

First, Complaint Counsel needs a reasonable substantial completion date so we can complete depositions within the fact discovery period. Without sufficient document productions, it is difficult for Complaint Counsel even to make final decisions about who to depose. And once those deponents are selected, Complaint Counsel needs to receive documents early enough to "review [them] in advance of depositions" *Kansas Food Packers v. Corpak*, No. 99-1418-JTM, 2000 WL 33170870, at *4 (D. Kan. Oct. 12, 2000); *see also Hartzell Mfg., Inc. v. Am. Chem. Techs.*, 899 F. Supp. 405, 410 (D. Minn. 1995) (ordering documents produced at least one week before relevant deposition).

Second, Complaint Counsel needs the documents and data in time for our experts to evaluate them and prepare expert reports—which are due 12 days after the close of fact discovery. *See* Scheduling Order 2; *see also In re Intuit Inc.*, 2022 WL 18389914, at *3 (granting Complaint Counsel motion to compel data production by a date certain to "enabl[e] adequate expert witness discovery").

For these reasons, neither Caremark's vague offer to provide the documents in early May (less than a month before the end of fact discovery, and after depositions will need to start) nor its "amenab[ility] in concept" to producing documents for "particular custodians" in advance of depositions are sufficient to allow the timely completion of fact discovery. Ex. E at 3. This Court should use its authority under Rule 3.38 to order that document production be substantially completed several months before the end of fact discovery, as federal courts frequently do in FTC cases. *See*, *e.g.*, Scheduling Order ¶ 8, *FTC v. Surescripts, LLC*, No. 1:19-cv-1080-JDB

(D.D.C. Feb. 28, 2020), ECF No. 54 (requiring substantial completion of document production approximately two months before end of fact discovery); First Scheduling Order ¶¶ 6-7, *FTC v. AbbVie Inc.*, No. 2:14-cv-05151-HB (E.D. Pa. Apr. 29, 2015), ECF No. 78 (same).

Caremark's objection to Complaint Counsel's proposed production timelines is that they are too short to allow Caremark to produce the requested information. Decl. ¶¶ 14, 16. But this position cannot be squared with Caremark's opposition to Complaint Counsel's request for a schedule extension. If the Commission grants Complaint Counsel's pending request to extend the hearing date by five months, this Court can extend fact discovery by several months. That extension would allow Caremark the time it claims to need to complete its productions, while ensuring that Complaint Counsel is not prejudiced in fact or expert discovery by a lack of timely documents or data. If Caremark succeeds in opposing this extension, however, it should be required to produce materials on a timeline that makes the current discovery schedule feasible.

CONCLUSION

Complaint Counsel respectfully requests that this Court, pursuant to Rule 3.38(a), order Respondents to produce the requested financial documents and data within 10 days, and produce remaining responsive documents by the earlier of (1) 60 days before the end of fact discovery, or (2) seven days before the document custodian's deposition.

Dated: March 12, 2025

Respectfully submitted,

/s/ Rebecca L. Egeland

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Counsel Supporting the Complaint

STATEMENT REGARDING MEET AND CONFER

The undersigned counsel certifies that Complaint Counsel conferred with Respondent's counsel in a good faith effort to resolve by agreement the issues raised by Complaint Counsel's Motion to Compel Timely Production of Documents from Caremark Respondents and have been unable to reach such an agreement. Complaint Counsel (Nicholas Leefer) and Respondent's Counsel (Kylie Hoover) met and conferred regarding these issues on December 3, 2024, January 2, 2025, January 10, 2025, January 22, 2025, and February 10, 2025, and corresponded most recently on February 27, March 3, 2025, and March 5, 2025, and were unable to resolve the issues raised in the foregoing Motion.

Dated: March 12, 2025

Respectfully submitted,

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[PROPOSED ORDER]

Upon Complaint Counsel's Motion to Compel Timely Production of Documents from Caremark Respondents ("Mot.") and having considered the papers in support and in opposition thereto, it is hereby ORDERED that Caremark Respondents produce non-custodial data and financial documents in response to Complaint Counsel's First Set of Requests for Production Issued to Respondents Caremark Rx, LLC and Zinc Health Services, LLC ("RFPs"), and in accordance with Mot. Ex. D (Letter dated March 3, 2025 from N. Leefer to K. Hoover) at 2,

within 10 days of this Order, and substantially complete document productions in response to the RFPs by the earlier of (1) 60 days before the close of fact discovery, or (2) seven days before the document custodian's deposition.

Dated: _____

_____
D. Michael Chappell
Chief Administrative Law Judge

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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**

DECLARATION IN SUPPORT OF COMPLAINT COUNSEL'S MOTION TO COMPEL TIMELY PRODUCTION OF DOCUMENTS FROM CAREMARK RESPONDENTS

1. I have personal knowledge of the facts set forth in this declaration.

2. My name is Amanda Triplett. I am an attorney admitted to practice law in the District of Columbia. I am employed by the Federal Trade Commission and am Complaint Counsel in this action. I also have a Bachelor of Business Administration (BBA) degree, with a focus on accounting, and previously worked as an auditor and management consultant for a short period prior to becoming an attorney. Through this experience, I have a working

understanding of the types of financial documents and data within our requests for production.

3. Attached to this declaration are Exhibits A through E, submitted in support of Complaint Counsel's Motion to Compel Timely Production of Documents from Caremark Respondents. These exhibits are accurate and complete copies of the original documents.

4. On October 23, 2024, the first day permitted under Rule 3.31(a), Complaint Counsel issued Requests for Productions ("RFPs") to Caremark Rx, LLC, and Zinc Health Services, LLC ("Caremark"). *See* Ex. A (Complaint Counsel's First Set of Requests for Production Issued to Respondents Caremark Rx, LLC and Zinc Health Services, LLC). I was involved in the drafting of the First Set of RFPs to Caremark. These RFPs seek basic organizational and market information about Caremark; specific information about its business practices with respect to insulin, rebates and fees, contracting, and client communications; and financial documents and data assessing the impact of these practices.

5. The information in this declaration is based on my personal knowledge of, and involvement, in the drafting of the First Set of RFPs, subsequent negotiations with Caremark, and my general understanding of the types of financial documents and data we requested.

Caremark's Delays Responding to the RFPs

6. On November 6, 2024, Caremark served their Responses and Objections to Complaint Counsel's First Set of Requests for Production.

7. Complaint Counsel and Caremark held initial meetings on November 12, November 18, and December 3, 2024 to discuss Caremark's objections to the RFPs. During these

meetings, Complaint Counsel proposed various approaches to narrow the burden of review, such as applying targeted search terms to files held by certain custodians, using previously agreed-upon search terms to refresh investigation custodians' productions, and limiting the scope of client-facing materials to a small selection of clients.

8. Since these meetings, Caremark has consistently delayed its response to the RFPs.

9. It took Caremark nearly two months to provide basic organizational charts. Caremark initially stated that it would provide these charts by November 29, 2024. When it failed to meet this timeline, Caremark stated that it would instead provide them by December 6, 2024. But Caremark missed that deadline as well. Caremark finally provided incomplete organizational charts on December 20, 2024, after being contacted again by Complaint Counsel. This production, however, omitted organizational charts from Caremark's PBM organization, which Caremark sent on January 3, 2025.

10. Caremark also took nearly two months to fully respond to Complaint Counsel's document custodian and search term proposals. Complaint Counsel sent Caremark initial custodian and search term proposals on December 13, 2024—with placeholders for custodians in certain roles where Complaint Counsel could not identify the correct individual. Complaint Counsel sought a timely meet and confer, but Caremark would not do so for two weeks. On December 20, Complaint Counsel sent Caremark a letter noting its lack of response to these proposals, its delay in scheduling a meet and confer, and its general failure to produce any documents other than organization charts in two months.

11. On January 15, after two meet and confers, Caremark sent Complaint Counsel an incomplete list of proposed custodians that only included some—not all—of the employees who had previously been custodians during the investigation, and did not

address any of the additional custodians Complaint Counsel had requested. On January 20, 2025, Caremark sent a partial counterproposal on search terms, which accepted only five of the fifteen search-term strings proposed by Complaint Counsel.

