

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EXPRESS SCRIPTS, INC.,)	
a Delaware Corporation,)	
)	
Plaintiff,)	Case No.
)	
v.)	
)	
WALGREEN CO.,)	
an Illinois Corporation,)	
)	
Defendant.)	

VERIFIED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, Express Scripts Inc, (“Express Scripts”), by and through its attorneys, and for its Verified Complaint for Injunctive and Other Relief against Defendant, Walgreen Co. (“Walgreens”), respectfully requests the Court grant injunctive relief pursuant to Federal Rule of Civil Procedure 65 to stop Walgreens’ unlawful activities and, in support thereof, states as follows:

THE PARTIES

1. Express Scripts, a Delaware corporation with its principal place of business in St. Louis, Missouri, is a leading pharmacy benefit management company (“PBM”) that provides a full range of prescription drug benefit services to its clients, which include employers, HMOs, health insurers, third-party administrators, union-sponsored benefit plans, workers’ compensation plans, and government health plans.

2. Express Scripts' mission is to make prescription drugs safer and more affordable. Express Scripts provides value to its clients by reducing waste and inefficiency in the pharmacy drug distribution chain.

3. Through various Pharmacy Provider Agreements, Express Scripts establishes and maintains retail pharmacy networks by entering into Pharmacy Provider Agreements with more than 60,000 retail pharmacies that dispense drugs to members of Express Scripts' health plan clients. Pursuant to these Pharmacy Provider Agreements, the Provider pharmacy dispenses prescription drugs to eligible Express Scripts plan participants and members and the Provider is then reimbursed by Express Scripts at an agreed upon rate.

4. Walgreens, an Illinois corporation with its headquarters and principal place of business in Deerfield, Illinois, is the largest retail pharmacy chain in the United States and currently operates more than 7,000 retail pharmacies located across all 50 states, the District of Columbia and Puerto Rico, with net sales of \$67.4 billion in the fiscal year ended August 31, 2010. (Walgreens' 2010 Form 10-K).

5. Pursuant to a Pharmacy Provider Agreement entered into with Express Scripts on January 1, 2009, Walgreens' retail pharmacies participate in Express Scripts' national commercial and Medicare Part D retail pharmacy network. The Pharmacy Provider Agreement remains in effect until December 31, 2011 and along with its Amendments, is attached as Exhibit 1.

NATURE OF THE CASE

6. This is an action for false advertising in violation of the Lanham Act, 15 U.S.C. §1125(a), and breach of contract under Illinois law in which Plaintiff seeks damages and injunctive relief pursuant to Fed R. Civ. P. 65 to prohibit false advertising in violation of the Lanham Act (15 U.S.C. § 1125(a)(1)(B)), and enforce non-discrimination, non-disparagement, non-solicitation, and anti-steering provisions in a Pharmacy Provider Agreement between Express Scripts and Walgreens. Under the Pharmacy Provider Agreement, Walgreens dispenses pharmaceuticals to individuals who participate in Prescription Drug Programs provided by Express Scripts for Medicare Part D participants, health plans, and other plan sponsors.

7. The Pharmacy Provider Agreement gives Walgreens access to over 60 million Express Scripts members, including approximately 2.5 million Medicare Part D members. In exchange for this access, Walgreens agreed to dispense pharmaceuticals to Express Scripts members at negotiated discounted rates and agreed, among other things, that it would not attempt to disenroll any Express Scripts member and or market, promote, or prefer, any Medicare Part D Plan over another plan, including those offered by Express Scripts.

8. The current Walgreens/Express Scripts Pharmacy Provider Agreement expires December 31, 2011. Negotiations for a new agreement have broken down, and Walgreens terminated contract renewal negotiations.

9. Since terminating contract renewal negotiations, Walgreens has launched an aggressive campaign to disparage Express Scripts, disenroll Express Scripts' commercial and Medicare Part D members and to promote and prefer other Medicare Part D programs to the exclusion of those offered through Express Scripts. This is exactly what Walgreens expressly promised that it would not do, and Walgreens actions are in direct violation of the Pharmacy Provider Agreement.

10. As part of this campaign to disenroll Express Scripts members, Walgreens also has published and distributed a wave of marketing and promotional materials which disparage Express Scripts and falsely state that, after December 31, 2011, Walgreens will be unable to fill prescriptions for Express Scripts members. This is false and highly misleading because nothing will prohibit Walgreens from continuing to fill valid prescriptions for such members after December 31, 2011, even if Walgreens is not a part of Express Scripts' pharmacy network.