12. On February 7, nearly two months after receiving Complaint Counsel's custodian and search term proposals, Caremark finally responded with complete counterproposals. But it has since continued to delay document production. Complaint Counsel has made several concessions in an attempt to reach a resolution, such as excluding four proposed custodians and agreeing to several limiting search string parameters suggested by Caremark. In contrast, Caremark took until March 5, 2025, to agree to add a key custodian—its PBM entity's Chief Financial Officer—and to provide information to identify other outstanding custodians.

Production Timing Disputes

13. Caremark has also repeatedly rejected Complaint Counsel's proposals for production schedules that would allow the production of documents in sufficient time to complete depositions and expert reports.

14. On December 20, Complaint Counsel asked Caremark to agree on a schedule for the rolling production of custodial documents by January 24, 2025. Caremark rejected Complaint Counsel's proposed timelines as unrealistic, without offering alternative deadlines.

15. On January 24, Complaint Counsel proposed a revised production schedule in which Caremark would: (1) complete production of non-custodial data and financial documents by February 17, 2025; (2) begin rolling custodial productions by February 21, 2025; and (3) substantially complete custodial document production by April 4, 2025. *See* Ex. C

(Letter dated Jan. 24, 2025 from A. Triplett to D. Dockery). Caremark rejected this proposed schedule. It argued that it had no obligation to provide responsive documents prior to the close of fact discovery on June 6, 2025. It offered—but did not commit—that it would try to substantially complete its document productions by early May if Complaint Counsel agreed to further limitations on the scope of our requests.

16. On March 3, 2025, Complaint Counsel informed Caremark that it would file a motion to compel if Caremark did not commit to commence rolling productions of custodial documents by March 10, 2025, with substantial completion by 60 days before the close of fact discovery (or, for custodial documents of a deponent, 7 days before that deposition). *See* Ex. D (Letter dated Mar. 3, 2025 from N. Leefer to K. Hoover). Caremark again refused to agree to Complaint Counsel's proposed timelines. Caremark cited the large volume of documents requested, and offered only that it was "amenable in concept to committing to substantially complete productions for particular deponent custodians at least seven days before their deposition." Ex. E (Letter dated Mar. 5, 2025 from K. Hoover to Counsel) at 3.

17. On March 10, 2025, Caremark produced 11,463 documents out of potentially hundreds of thousands, depending on the search terms on which the parties ultimately agree. Prior to March 10, Caremark had produced 56 documents.

Financial Document Requests

18. In addition to its refusal to agree to any of Complaint Counsel's proposed production timelines, Caremark also will not commit to producing the non-custodial financial documents requested by Complaint Counsel.

19. RFP Nos. 23-29, 33-35, and 37 seek regularly held accounting and business documents that large companies generally create and maintain in the regular course of business. The RFPs identify many of these documents by type or by name, including consolidated and unconsolidated financial statements, profit and loss statements, general ledgers, subledgers, budgets, and projections. These documents will allow Complaint Counsel to assess the complex transactions between Caremark's PBM and GPO entities, drug manufacturers, and plans.

20. Complaint Counsel's financial expert will perform an in-depth analysis of these financial records to assess the components of Caremark's revenues, the proportion of revenues derived from rebates and fees, the profitability of those rebates and fees, and the extent to which these rebates and fees are shared with clients or members. This analysis requires reviewing the high-level balances on Caremark's financial statements and tying those balances to other requested documents describing their underlying sub-totals.

21. For example, the RFPs request consolidated financial statements (Ex. A, RFP No. 24), which are a combination of financial statements for a company's divisions or subsidiaries and report all financial information for the parent as a single entity. For public companies such as Caremark's parent, these consolidated financial statements are filed publicly on a quarterly and annual basis and serve as the "official" reported figures for the company's financial performance. The unconsolidated financial statements provide similar financial information specific to Caremark's PBM and GPO entities. Together, these documents provide detail on the individual finances of these subsidiaries and how they fold into the broader financial balances of the parent company.

22. Since the totals reflected on these financial statements are provided at an aggregated level, other documents are necessary to understand the components of these high-level transaction records.

23. The general ledger and subledgers (Ex. A, RFP Nos. 26-27, 29) are the company's "books"—that is, the record of the company's transactions—and contain the underlying transactional detail necessary to understand the totals on the financial statements. They include assets, liabilities, income, and expenses, as well as sub-types for each of these, and can generally be exported from a company's accounting system.

24. Other requested accounting documents—such as the chart of accounts, trial balance, invoices, reconciliations, business process documentation, cost and expense detail, intercompany transactions, ownership records, and investment detail for transactions (Ex. A, RFP Nos. 23, 25, 26-29 and 33-35)—are regularly held records that can be used to understand the various transactions, balances, and accounts within the ledger and financial statements.

25. In addition to these accounting documents, RFP Nos. 26-27 seek specific business review and planning documents, such as profit and loss statements, budgets, forecasts, cost reports, profitability reports, projections, and models. These are regularly held business documents that are generally prepared in advance of routine meetings, business reviews, or trade reviews. They provide additional context to the information described within the financial statements and can show how the company evaluates its financial performance and makes strategic decisions—including with respect to rebates and fees.

26. Finally, as a discrete standalone request, Complaint Counsel requested all documents relating to rebate or fee auditing, monitoring, or compliance reports conducted by or on

behalf of Caremark, insulin manufacturers, or clients (Ex. A, RFP No. 37). This information is relevant to allegations relating to Caremark's transparency (or lack thereof) with respect to the rebates and fees they collect and pass through to clients. These documents are likely to be centrally stored or summarized within documents tracking audit requests and outcomes.

27. The requested accounting and financial documents are important to Complaint Counsel's ability to develop evidence to (1) prove the significant profits Caremark makes from the rebate-centric system it created; (2) analyze the incentives driving Caremark's financial and strategic decisions, specifically with respect to rebates and fees; and (3) rebut Caremark's claims that rebates and fees are mostly reinvested or passed through to health plan sponsor clients or individual patients.

28. In early discussions and at multiple meet and confers about Caremark's response to Complaint Counsel's First Set of RFPs, Complaint Counsel provided detailed guidance concerning the materials requested. *See, e.g.*, Ex. C (Letter dated Jan. 24, 2025 from A. Triplett to D. Dockery). Complaint Counsel stated multiple times that the requests sought standard business documents, often identified by name, which are held in the ordinary course of business and are frequently centrally stored or easily identifiable by business personnel.

29. Caremark initially agreed to investigate these requests with its accounting and business personnel and to consider ways to identify the requested financial documents. *See* Ex. B (Letter dated Dec. 13, 2024 from A. Triplett to D. Dockery). Nearly a month later, Caremark stated that it was still in the process of reviewing and pulling responsive documents, but did not have an update on its timing. The following week, Caremark

reversed its position. Caremark stated that it did not understand what documents were being requested, but also claimed that the request was so broad that it would take over a year to produce these documents. Caremark was unable to identify any specific questions or concerns regarding these document requests. *See* Ex. C (Letter dated Jan. 24, 2025 from A. Triplett to D. Dockery).

30. Since then, Caremark has refused to engage on these requests for financial documents and has not provided a proposal or even an update as to what documents, if any, it will produce. In its March 3 letter, Complaint Counsel informed Caremark that it intended to file a motion to compel unless Caremark provided the requested materials. *See* Ex. D (Letter dated Mar. 3, 2025 from N. Leefer to K. Hoover). In response, Caremark stated that Complaint Counsel's financial document requests were overbroad and sought irrelevant information, claiming that Complaint Counsel were either unwilling or unable to articulate what specific financial records were being sought. Though Caremark indicated it was working to produce some responsive documents, it did not specifically commit to doing so or indicate what documents it would provide.

Data Requests

31. Similarly, Caremark has not agreed to produce the data sought by the RFPs.

32. RFP Nos. 22, 30-32, and 38-39 seek data relating to the parties' market share, compensation related to the provision of PBM and GPO services, aggregated rebate and fee information for all drugs, insulin-specific rebate and fee information, insulin pricing information, and cost-sharing amounts paid by patients for insulin.

33. Data concerning market share is relevant to prove that drug manufacturers who do not participate in Respondents' "chase the rebate" scheme face the threat of being excluded outright from insurance coverage for a significant portion of patients.

34. Data relating to Respondents' compensation for PBM and GPO services and data relating to rebates and fees earned for insulin, and other drugs, will show that rebate and fee sharing is a prevalent and profitable compensation model, contributing further to incentives to inflate rebates and fees.

35. Data concerning insulin pricing and cost-sharing amounts paid for insulin will show that the effects of this system are higher list prices and out-of-pocket patient costs for certain individuals.

36. Complaint Counsel's economic expert will use the requested data to evaluate Caremark's market share, compensation related to the provision of PBM and GPO services, rebate and fee information for all drugs (and for insulin), insulin pricing information, and cost-sharing amounts paid by patients for insulin. These analyses will show how Caremark's rebating scheme works, and how it has led to inflated prices for insulin.

37. These requests seek some data beyond what Caremark produced during Complaint Counsel's investigation.

38. First, because Caremark began using exclusive formularies in 2012, these requests seek data going back to 2010. Pre-2012 data is relevant and important because it will allow Complaint Counsel's economic expert to conduct a time study comparing insulin rebates, pricing, and patient pay information before and after Caremark implemented its exclusive formularies strategy.

39. Second, these data requests seek aggregated information for total drug rebates, rather than just insulin specific rebate and fee information, as this information will be key to calculating the overall rate of rebate that Caremark passes through to clients.

40. Third, these requests seek additional data parameters, including by plan and by formulary, in order to assess whether the characteristics of the plan or formulary product affect insulin patient pay amounts, rebates and fees earned, and compensation to Caremark.

41. In initial meet and confers, Complaint Counsel explained the relevance of the requested data and tried to work with Caremark on a plan for production. Caremark did not provide any information on whether or when it intended to produce the requested data.

42. On February 5, 2025, Complaint Counsel sent proposed parameters for a data production, identifying relevant data fields from the materials produced during the investigation. The proposal left placeholders for other data fields to which Complaint Counsel does not have access, and which would need to be identified by Caremark. Caremark has not yet responded to this proposal.

43. Complaint Counsel's March 3 letter informed Caremark that Complaint Counsel intended to move to compel Caremark to produce this data if Caremark did not agree to do so. Caremark objected for the first time that Complaint Counsel's data requests were overbroad in duration—because they seek data going back to 2012, some of which Caremark claims is in archived storage—and in scope—because they seek data beyond what was produced in the investigation. As with the requested financial documents, Caremark suggested it was working to produce data, but did not identify what data it

possessed, made no commitment to produce any particular data, and offered no timeline for production.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 12, 2025, in Washington, DC.

/s/ Amanda Triplett
Amanda Triplett

EXHIBIT A

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

In the Matter of **Caremark Rx, LLC,** **Zinc Health Services, LLC,** **Express Scripts, Inc.,** **Evernorth Health, Inc.,** **Medco Health Services, Inc.,** **Ascent Health Services LLC,** **OptumRx, Inc.,** **OptumRx Holdings, LLC, and** **Emisar Pharma Services LLC,** **Respondents.**	**Docket No. 9437**

COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR PRODUCTION ISSUED TO RESPONDENTS CAREMARK RX, LLC AND ZINC HEALTH SERVICES, LLC

Pursuant to the Federal Trade Commission's Rule of Practice, 16 C.F.R. § 3.37, and the Definitions and Instructions set forth below, Complaint Counsel hereby requests that Respondents Caremark Rx, LLC and Zinc Health Services, LLC produce within 30 days all documents, electronically stored information, and other things in their possession, custody, or control responsive to the following requests:

1. Submit one copy of each organization chart and personnel directory for the Company and CVS Health Corporation (including domestic and international entities) and for each of the divisions or business segments involved, directly or indirectly, in any activity relating to PBM services, GPO services, or Insulin Products.

2. Submit all documents relating to communications about any Insulin Product between the Company and any Plan Sponsor, Payor, or any entity acting on behalf of a Plan Sponsor or Payor.

3. From July 29, 2022 to present, submit all documents relating to communications about any Insulin Product between the Company and any Insulin Manufacturer.

4. Submit all documents discussing Insulin Product List Prices, including, but not limited to documents relating to the impact of the elimination of Medicaid's average manufacturer price ("AMP") cap.

5. From July 29, 2022 to present, submit one copy of each executed Agreement between the Company and any Insulin Manufacturer that relates to pricing, discounts, rebates, fees, or other concessions or any other form of consideration for any Insulin Product.

6. Submit one copy of each executed PBM or GPO services Agreement between the Company and any commercial Plan Sponsor, Payor, or any entity acting on behalf of a commercial Plan Sponsor or Payor.

7. Submit one copy of each executed marketing allocation Agreement between the Company and any consultant, coalition, or other entity which acts on behalf of a commercial Plan Sponsor or Payor.

8. Submit one copy of each executed Agreement between the Company and any GPO or GPO participant, partner, or member, including any intercompany Agreements.

9. From January 1, 2018 to the present, submit one copy of the final Rebate Agreement between the Company and the relevant manufacturer for all non-insulin pharmaceutical products where the same manufacturer (including its partner, subsidiary, or affiliate) simultaneously offers or offered both a high-WAC and low-WAC version of an equivalent product (e.g., Harvoni, Epclusa, Abrilada, Amjevita, Cyltezo, Hulio, Hyrimoz, Repatha, Praluent) but the Company covers or covered the high-WAC version while excluding the low-WAC version on one or more of its Standard Formularies.

10. From January 1, 2018 to the present, submit one copy of each regularly prepared document relating to the Company's non-clinical decision-making with respect to the placement of the products responsive to Request No. 9 on its Standard Formularies, including but not limited to models, presentations, and committee minutes.

11. From July 29, 2022 to present, submit all documents prepared for, presented to, or discussed at a Meeting of CVS Health Corporation's or the Company's board of directors or other senior executives, and all documents relating to any such Meeting (including but not limited to Meeting minutes, drafts, and written communications), that relate to Insulin Products or anything that would implicate Insulin Products.

12. From July 29, 2022 to present, submit all documents relating to any Insulin Product prepared for or by any committee responsible for non-clinical aspects of Formulary development.

13. From July 29, 2022 to present, submit all documents relating to the placement, exclusion, or relative position of any Insulin Product on any Company Formulary, including but not limited to documents discussing the Company's Formulary development strategies, plans, and implementation.

14. From July 29, 2022 to present, submit all documents relating to the Company's Insulin Product strategy relating to rebates, fees, and any other payments from Insulin Manufacturers.

15. For any Insulin Product, submit all documents relating to patient assistance programs, cash prices at the pharmacies, and out-of-pocket spending for uninsured and insured patients, including but not limited to patients with coinsurance or paying a deductible.

16. Submit all documents discussing actual or potential harm to patients, Plan Sponsors, or Payors due to the List Price of Insulin Products included on the Company's Formularies or the use of List Price (or a benchmark correlated to List Price) for Insulin Products as a basis for Cost-sharing, rebates, fees, or other payments.

17. Submit all documents relating to negotiating, determining, and tracking rebate guarantees or any other methods of sharing or using rebates, rebate amounts, fees, or other amounts earned from drug manufacturers, including total amounts earned and any remaining exposure or amounts paid by the Company to meet sharing requirements.

18. Submit all documents relating to requests for proposals, bids, offers, or models or analyses relating to proposals, bids, or offers for PBM or GPO services between the Company and commercial Plan Sponsors, Payors, or any entity acting on behalf of commercial Plan Sponsors or Payors.

19. Submit all strategy and planning documents relating to requests for proposals, bids, or offers for PBM or GPO services between the Company and commercial Plan Sponsors, Payors, or any entity acting on behalf of commercial Plan Sponsors or Payors, including but not limited to underwriting for Pharmacy Benefit Plans and the promotion, marketing, or offering of the Company's Standard Formulary options.

20. Submit all documents relating to communications with commercial Plan Sponsors, Payors, or any entity acting on behalf of commercial Plan Sponsors or Payors, concerning Pharmacy Benefit Plan Design.