11. Unless enjoined by this Court, Walgreens' ongoing breach of the Pharmacy Provider Agreement and publication of false promotional and marketing materials will greatly disrupt the orderly transition of tens of thousands of plan participants' prescriptions and cause irreparable and immeasurable damage to Express Scripts and its clients.

12. Timing is of the essence because Medicare Part D open enrollment begins on October 15, 2011. Under Medicare Part D, a member remains “enrolled” in a prescription drug plan (“PDP”) until one of the following occurs:

- i. The individual successfully enrolls in another PDP;
- ii. The individual voluntarily disenrolls from the PDP; or
- iii. The individual is involuntarily disenrolled from the PDP. 42.

C.F.R. § 423.32.

As 42 C.F.R. § 423.36 explains, “an individual may disenroll from a [prescription drug plan] by *enrolling in a different PDP plan...*” During this process, Medicare Part D beneficiaries either stay with their current health plan or disenroll and make a switch to a different plan. Walgreens’ false and misleading statements breach the Pharmacy Provider Agreement because, among other reasons, they are designed to encourage Medicare Part D members and others to disenroll from health plans who are clients of Express Scripts.

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over Walgreens because it transacts business in Illinois, breached contractual obligations, and engaged in wrongdoing in Illinois.

14. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338, and 1332 because the amount in controversy exceeds \$75,000 and Express Scripts is not a citizen of the same state as Walgreens.

15. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 because the claim arises out of incidents occurring in this judicial district and because Walgreens resides and conducts business in this judicial district.

**THE WALGREENS/EXPRESS SCRIPTS RELATIONSHIP
AND PHARMACY PROVIDER AGREEMENT**

16. Walgreens currently participates in one or more of ESI's retail pharmacy networks under the terms of the parties' Pharmacy Provider Agreement, as amended, which became effective on January 1, 2009 (the "Pharmacy Provider Agreement"). The Pharmacy Provider Agreement remains in effect until December 31, 2011 and along with its Amendments, is attached as Exhibit 1.

17. Under the Pharmacy Provider Agreement, Walgreens dispenses pharmaceuticals to individuals who participate in Prescription Drug Programs provided by Express Scripts for both commercial and Medicare Part D participants, health plans, and other plan sponsors.

18. The relationship provides benefits to both parties. The Pharmacy Provider Agreement gives Walgreens access to over 60 million Express Scripts members from whom Walgreens enjoys revenues for sales of prescription drugs in addition to its other general merchandise.

19. In exchange, Walgreens agreed to dispense pharmaceuticals to Express Scripts members at agreed-upon rates and agreed, among other things, that it would not disparage Express Scripts, would not attempt to disenroll any

Express Scripts member, and would not market, promote, or prefer, any Medicare Part D Plan over another plan, including those offered by Express Scripts.

20. Specifically, the parties agreed that “[REDACTED]
[REDACTED]
[REDACTED].”

(Pharmacy Provider Agreement, Exhibit 1 at § 2.10) (emphasis added).

21. Further, under the Medicare Addendum to the Pharmacy Provider Agreement, Walgreens agreed that it [REDACTED]
[REDACTED] (*Id.*; Medicare Addendum, § II.7) (emphasis added).

22. And Section 8.1 of the Pharmacy Provider Agreement prohibits Walgreens from “[REDACTED]
[REDACTED]
[REDACTED].”¹

23. Section 8.1 broadly defines “[REDACTED]
[REDACTED]

¹ [REDACTED]

[REDACTED]

[REDACTED]²

**THE BEGINNINGS OF WALGREENS' CAMPAIGN
TO DISPARAGE, SOLICIT, DISENROLL, AND
STEER EXPRESS SCRIPTS MEMBERS**

24. Knowing that the Pharmacy Provider Agreement terminates at the end of 2011, Walgreens and Express Scripts began negotiating a new agreement in February 2011. Those negotiations broke down in late June 2011 when Walgreens terminated the negotiations.

25. In late July 2011, Express Scripts learned that Walgreens began to initiate a marketing campaign specifically targeted to disenroll members from Express Scripts' Medicare Part D programs.