21. Submit all documents discussing the Company's market share, competitive position, or performance relative to any other company providing PBM or GPO services.

22. Submit data sufficient to show the following information for each of the Company's PBM and GPO entities, by Payor, on an annual basis:

    a. Total number of prescription claims and days of therapy processed;
    b. Total revenues for all prescription claims and days of therapy processed; and
    c. Total covered lives or members.

23. Submit documents sufficient to show ownership of the Company's PBM and GPO entities and the relations of the Company's PBM and GPO entities to other companies owned or controlled by CVS Health Corporation, including but not limited to capitalization tables, share ledgers, stock certificates, and company formation documents such as articles of incorporation, articles of organization, bylaws, or operating Agreements.

24. Submit one copy of CVS Health Corporation's consolidated financial statements and unconsolidated financial statements for the Company's PBM and GPO entities on any periodic basis.

25. Submit all process flow charts, narratives, and any other documents sufficient to show CVS Health Corporation's and the Company's processes, policies, and procedures related to the accounting, reporting, and management of rebates, fees, and other payments or transactions between the Company and drug manufacturers, related parties, Plan Sponsors, Payors, or any entity acting on behalf of Plan Sponsors or Payors, including but not limited to:

    a. how such rebates, fees, and payments are calculated, invoiced, and collected;
    b. how such rebates, fees, and payments are recognized, tracked, and accounted for;
    c. how such rebates, fees, and payments are shared with Plan Sponsors, Payors, or any entity acting on behalf of Plan Sponsors or Payors, including through rebate and fee sharing, rebate guarantees, reinvested rebates, point of sale rebates;
    d. how the portion of such rebates, fees, and payments retained by the Company is determined, including any deductions or adjustments based on amounts shared with Plan Sponsors or Payors; and
    e. how such rebates, fees, and payments are transmitted to other companies owned or controlled by CVS Health Corporation through intercompany transactions.

26. Submit all profit and loss statements, general ledgers, subledgers, budgets, forecasts, cost reports, profitability reports, projections, models, and other business review and planning documents prepared for CVS Health Corporation, the Company, and all business units relating to PBM or GPO services, including but not limited to the accounting, reporting, and management of rebates, fees, and other payments or transactions between the Company and drug manufacturers, related parties, Plan Sponsors, Payors, or any entity acting on behalf of Plan Sponsors or Payors.

27. Submit all profit and loss statements, general ledgers, subledgers, budgets, forecasts, cost reports, profitability reports, projections, models, and other business review and planning documents prepared for CVS Health Corporation, the Company, and all business units relating to PBM or GPO services for Insulin Products, including but not limited to the accounting, reporting, and management of rebates, fees, and other payments or transactions between the Company and Insulin Manufacturers, related parties, Plan Sponsors, Payors, or any entity acting on behalf of Plan Sponsors or Payors.

28. Submit all documents relating to the billing and collection of rebates, fees, and other payments from Insulin Manufacturers, including invoices or bills.

29. Submit documents and data sufficient to show the date, amount, purpose, and nature of transactions comprising the following financial statement balances and all subtotals within them for CVS Health Corporation and the Company, including all reconciliations, trial balances, general ledgers, subledgers, general ledger reports, chart of accounts, and any other reports used to prepare this information:

    a. Gross and net revenues;
    b. Expenses, including cost of goods sold;
    c. Operating income;
    d. Income before tax; and
    e. Net income.

30. For each year and quarter, submit data sufficient to show the following information for all prescription drug products, by Plan:

    a. Plan Sponsor or Payor;
    b. Total covered lives or members;
    c. Total number of prescription claims and days of therapy processed;
    d. Total earned rebates, fees, and any other payments from drug manufacturers, including subtotals for each type of payment (e.g., base rebates, manufacturer discounts, administrative fees, data portal fees, service fees, enterprise fees, price protection fees, fixed or lump sum payments);
    e. Total rebates, fees, and any other payments from drug manufacturers retained by the Company, including subtotals for each type of payment;
    f. Total deductions or adjustments to earned or retained rebates, fees, and other payments from drug manufacturers (e.g., rebate share amounts, rebate guarantees, reinvested rebates, point of sale rebates, etc.) including subtotals for each type of deduction or adjustment;
    g. Formulary;
    h. Formulary design (e.g., exclusive, closed, open, 3-tier, etc.);
    i. Information used to calculate each subtotal identified in 30(d)-(f); and
    j. Whether each subtotal identified in 30(d)-(f) is attributable to PBM or GPO services.

31. For each year and quarter, beginning in 2010, submit data sufficient to show the following information for each Insulin Product, by Plan:

    a. Plan Sponsor or Payor;
    b. Plan Sponsor or Payor type (e.g. commercial, Medicare, etc.)
    c. Product name;
    d. Active ingredient;
    e. Insulin Manufacturer;
    f. NDC;
    g. List Price;
    h. All discounts to List Price, by type of discount;
    i. Net Price of the Insulin Product;

j. Total number of Insulin Product prescription claims and days of therapy processed;
k. Total earned rebates, fees, and any other payments from each Insulin Manufacturer, including subtotals for each type of payment (e.g., base rebates, manufacturer discounts, administrative fees, data portal fees, service fees, enterprise fees, price protection fees, fixed or lump sum payments);
l. Total rebates, fees, and any other payments from each Insulin Manufacturer retained by the Company, including subtotals for each type of payment;
m. Information used to calculate each subtotal identified in 31(k)-(l);
n. Whether each subtotal identified in 31(k)-(l) is attributable to PBM or GPO services;
o. Formulary;
p. Formulary design (e.g., exclusive, closed, open, 3-tier, etc.); and
q. Formulary tier.

32. For each year and quarter, beginning in 2010, submit data sufficient to show the following information for each Plan Sponsor or Payor, by Plan, for which the Company provides PBM or GPO services:

a. Total covered lives or members;
b. Total number of prescription claims and days of therapy;
c. Method(s) of compensating the Company for PBM or GPO services (e.g., rebate or fee sharing, rebate or fee sharing with guarantees or reinvestment, flat fees, other fees, etc.);
d. Amounts paid to the Company for PBM or GPO services, including subtotals for each method of compensation;
e. A description of each subtotal identified in 32(d), including a description of how each subtotal is calculated (e.g., sharing percentages, flat fee amount, fees on a per claim basis, guarantee requirements, reinvestment requirements, etc.); and
f. Whether each subtotal identified in 32(d) is attributable to PBM or GPO services.

33. For each year, submit documents sufficient to show allocated or directly assigned costs and expenses relating to the provision of PBM or GPO services by CVS Health Corporation and the Company, including:

a. Total amounts for each allocated or directly assigned cost or expense; and
b. A description of each allocated or directly assigned cost or expense, including a description of any cost allocation methods used.

34. Submit documents and data sufficient to show the source, date, amount, purpose, and nature of related party and intercompany transactions, including any consolidating adjustment entries, recorded by CVS Health Corporation or the Company by type, including how each is calculated or determined.

35. Submit documents and data sufficient to show the source, date, amount, purpose, and nature of transactions reported by CVS Health Corporation or the Company that are

attributable to payments or investments to reduce Plan health care costs or to provide additional Plan benefits.

36. Submit all documents relating to the impact of rebates, fees, and any other payments from drug manufacturers on Premiums.

37. Submit all documents relating to rebate or fee auditing, monitoring, or compliance reports conducted by or on behalf of the Company, Insulin Manufacturers, commercial Plan Sponsors, Payors, or any entity acting on behalf of commercial Plan Sponsors or Payors.

38. For each year and quarter, beginning in 2010, submit data sufficient to show, for each Plan Sponsor or Payor, by Plan, the following information for each Insulin Product:

    a. Total number of prescription claims and days of therapy with Cost-sharing amounts paid by members, by type of Cost-sharing (e.g., coinsurance, co-pay, deductibles, preventive drug list, etc.);
    b. Total number of prescription claims and days of therapy with no Cost-sharing amounts paid by members;
    c. Total Cost-sharing amounts paid by members, by type (e.g., coinsurance, co-pay, deductibles, preventive drug list, etc.);
    d. Total reductions to member Cost-sharing amounts, including subtotals for each type (including but not limited to reductions attributable to patient assistance programs offered by the Company or drug manufacturers, reinvested rebates, or point-of-sale rebates); and
    e. The calculation of each subtotal identified in 38(d).