26. Express Scripts immediately sent a cease and desist letter to Walgreens' legal department notifying them that under the current Pharmacy Provider Agreement they agreed that they would not "attempt to disenroll any Member" and that they would not "under any circumstances, promote or prefer any Part D Plan over another." (Ex. 2, July 27, 2011, Cease and Desist at p. 2).

² Under the Pharmacy Provider Agreement, Walgreens' violation of the non-disparagement provision entitles Express Scripts "[REDACTED]

[REDACTED]" (*Id.*) Accordingly, Walgreens has specifically acknowledged and agreed that its breach of the non-disparagement provision "[REDACTED]

[REDACTED]" (*Id.*)

27. Walgreens' Divisional Vice President, Bryan Schneider, Esq. responded by letter dated August 5, 2011, informing Express Scripts that it did not intend to "promote or prefer any Medicare Part D plan," and that Walgreens "has not attempted, in this letter or otherwise, to disenroll any individual from its current plan." (Ex. 3, August 5, 2011, correspondence from Bryan A. Schneider at pp. 2-3).

28. Despite the express assurances in Mr. Schneider's letter, it is now clear that Walgreens was devising a campaign to do exactly what it said it would not do—disenroll Express Scripts members and promote and prefer Medicare Part D plans over those offered by Express Scripts.

**DESPITE ITS PROMISES, ON SEPTEMBER 1, 2011
WALGREENS LAUNCHED AN AGGRESSIVE MEDIA CAMPAIGN TO
DISENROLL EXPRESS SCRIPTS' MEMBERS IN
DIRECT BREACH OF THE PROVIDER AGREEMENT**



29. On or about September 1, 2011, Walgreens launched an aggressive media campaign to disenroll Express Scripts' Members in direct breach of the Pharmacy Provider Agreement.

30. For example, Walgreens Chief Client Officer, Joe Terrion, began sending letters directly to Express Scripts' commercial clients "strongly encourag[ing]" them to disenroll in plans with coverage through Express Scripts and choose plans with "Walgreens' coverage." (Ex 4). The letter listed specific non-Express Scripts plans that Walgreens recommended they select after disenrolling from their current plan with Express Scripts. (*Id.*).

31. At about the same time, Walgreens also sent flyers intended to be distributed to Express Scripts' members that included ghost-written letters from Walgreens. (Ex. 5). The flyers tell members to "**let your voice be heard!**" and "choose Walgreens." (*Id.*).

32. On or about September 1, 2011, Express Scripts learned that Walgreens also had launched a website—www.ichoosewalgreens.com—specifically targeting Express Scripts commercial and Medicare part D clients and members. (Ex. 6, www.ichoosewalgreens.com).


33. Below is a copy of the Walgreens website showing Walgreens' disenrollment campaign, targeting all aspects of Express Scripts' PBM business, members, and client base.

Go to Walgreens.com Connect with Walgreens  

I Choose *Walgreens*

Email:

Receive updates on how to participate in a plan that includes Walgreens in its network.
[View our Online Privacy & Security Policy](#)



At Walgreens, our mission is to be the most trusted, convenient multi-channel provider and advisor of innovative pharmacy, health and wellness solutions, consumer goods and services in communities across America.

Unfortunately, our contract renewal negotiations with pharmacy benefit manager Express Scripts, Inc. have been unsuccessful, and as a result, we will likely not be part of Express Scripts' pharmacy provider network as of January 1, 2012.

To express your desire to continue to choose Walgreens as your pharmacy provider, please click on the button below that applies to you to show the recommended action to take.

TRICARE Plan Participants
Sign The Petition

[TRICARE Plan Info](#)

Employer-Provided Plan Participants

[Employer-Provided Plan Info](#)

Medicare Part D Plan Participants

[Medicare Part D Plan Info](#)

Please refer back to this website periodically for more information on how to participate in a plan that includes Walgreens in its network.

Notice of Privacy Practices :: Terms of Use :: Online Privacy & Security
 © Copyright 2011 Walgreen Co. All rights reserved.

34. The new website took Walgreens' efforts to an entirely new level, offering pre-drafted petitions to the Department of Defense, letters "ghost-written" by Walgreens to be sent to Express Scripts' employer sponsored plans to encourage dropping Express Scripts, and perhaps most egregious, a direct campaign to disenroll members from Medicare Part D plans provided through Express Scripts. (*Id.*).