39. Submit a copy of any database containing information responsive to Requests 21-38.

For the purpose of these Requests, the following definitions and instructions apply without regard to whether the defined terms used herein are capitalized or lowercase and without regard to whether they are used in the plural or singular forms:

DEFINITIONS

40. The terms "the Company" or "Company" means Caremark Rx, LLC and Zinc Health Services, LLC, and all domestic and foreign, predecessors, successors, divisions, wholly or partially owned subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents, and representatives of the foregoing.

1. The term "Agreement" means any oral or written contract, arrangement, or understanding, whether formal or informal, between two or more Persons, together with all modifications or amendments thereto.

2. The term "Average Wholesale Price" means the "average wholesale price" as reported in wholesale price guides or other publications of drug pricing data.

3. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.

4. The term "Cost-sharing" refers to health care costs not covered by the Company, a Plan, Plan Sponsor, or Payor, including but not limited to patient out-of-pocket payments such as co-pays, coinsurance, and deductibles, or other payments.

5. The terms "discuss" or "discussing" means in whole or in part constituting, containing, describing, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. In addition, a document that "discusses" another document includes the other document itself (e.g., a document that "discusses" an agreement or contract includes the agreement or contract itself). Further, these terms include any operating or financial data about the designated subject matter where such data are separately set out as in a chart, listing, table, or graph.

6. The term "document" means any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Company. The term "documents" includes, without limitation: computer files; email messages; text messages; instant messages and chat logs; group chats; voicemails and other audio files; calendar entries; schedulers; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person's files; notes of Meetings or telephone calls; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

   Unless otherwise specified, the term "documents" excludes:

   a. bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature;

   b. architectural plans and engineering blueprints;

   c. documents solely relating to environmental, tax, human resources, and Occupational Safety and Health Administration (OSHA) issues; and

   d. relational and enterprise databases, except as required to comply with an individual Request.

7. The term "computer files" includes information stored in, or accessible through, computers or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this Definition with the Commission representative identified on the last page of this Request. The Commission representative will consider modifying this Definition to:

a. exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from those that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;

b. limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, certain time periods, or certain Requests identified by the Commission representative; or

c. include other proposals consistent with Commission policy and the facts of the case.

8. The terms "each," "any," and "all" mean "each and every." The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of these requests for production anything that might otherwise be outside its scope. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.

9. The term "FDA" means the United States Food and Drug Administration.

10. The term "Formulary" means a Payor's, Health Care Provider's or PBM's list of medicines, drugs, or pharmaceutical products that are approved to be prescribed, covered, or reimbursed at a hospital, in a particular health system, or under the pharmaceutical benefit of a health insurance policy.

11. The terms "GPO" or "Group Purchasing Organization" means any entity that negotiates for, contracts for, or purchases pharmaceuticals on behalf of its members.

12. The term "Health Care Provider" refers to any doctor, hospital, clinic, or other person or entity that provides health care services, including any individuals that are employed by, serve as the agent of, or are otherwise contracted or affiliated with a doctor, hospital clinic, or other person or entity that provides healthcare services to patients.

13. The terms "identify" or "specify" when used in reference to a natural person, means to state the person's (1) full name; (2) present or last-known residence and telephone number and present or last-known business address and telephone number; and (3) present or last-known employer and job title. For any person identified, if any of the above information was different during the time period relevant to these requests for production, supply both the current information and such different information as applies to the time period relevant to these requests for production. Once a natural person has been identified properly, it shall be sufficient thereafter when identifying that same person to state the name only.

"Identify" or "specify," when used in reference to a corporation or other non-natural person, means (1) to state that entity's name; (2) to describe its nature (e.g., corporation, partnership, etc.); (3) to state the location of its principal place of business; and (4) to identify the natural person or persons employed by such entity whose actions on behalf of the entity are responsive to these requests for production. Once such an entity has been

identified properly, it shall be sufficient thereafter when identifying that same entity to state the name only.

"Identify" or "specify," when used in reference to facts, acts, events, occurrences, Meetings, or Communications, means to describe, with particularity, the fact, act, event, occurrence, Meeting, or Communication in question, including but not limited to (1) identifying the participants and witnesses of the fact, act, event, occurrence, Meeting, or Communication; (2) stating the date or dates on which the fact, act, event, occurrence, Meeting, or Communication took place; (3) stating the location(s) at which the fact, act, event, occurrence, Meeting, or Communication took place; and (4) providing a description of the substance of the fact, act, event, occurrence, Meeting, or Communication.

14. The terms "include" and "including" mean "including but not limited to." The use of the term "include" in any request shall not be used to limit the generality or scope of any request. Nor shall the generality of any request be limited by the fact that another request touches on the same topic with a greater or lesser degree of specificity.

15. The term "Insulin Manufacturer" means any company that manufactures or markets insulin, including but not limited to Eli Lilly and Company, Novo Nordisk A/S, Sanofi S.A., Viatris Inc., and Biocon Limited.

16. The term "Insulin Product" means each insulin pharmaceutical and related device, equipment, or other mechanical part approved by the FDA to treat diabetes.

17. The term "intercompany" refers to any activities or transactions between the Company, its parent company, and any entities owned or controlled by the same parent company.

18. The term "List Price" means any price at which an Insulin Product is listed, including but not limited to Wholesale Acquisition Cost and Average Wholesale Price.

19. The term "Meeting" means an assembly of two or more people, in-person or via telephone, voice-over-IP, video, video conferencing, WebEx, or similar means of communication.

20. The term "Net Price" means the List Price less all rebates, discounts, and other reductions.

21. The term "Payor" means any entity, other than the receiving patient, that pays or reimburses in whole or in part for the administration or sale of a pharmaceutical product. Payors include, but are not limited to, Plan Sponsors, federal and state government programs such as TRICARE, Medicare, and Medicaid; private insurers and health-maintenance organizations (HMOs); and health-and-welfare funds.

22. The term "PBM" or "Pharmacy Benefit Manager" means any entity or anyone acting on the entity's behalf (such as a GPO) that serves as a third-party administrator of a Payor or Plan's prescription drug programs; negotiates rebate or fee agreements on behalf of a

Payor or Plan; creates or manages a Formulary on behalf of a Payor or Plan; or otherwise deals with pharmaceutical manufacturers or sellers on behalf of a Payor or Plan.

23. The terms "person" or "persons" includes the Company and means any natural person, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust.

24. The term "pharmacy" refers to any entity, including mail-order vendors, retail vendors, hospitals, clinics, and inpatient facilities, that dispenses pharmaceutical products to patients, including pursuant to a prescription issued by a Health Care Provider. (If a pharmacy has more than one location or outlet, each location should be accounted for individually).

25. The term "Pharmacy Benefit Plan" means a plan that provides insurance coverage to a patient for certain drugs from pharmacies and other drug sources, often serviced by a PBM.

26. The term "Pharmacy Benefit Plan Design" refers to the features, structure, or design of a Pharmacy Benefit Plan, including but not limited to product access or coverage, Formularies, restrictions on covered products (e.g., product exclusions, dispensing limits, quantity caps), utilization management (e.g., prior authorization, step therapy, mandatory generic substitution, preferred drug lists), Cost-sharing approaches (e.g., tiered copayments, coinsurance, deductibles), general utilization review (e.g., drug utilization review, disease management), and any consulting, modeling, underwriting, cost-reporting, or other support services provided by the Company to a Plan Sponsor, Payor, or patient.

27. The term "Plan" means any health plan or coverage designed, offered, operated, administered, sponsored, or insured by a Payor that pays for (in whole or in part), purchases, reimburses (in whole or in part), dispenses, or otherwise provides pharmaceuticals to individuals.

28. The term "Plan Sponsor" means the financial entities (e.g., Self-funded employers, insurance companies, union health plans) that pay for prescription drugs through Pharmacy Benefits Plans or any entity acting on their behalf. Each Plan Sponsor will often offer multiple Pharmacy Benefit Plans.