35. In particular, Walgreens instructed Express Scripts Medicare Part D members that they "*will need* to select a different plan that includes Walgreens

during the Medicare Annual Election Period from October 15 through December 7, 2011.” (*Id.*) (emphasis added).

36. Finally, on Tuesday, September 6, 2011, Express Scripts learned that Walgreens sent a high-priority internal directive to its “Managers, Pharmacy Managers, Senior Techs and the whole store/pharmacy TEAM” with detailed instructions to disenroll, solicit, and steer Express Scripts’ members away from Express Scripts. (Ex. 7).

37. The directive told Walgreens’ employees to “stand up and take action against ESI.” (*Id.*) It also clearly outlines the intent of Walgreens’ Medicare Part D disenrollment campaign:

ESI is #1 Priority. Flu Shots #2....Plan comparison discussions with Med Part D patients will begin on Oct. 15. These discussions aim to move patients into a **Med Part D plan that includes Walgreens.**

38. There is no question that Walgreens’ campaign is a blatant attempt to disenroll Express Scripts members, including, and specifically targeting, members participating in Express Scripts’ Medicare Part D plans.

39. Under Medicare Part D, a member remains “enrolled” in a prescription drug plan (“PDP”) until one of the following occurs:

- i. The individual successfully enrolls in another PDP;
- ii. The individual voluntarily disenrolls from the PDP; or
- iii. The individual is involuntarily disenrolled from the PDP. 42.

C.F.R. § 423.32.

40. As 42 C.F.R. § 423.36 explains, “an individual may disenroll from a [prescription drug plan] by *enrolling in a different PDP plan...*”

41. As Walgreens acknowledges, the Medicare Part D timing is critical: the Medicare Annual Election Period runs from October 15 through December 7, 2011. If Walgreens can convince members to disenroll from Express Scripts during this period, they will be locked into non-Express Scripts’ plans, and unable to correct that selection for at least a year.

42. Most importantly, by actively encouraging members participating in Express Scripts’ Medicare Part D plans to “choose Walgreens” and “select a different plan that includes Walgreens during the Medicare Annual Election Period,” Walgreens is attempting to disenroll members in open and direct breach of the Provider Agreement. Under the Pharmacy Provider Agreement, Walgreens expressly agreed that it would **not** attempt to disenroll any member. (Ex. 1 at § 2.10).

43. Walgreens’ Medicare Part D campaign also violates the Medicare Addendum to the Pharmacy Provider Agreement, wherein Walgreens expressly agreed that it would “not, **under any circumstances**, promote or prefer any Part D Plan over another.” (*Id.* Medicare Addendum at § II.7) (emphasis added). When Walgreens directs Express Scripts’ members to “choose Walgreens” and select a non-Express Scripts plan, there is no question Walgreens is promoting Walgreens’ covered plans to the exclusion of Express Scripts’ covered Medicare

Part D plans. Again, Walgreens' actions are in direct breach of the Pharmacy Provider Agreement.

44. Walgreens' open breach of the Pharmacy Provider Agreement through its disenrollment tactics threaten to cause immediate and irreparable harm to Express Scripts, its clients, and members.

45. Approximately 2.5 million people are covered by Express Scripts' Medicare Part D programs.

46. For example, if Walgreens can convince or confuse members into disenrolling from their Express Scripts' plans during the upcoming Medicare Annual Election Period, Express Scripts will have no adequate remedy, as its clients and members will be locked into non-Express Scripts' plans for at least the next year.

47. In addition to a clear breach of the Pharmacy Provider Agreement, upon information and belief, it appears that Walgreens is attempting to disenroll, and influencing members to "choose Walgreens," not because of health and safety concerns, but because Walgreens has the "potential for financial gain" if it can influence Express Scripts' members to disenroll from Express Scripts' client plans and "choose Walgreens." (*See Medicare Marketing Guidelines, Section 70.12.2*).

WALGREENS' FALSE STATEMENTS

48. To facilitate its campaign to disparage Express Scripts and disenroll Express Scripts' members, Walgreens has engaged in false and misleading

commercial marketing and advertising intended to deceive members into believing that they will be unable fill prescriptions at Walgreens after December 31, 2011, unless they leave Express Scripts.

49. For example, Walgreens has created and widely distributed handouts to customers that state in bold-face type that: **“Walgreens will be able to fill Express Scripts prescriptions ONLY through Dec. 31, 2011.”** (*See* Ex. 5).

50. These handouts constitute advertising or promotional materials issued by Walgreens regarding its products and services and the products and services of Express Scripts.

51. As another example, Walgreens has created and widely distributed letters “To members of the TRICARE pharmacy program,” a program for which Express Scripts serves as the PBM. (Ex. 8.) In those letters, Walgreens states that “we will no longer be able to fill prescriptions for TRICARE members after Dec. 31” and suggests that Express Scripts has refused “several options that would allow Walgreens to continue serving” TRICARE members. (*Id.*).

52. Those letters to TRICARE beneficiaries constitute advertising or promotional materials issued by Walgreens regarding its products and services and the products and services of Express Scripts.

53. As another example, Walgreens’ publicly-available “I choose Walgreens” website, tells Medicare Part D plan members that “you will no longer be able to fill your Part D prescriptions at Walgreens and Duane Reade drug stores.” Walgreens’ website further instructs these Express Scripts’

members to leave Express Scripts and “select a different plan that includes Walgreens during the Medicare Annual Election Period from October 15 through December 7, 2011.” (Ex. 6).

54. Walgreens’ “I choose Walgreens” website constitutes advertising or promotional material issued by Walgreens regarding its products and services and the products and services of Express Scripts.

55. The statements referenced in Paragraphs 49-54 are intended to confuse and deceive the recipients of those statements into believing that, after December 31, 2011, they will not be able to fill prescriptions at Walgreens. The statements are also likely to influence the customer’s purchasing decisions; otherwise, Walgreens would not direct such statements to them.

56. But the statements referenced in Paragraphs 49-54 are false and misleading. In fact, there is nothing that would prohibit Walgreens from filling a valid prescription from any Express Scripts’ member, even if Express Scripts is no longer under a network Pharmacy Provider Agreement with Walgreens after December 31, 2011.

57. In truth, these Express Scripts members could continue to fill prescriptions at Walgreens after December 31, 2011 if they elected to do so. Of course, if Walgreens has not contracted with Express Scripts to provide them with contracted discounts, then they would not receive the type of contracted discounts they currently receive at Walgreens’ locations. Walgreens, would,

however, be free to charge that walk-in customer whatever amount it chooses to charge them for the “convenience” of using a Walgreens’ facility.

58. Through its misleading and false marketing, Walgreens is attempting to deceive Express Scripts’ members and clients into believing that their health and safety is at risk unless they “choose Walgreens” and drop Express Scripts. This type of false advertising is in clear violation of the Lanham Act. 15 U.S.C. § 1125(a)(1)(B).

COUNT I
(Breach of the Provider
Agreement by Walgreens)

59. Express Scripts realleges and restates paragraphs 1 - 58 as if fully restated herein.

60. The Pharmacy Provider Agreement is a valid and enforceable contract.

61. Express Scripts has fully performed all of its obligations under the Pharmacy Provider Agreement.

62. As described in detail above, Walgreens has breached the Pharmacy Provider Agreement by: (a) attempting to disenroll members in violation of [REDACTED] the Pharmacy Provider Agreement; (b) promoting or preferring Medicare Part D plans over those offered through Express Scripts in violation of [REDACTED] of the Medicare Addendum to the Pharmacy Provider Agreement; and (c) engaging in a campaign to disparage Express Scripts in violation of [REDACTED] the Pharmacy Provider Agreement.

63. Express Scripts, its clients, and members who depend upon Express Scripts for their prescription drug benefits will suffer irreparable harm and have no adequate remedy at law unless Walgreens is enjoined by the Court from continuing its ongoing breach of the Pharmacy Provider Agreement.

64. Walgreens' breach cannot be fully remedied by monetary damages.

COUNT II

(False Advertising In Violation of The Lanham Act)

65. Express Scripts realleges and restates paragraphs 1-64 as if fully restate herein.

66. Walgreens' statements, including the statements described in paragraphs 48-56, constitute false or, at a minimum, misleading statements of fact regarding Walgreens' and Express Scripts' products and services.

67. Walgreens' statements, including the statements described in paragraphs 48-56, deceived or, at a minimum, had the capacity to deceive a substantial segment of their audience. Moreover, those statements are material and likely to influence the purchasing decision of the relevant audience.