29. The terms "price" or "pricing," when used with regard to one or more products, means the amount charged by the supplier for such product(s) or the amount paid by the buyer of such product(s) to the seller, whether or not the seller is the manufacturer of the product(s). The terms "price" also includes amounts denominated as price, gross price, net price, average price, unit price, effective price, dead net price, rebate, package price, bundled price, discount, credit, charge or chargeback, allowance, debit, or any other payment or receipt of anything of value incurred in whole or in part as a result of the sale of the applicable product.

30. The term "rebate" means a retrospective payment returning a portion of the List Price paid for a drug to the direct or indirect purchaser.

31. The terms "relate," "related to," and "relating to" mean, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting on, discussing, describing, identifying, referring to, reflecting, reporting on, stating, or dealing with.

32. The term "retained" refers to any portion of rebates, fees, or other payments from drug manufacturers that is earned or kept by the Company, regardless of whether the amount is shared, reinvested, converted into a point-of-sale rebate, used to meet guarantee requirements, or otherwise spent by the Company.

33. The term "Self-funded" means a funding arrangement where an employer assumes the responsibility of paying healthcare claims.

34. The term "Standard Formulary" means any standardized or template Formulary that has not been customized by a client.

35. "Wholesale Acquisition Cost" or "WAC" means the manufacturer's List Price for a drug to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, Rebates or reductions in Price, as reported in wholesale price guides or other publications of drug pricing data.

INSTRUCTIONS

1. Unless otherwise indicated, each request covers documents and information dated, generated, received, or in effect from January 1, 2019, to the present.

2. Respondent need not produce responsive documents that Respondent has previously produced to the Commission in relation to the prior investigation, FTC No. 2210114. **Respondent must produce all other responsive documents, including any otherwise responsive documents that may have been produced by Respondent to the Commission in relation to any other investigation conducted by the Commission.**

3. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by Respondent up to forty-five (45) calendar days prior to the date of the Company's full compliance with this request.

4. Except for privileged material, the Company will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. The Company should submit any appendix, table, or other attachment by either attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, the Company will not redact, mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

5. Unless modified by agreement with Complaint Counsel, these Requests require a search of all documents in the possession, custody, or control of the Company including, without limitation, those documents held by any of the Company's officers, directors, employees, agents, representatives, or legal counsel, whether or not such documents are on the

premises of the Company. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, the Company must provide the Complaint Counsel with the following information as to each such person: his or her name, address, telephone number, and relationship to the Company. In addition to hard copy documents, the search must include all of the Company's Electronically Stored Information.

6. Form of Production. The Company shall submit all documents as instructed below absent written consent signed by Complaint Counsel.

   a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:

      i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and applicable metadata and information as described in subparts (a)(iii) and (a)(iv).

      ii. Submit emails in image format with extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
To	Recipient(s) of the email.
From	The person who authored the email.
CC	Person(s) copied on the email.
BCC	Person(s) blind copied on the email.
Subject	Subject line of the email.
Date Sent	Date the email was sent.
Time Sent	Time the email was sent.
Date Received	Date the email was received.
Time Received	Time the email was received.
Attachments	The Document ID of attachment(s).
Mail Folder Path	Location of email in personal folders, subfolders, deleted items or sent items.

Message ID	Microsoft Outlook Message ID or similar value in other message systems.

iii. Submit email attachments in image format, or native format if the file is one of the types identified in subpart (a)(i), with extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Parent Email	The Document ID of the parent email.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

iv. Submit all other electronic documents in image format, or native format if the file is one of the types identified in subpart (a)(i), accompanied by extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.

Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

v. Submit documents stored in hard copy in image format accompanied by OCR with the following information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.

vi. Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 6.

b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats such as CSV files, with all underlying data un-redacted and all underlying formulas and algorithms intact.

7. If the Company intends to utilize any electronic search terms, de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact the Commission to determine, with the assistance of the appropriate Commission

representative, whether and in what manner the Company may use such software or services when producing materials in response to these requests for production.

8. Produce electronic file and image submissions as follows:

   a. For productions smaller than 10 GB, the Company's response to these requests for production shall be submitted to the Commission through email and using secure file transfer protocols ("FTP"). For instructions on submitting through FTP, please contact Terri Martin (tmartin@ftc.gov), Stephanie Guy (sguy@ftc.gov); Qwai-Zia Pennix (qpennix@ftc.gov), Tofunmi Onafowokan (jonafowokan@ftc.gov) and John Yoon (jyoon2@ftc.gov).

   b. For productions larger than 10 GB, the Company shall submit its response to these requests for production using physical media (USB accessible external hard drive/thumb drive), in a Microsoft Windows compatible format. The Company shall contact Terri Martin (tmartin@ftc.gov), Stephanie Guy (sguy@ftc.gov); Qwai-Zia Pennix (qpennix@ftc.gov), Tofunmi Onafowokan (jonafowokan@ftc.gov) and John Yoon (jyoon2@ftc.gov), who will provide further instructions on how to submit a response to this subpoena on physical media.

   c. A transmittal cover letter shall still be sent via electronic mail to: Nicholas Leefer (nleefer@ftc.gov), Terri Martin (tmartin@ftc.gov), Stephanie Guy (sguy@ftc.gov); Qwai-Zia Pennix (qpennix@ftc.gov), Tofunmi Onafowokan (jonafowokan@ftc.gov) and John Yoon (jyoon2@ftc.gov).

9. <u>All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with these requests for production</u>.

   a. Encryption of productions using NIST FIPS-compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.[1]

   b. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.

[1] The National Institute of Standards and Technology (NIST) issued Federal Information Processing Standard (FIPS) Publications 140-1 and 140-2, which detail certified cryptographic modules for use by the U.S. Federal government and other regulated industries that collect, store, transfer, share, and disseminate sensitive but unclassified information. More information about FIPS 140-1 and 140-2 can be found at http://csrc.nist.gov/publications/PubsFIPS.html.

10. All documents responsive to these requests:

    a. Shall be produced in complete form, unredacted unless privileged, and in the order in which they appear in the Company's files;

    b. Shall be marked on each page with corporate identification and consecutive document control numbers when produced in image format;

    c. Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black and white photocopying or conversion to TIFF format of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-color photocopy, or a JPEG format image);

    d. Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and

    e. Shall be accompanied by an index that identifies (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents. The Commission representative will provide a sample index upon request.

11. If any documents are withheld from production based on a claim of privilege, Respondent shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.

12. If Respondent is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by Respondent to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for Respondent to make an estimate, provide an explanation.

13. If documents responsive to a particular Request no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but Respondent has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.

14. The Company must provide the Commission with a statement identifying the procedures used to collect and search for electronically stored documents and documents stored in paper format. The Company must also provide a statement identifying any electronic production tools or software packages utilized by the company in responding to this

subpoena for: keyword searching, Technology Assisted Review, email threading, de-duplication, global de-duplication or near-de-duplication, and

a. if the company utilized keyword search terms to identify documents and information responsive to this subpoena, provide a list of the search terms used for each custodian;

b. if the company utilized Technology Assisted Review software;

   i. describe the collection methodology, including: how the software was utilized to identify responsive documents; the process the company utilized to identify and validate the seed set documents subject to manual review; the total number of documents reviewed manually; the total number of documents determined nonresponsive without manual review; the process the company used to determine and validate the accuracy of the automatic determinations of responsiveness and non-responsiveness; how the company handled exceptions ("uncategorized documents"); and if the company's documents include foreign language documents, whether reviewed manually or by some technology-assisted method; and

   ii. provide all statistical analyses utilized or generated by the company or its agents related to the precision, recall, accuracy, validation, or quality of its document production in response to this subpoena; and identify the person(s) able to testify on behalf of the company about information known or reasonably available to the organization, relating to its response to this request.

c. if the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena

Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Nicholas Leefer at (202) 326-3573 or nleefer@ftc.gov. The response to the request shall be addressed to the attention of Nicholas Leefer, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

Dated: October 23, 2024

Respectfully submitted,

/s/ Nicholas Leefer
Nicholas Leefer

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3573
Email: nleefer@ftc.gov

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2024, I caused the foregoing Complaint Counsel's First Set of Requests for Production to be served via email on:

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emainigi@wc.com

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

Dated: October 23, 2024

/s/ Nicholas Leefer
Nicholas Leefer

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3573
Email: nleefer@ftc.gov

Counsel Supporting the Complaint

EXHIBIT B

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Health Care Division

December 13, 2024

Daniel M. Dockery
Williams & Connolly
680 Maine Avenue SW
Washington, DC 20024

Re: In the Matter of Caremark Rx, LLC, et al. (Insulin)

Dear Daniel:

I write to memorialize our December 3, 2024 call discussing Caremark's and Zinc's ("Caremark's") objections to the FTC's Requests for Production in the above-captioned matter. On this call, we discussed and agreed upon the following for specific objections made to the following requests.