68. Express Scripts has been damaged by Walgreens' actions, including but not limited to a loss of goodwill.

69. Express Scripts will continue to suffer irreparable damage unless Walgreens is restrained from continuing its campaign of false advertising and promotion.

70. Express Scripts has no adequate remedy at law to address Walgreens' campaign of false advertising and promotion.

COUNT III
(For Preliminary and Permanent Injunctive
Relief Against Walgreens)

71. Express Scripts realleges and restates paragraphs 1-70 as if fully restated herein.

72. Express Scripts, its clients, and members who depend upon Express Scripts for their prescription drug benefits will suffer irreparable harm and injury as a result of Walgreens' contract violations and Walgreens' campaign of false advertising and promotion.

73. Express Scripts' business will be injured, irreparably and otherwise in amounts that will exceed \$75,000 but that will also be difficult to determine or calculate, as a result of Walgreens' conduct.

74. Express Scripts is likely to prevail on the merits on Count I because Walgreens is in open breach of the Pharmacy Provider Agreement.

75. Express Scripts is likely to prevail on the merits on Count II because Walgreens' advertising and promotional statements, as described in further detail above, are false and have a tendency to deceive.

76. Injunctive relief is necessary as no adequate remedy at law exists. Unless an injunction is issued, Express Scripts will suffer irreparable and incalculable harm for which it can never be compensated.

Wherefore, Express Scripts requests that judgment be granted in its favor and against Walgreens, and that Express Scripts be granted:

- a. Preliminary and permanent injunctive relief prohibiting Walgreens from engaging in any conduct or communications that direct or attempt to direct any members to disenroll in Express Scripts' Medicare Part D programs during the term of the Pharmacy Provider Agreement, or through January 1, 2012;
- b. Preliminary and permanent injunctive relief prohibiting Walgreens from engaging in any conduct or communications that promote or prefer any Medicare Part D program over any Express Scripts' program during the term of the Pharmacy Provider Agreement, or through January 1, 2012;
- c. Preliminary and permanent injunctive relief prohibiting Walgreens from engaging in any conduct or communications including, but not limited to, contacting any media or any Sponsor or Sponsor's Members or other party, designed to disparage Express Scripts, or disenroll or steer members away from Express Scripts, during the term of the Pharmacy Provider Agreement, or through January 1, 2012;

- d. Preliminary and permanent injunctive relief prohibiting Walgreens from stating, or making statements suggesting that, it cannot accept a valid prescription from an Express Scripts member after December 31, 2011;
- e. any and all money damages that can be proven by Express Scripts, although such money damages will not provide Express Scripts with an adequate remedy and must be paired with injunctive relief;
- f. its reasonable attorneys' fees and costs for investigating and bringing this claim; and
- g. all other necessary and appropriate relief.

Respectfully Submitted,

EXPRESS SCRIPTS, INC.

By: s/James P. White
One of Its Attorneys

James P. White
James F. Monafò (pro hac pending)
Christopher J. Valeriote (pro hac pending)
Christopher A. Smith (pro hac pending)
HUSCH BLACKWELL LLP
120 South Riverside Plaza
Suite 2200
Chicago, IL 60606
Phone: 312.655.1500
Fax: 312.655.1501

VERIFICATION

Under penalties as provided by law, the undersigned, Brit Pim, Vice President and General Manager of Medicare & Medicaid at Express Scripts, Inc., being first duly sworn under oath, deposes and states that he has read the foregoing Verified Complaint for Injunctive and Other Relief, and on the basis of his personal knowledge, review of appropriate business records and discussions with relevant knowable personnel, he believes the allegations contained therein are true and correct except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he believes the same to be true to the best of his knowledge, information, and belief. This verification is made by deponent and not by Plaintiff because Plaintiff is a corporation and deponent is a duly authorized representative thereof.

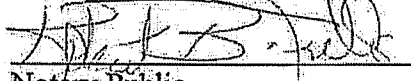


Brit Pim
*Vice President and General Manager of
Medicare & Medicaid at Express Scripts,
Inc.*

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 6th day of September, 2011, before me appeared Brit Pim, to me personally known, who being by me duly sworn did say that he is the Vice President and General Manager of Medicare & Medicaid at Express Scripts, Inc., a Delaware corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.



Notary Public

My Commission Expires:

08/03/2016