- **19:** In response to your concern about the breadth of this request, we specified that we are interested in overarching strategy and planning documents relating to how Caremark approaches the plan sponsor client bidding process. You agreed to consider ways to identify such documents.

- **20:** In response to your concern about the breadth of this request, we suggested the use of custodians and search terms. Caremark agreed to consider ways to identify relevant communications concerning pharmacy benefit plan design, including through potential custodial searches.

- **21:** In response to your concern about the breadth of this request, we suggested the use of custodians and search terms. We also suggested that there may be a structured process or report issued to assess Caremark's competitive position, and key personnel who might be helpful in identifying relevant documents. Caremark agreed to consider ways to identify relevant documents discussing Caremark's market position, including through custodial searches.

- **22:** Complaint Counsel agreed to confirm with economist staff whether market share information for each payer, or client, is necessary.

- **23:** Complaint Counsel requested that Caremark identify the burden of pulling the requested documents concerning ownership information and relationships between Caremark's corporate entities, as Complaint Counsel believes that many of these documents are likely to be centrally stored. Complaint Counsel has also reviewed

Caremark's organizational charts and believes that ownership information limited to Caremark and Zinc is sufficient.

- **24:** We stated that, at a minimum, you should produce unconsolidated financial statements for Caremark and Zinc on a quarterly basis, in addition to public, consolidated financial statements for CVS Health Corporation. Please confirm that you will search for and produce these documents.

- **25:** In response to your concern about the breadth of this request, we clarified that the requested documents are likely to be centrally stored for the purpose of sharing with consultants and auditors so they can understand various financial and business processes at the company, including how various entities interact within these financial and business processes. Caremark agreed to consider ways to identify such materials.

- **26-28:** In response to your concern about the breadth of this request, we explained that many of the requested documents are likely to be centrally stored and are ordinary course documents referenced by the accounting and finance departments. Caremark agreed to consider ways to identify the financial documents requested.

- **29:** Complaint Counsel requested that Caremark inquire about information available to show the detail supporting the listed financial statement line items reported by the company and other financial documents involved in the preparation of this information, as Complaint Counsel believes that many of these documents are likely to be centrally stored or easily accessible to accounting and finance staff.

- **30-32:** Caremark requested that Complaint Counsel provide time ranges and variables necessary to satisfy these data requests. We believe our data requests accurately request what we expect Caremark to produce but as a courtesy, we agreed to discuss this request with our economist staff and are working on providing additional detail. Complaint Counsel agrees to work with Caremark to discuss these requests, and other data requests, on a separate call in more detail, with both parties working towards determining a data approach.

We concluded by affirming our intention to reconvene to discuss your remaining objections and to begin working to identify appropriate custodians and search terms, data, and financial documents, where requested. Please let us know your availability for our next call.

Please let us know as soon as possible if this does not accord with your understanding of our conversation.

Sincerely,

/s/ Amanda Triplett
Amanda Triplett

EXHIBIT C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Health Care Division

January 24, 2025

Daniel M. Dockery
Williams & Connolly
680 Maine Avenue SW
Washington, DC 20024

Re: In the Matter of Caremark Rx, LLC, et al. (Insulin)

Dan,

I write to follow up on our December 20, 2024 letter regarding Caremark and Zinc's ("Caremark's") progress to date in responding to Counsel's Requests for Production ("RFPs") in the above-captioned matter. In our letter, we expressed concerns regarding Caremark's progress and proposed several production timelines to ensure a reasonable discovery schedule.[1] In response to this letter, Caremark responded by stating that our proposed timelines were too aggressive, while refusing to provide alternative dates.[2] Many of the proposed deadlines have passed and Caremark is now on track to miss the remaining deadlines to provide a custodial production schedule and produce financial documents and data.[3]

Throughout this process, Caremark has consistently demonstrated a lack of engagement in moving discovery and document production forward. We issued our requests for production over 3 months ago on October 23, 2024. Caremark has yet to produce any documents in response to 36 of our 39 requests for production. In fact, Caremark has only produced 56 documents in total—organizational charts, updated rebate agreements with insulin manufacturers, and formulary committee minutes responsive to only three of our requests for production. Caremark's delays throughout the discovery process are recapped below in additional detail.

Caremark's Objections to our RFPs

- To date, we have scheduled 6 meet and confers with Caremark to discuss our RFPs. At our initial meetings, we discussed Caremark's objections while providing additional detail on the scope, meaning, and purpose of each request for production. We also discussed ways to efficiently satisfy the requests, including

[1] *See* December 20, 2024 Ltr from Triplett to Dockery (asking that Caremark agree to: immediately identify the identity of its own company witnesses on its preliminary witness list, finalize a custodian and search term agreement by January 15, 2025; reach an agreement on a custodial production schedule by January 24, 2025; and produce data and financial documents by February 14, 2025).
[2] *See* January 3, 2025 Ltr from Triplett to Dockery.
[3] As of our last call on January 22, 2025, Caremark has indicated that it would not meet these deadlines and has provided no other meaningful updates on these items to date.

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WASHINGTON, D.C. 20580

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Health Care Division

through the use of custodial searches and the use of a limited selection of client plan sponsors to narrow the scope of discovery.[4]

Custodial Document Production

- On December 17, 2024, Caremark submitted its preliminary witness list but left several placeholder categories for its own employees. For example, Caremark noted a "Caremark Respondent Witness" may be called to testify about plan design options, rebate pass through options, member affordability options, and the benefits of rebates in helping to reduce costs and improve benefits. Another "Caremark Respondent Witness" may be called to testify about Caremark's financial documents and the profitability of rebates, fees received, and insulin products.[5] Since December 20, 2024, we have asked repeatedly that Caremark identify these witnesses from its own company immediately so that we have an opportunity to include these witnesses as document custodians.[6] Caremark has yet to identify these witnesses.

- It took Caremark until December 20, 2024 to produce a personnel organizational chart for its GPO entity, Zinc, and until January 3, 2025 to produce a similar chart for its PBM entity, even though these materials were initially promised by the week of November 25-29, 2024.[7] Due to technological issues in producing those documents, Caremark was not able to meet its initial timeline, provided a revised timeline for the week of December 2-December 6, 2024,[8] missed this second deadline, and only provided another update on December 19, shortly before making a production.[9] We then discovered that Caremark omitted its PBM entity's personnel organizational chart from this production and had to request again that Caremark provide this information on January 3, 2025.[10]

- Due to Caremark's delays, on December 13, 2024, we sent our initial proposals on custodians and search terms before receiving updated organizational charts.[11] While waiting for Caremark's organizational charts, we repeatedly reiterated

[4] *See* November 15, 2024 Ltr from Triplett to Dockery; November 26, 2024 Ltr from Triplett to Dockery; December 13, 2024 Ltr from Triplett to Dockery.
[5] *See* December 17, 2024 Preliminary Witness List (Caremark).
[6] *See* December 20, 2024 Ltr from Triplett to Dockery (asking that Caremark agree to immediately identify the identity of its own company witnesses on its preliminary witness list).
[7] *See* November 26, 2024 Ltr from Triplett to Dockery.
[8] *See* November 26, 2024 Production Message from Kritz to Triplett; December 13, 2024 Email from Triplett to Kritz.
[9] *See* December 19, 2024 Email from Kritz to Triplett.
[10] *See* January 3, 2025 Email and Ltr from Triplett to Dockery.
[11] *See* December 13, 2024 Ltr from Triplett to Dockery.

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WASHINGTON, D.C. 20580

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Health Care Division

several questions for Caremark to follow up on within their counterproposal, including clarifications relating to: 1) personnel managing the accounts of Caremark's plan sponsors; 2) the roles of underwriting personnel involved in determining rebate sharing, rebate-guarantee, and other plan sponsor client contract financial terms; 3) personnel involved in finance, accounting, and rebate management at Caremark; and 4) personnel involved in managing Caremark's affordability programs.[12] We finally received a list of custodians proposed by Caremark on January 15, 2025, on the deadline for finalizing an agreement on custodians and search terms.[13] However, Caremark's counterproposal on custodians failed to resolve the questions raised by Complaint Counsel and remains incomplete. At our last meeting on January 22, 2024, Caremark acknowledged that is still actively looking into several outstanding issues regarding its counterproposal and did not provide a timeline for its final custodian list.

- Caremark also stated that it would provide a counterproposal on search terms by January 15, 2025.[14] Caremark has not yet provided a full counterproposal. Instead, Caremark sent an email on January 20, 2025 with a list of search strings responsive to only 5 of the 15 strings suggested by Complaint Counsel, which Caremark stated that it "can accept" at this time.[15] In this email, Caremark noted that "we are continuing to evaluate some of the other terms you proposed."[16] At our latest meeting on January 22, 2025, Caremark was unable to provide a timeline for the remainder of its search term counterproposal.

- In line with its delays in custodian and search term negotiations, Caremark has never provided a timeline for its plans for custodial document production.[17]

- On December 20, 2024, we also proposed a selection of plan sponsors to narrow the scope of several custodial requests.[18] At subsequent meet and confers, Caremark has spent considerable time questioning the methodology used to select

[12] *See* January 3, 2025 Ltr from Triplett to Dockery; January 15, 2025 Ltr from Triplett to Dockery.
[13] *See* December 20, 2024 Ltr from Triplett to Dockery (asking that Caremark agree to finalize a custodian and search term agreement with Complaint Counsel by January 15, 2025).
[14] *See* January 15, 2025 Ltr from Triplett to Dockery.
[15] See January 20, 2025 Email from Dockery to Triplett.
[16] *See id.*
[17] *See* December 20, 2024 Ltr from Triplett to Dockery (asking that Caremark agree to a custodial production schedule by January 24, 2025).
[18] *See* December 20, 2024 Ltr from Triplett to Dockery (Sampling).

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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Health Care Division

the plan sponsors, without identifying alternatives or working to identify custodians relevant to the select plan sponsors.[19]

Data and Financial Document Production

- Since December 3, 2024, Caremark has not meaningfully engaged on various RFPs relating to data and financial documents (RFP requests 22-35 and 37-39). We have provided detailed guidance as to the materials being requested multiple times throughout the course of discovery negotiations.

- Since December 3, 2024, we have reiterated multiple times that many of these requests are for standard financial documents identified by name, which are held in the ordinary course of business, are frequently centrally stored, or are easily identifiable by company business personnel.[20] For example, our requests for financial documents include requests for financial statements, profit and loss statements, general ledgers, subledgers, budgets, and other reports prepared by the company to account for, report, and manage rebates, fees, and other transactions with drug manufacturers or plan sponsor clients. Still, as of our most recent meeting with Caremark on January 22, 2025, Caremark stated that they did not understand what documents we were requesting, suggested that our financial document requests needed to be narrowed, and claimed that it would take over a year to produce these documents.

- Despite repeatedly asking for an update on the timing of data and financial document productions, Caremark has never provided us with one. Caremark has also never indicated that they have any specific questions or points to discuss with us prior to producing these documents. As a result, we do not believe that Caremark is on track to produce these non-custodial documents by February 14, 2025.[21]

Updated Schedule for Production

As Caremark continues to stall the discovery process, we are growing increasingly concerned that Caremark's delays will preclude us from engaging in necessary factual development. Timely discovery is necessary for us to review documents in advance of

[19] *See* January 3, 2025 Email and Ltr from Triplett to Dockery; January 15, 2025 Ltr from Triplett to Dockery.
[20] *See* December 13, 2024 Ltr from Triplett to Dockery.
[21] *See* December 20, 2024 Ltr from Triplett to Dockery (asking that Caremark agree to produce non-custodial data and financial documents by February 14, 2025).

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WASHINGTON, D.C. 20580

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depositions and to complete other expert work in advance of the close of fact discovery and expert report deadlines in June 2025.[22] Our revised schedule for production is as follows.

- Caremark will complete the production of data and financial documents, which do not depend on custodial searches, by February 17, 2025. This includes documents responsive to RFP requests 22-35 and 37-39.

- Caremark will begin rolling custodial productions by February 21, 2025.

- Caremark will substantially complete custodial document production efforts in response to Complaint Counsel's RFPs by April 4, 2025.

Please let us know whether Caremark commits to this schedule by February 5, 2025. Otherwise, we plan to move the ALJ to impose this schedule.

Sincerely,
/s/ Amanda Triplett
Amanda Triplett

[22] *See* October 23, 2024 Scheduling Order.

EXHIBIT D

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Health Care Division

March 3, 2025

Kylie Hoover
Williams & Connolly
680 Maine Avenue SW
Washington, DC 20024

Re: In the Matter of Caremark Rx, LLC, et al. (Insulin)

Kylie,

I write regarding the lack of production commitments from Caremark Respondents prior to the close of fact discovery on June 6, 2025. As you are aware, we first raised concerns about the pace of Caremark's responses to our requests for production on December 20, 2024.[1] At that point we asked that Caremark finalize a custodian and search term agreement by January 15, 2025; reach an agreement on a custodial production schedule by January 24, 2025; and produce data and financial documents by February 14, 2025. After the first interim deadlines we requested passed with little to no progress from Caremark, we again raised our concerns in a letter on January 24, 2025.[2] In that letter we noted that Caremark's delay would prejudice Complaint Counsel because we would not receive documents and data far enough in advance of depositions and in time for use by Complaint Counsel's experts in their reports, and we requested Caremark commit to (a) complete data and financial document productions by February 17, 2025; (b) commence custodial productions by February 21, 2025, with regular rolling productions thereafter; and (c) substantially complete custodial document production by April 4, 2025.

We have met and conferred repeatedly through the discovery period, including multiple times since our January 24 letter, but we still do not have commitment from Caremark on a production schedule. And little progress has been made in producing documents and data. Given the rapidly approaching close of fact discovery, and our stated intention to begin noticing depositions this month, Complaint Counsel needs production commitments from Caremark now to ensure we will not be prejudiced by delays in productions of responsive documents and data. Accordingly, we plan to file a motion with the court to compel the following production deadlines and custodian unless you agree to the below by March 5, 2025:

- Commence rolling productions of custodial documents by March 10, 2025, with substantial completion by the earlier of (i) 60 days before the close of fact

[1] *See* December 20, 2024 Ltr from Triplett to Dockery.
[2] *See* January 24, 2025 Ltr from Triplett to Dockery.

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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

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Health Care Division

discovery (April 7, 2025 under the current scheduling order); or (ii) for a deponent custodian, at least 7 days before such custodian's deposition; and

- Substantially complete data and financial productions by March 14, 2025 as requested in our first requests for production (RFP Nos. 22-35 and 37-39), including data going back to 2010 for RFP Nos. 31, 32, and 38, and including the variables specified in our February 5, 2025 letter to you; and
- Conduct a custodial search of documents from Caremark's CFO.

Please let us know if you would like to discuss anything contained herein.

Sincerely,
/s/ Nicholas Leefer
Nicholas Leefer

{EXHIBIT E}

CONFIDENTIAL – REDACTED IN ENTIRETY

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2025, I caused the foregoing document to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

Secretary of the Commission
Clerk of the Court

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-110
Washington, DC 20580
OALJ@ftc.gov

Administrative Law Judge

I also certify that I caused the foregoing document to be served via email to:

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Counsel for Respondents OptumRx, Inc.; OptumRx Holdings, LLC; Emisar Pharma Services LLC

/s/ Rebecca L. Egeland
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Counsel Supporting the Complaint