



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ALBERTSON'S LLC,
NEW ALBERTSONS L.P.,
SAFeway INC., and
UNITED SUPERMARKETS, LLC,

Plaintiffs,

v.

EXPRESS SCRIPTS, INC.,

Defendant.

Consol. C.A. No. N25C-12-001-KMM-
CCLD

Public Version filed January 7, 2026

CONSOLIDATED COMPLAINT

Albertson's LLC, New Albertsons L.P. (formerly New Albertsons, Inc.), Safeway Inc., and United Supermarkets, LLC (collectively, "Albertsons Companies") file this consolidated complaint against Express Scripts, Inc. ("Express Scripts") for conduct that minimized reimbursement to Albertsons Companies and adversely affected patients while maximizing Express Scripts' profits.

NATURE OF THE ACTION

1. This action arises out of Express Scripts' improper and arbitrary behavior, in violation of its contractual obligations, in which it initially classified prescription drugs as brand-name drugs, then reversed course and re-classified them as generic drugs. Because Express Scripts flipped drugs from brand to generic classifications, long after the patient paid for them as brand drugs, Express Scripts

reimbursed Albertsons Companies at a lower reimbursement rate than the rate for brand drugs.

2. Express Scripts is one of the nation's largest Pharmacy Benefit Managers ("PBMs"), serving as a middleman in the delivery of prescription drugs.

3. As a PBM, Express Scripts manages prescription drug benefits for health insurance plans, employers, and government programs by, among other things, establishing networks of pharmacies so that members of those plans and programs can get their prescription medications.

4. Albertsons Companies, together with its affiliated companies, is one of the largest food retailers in the United States with 2,257 stores across 35 states and the District of Columbia, with operations that include 1,720 pharmacies as of September 6, 2025.

5. Express Scripts has agreements with various entities affiliated with Albertsons Companies so that beneficiaries of plans administered by Express Scripts can have their prescriptions filled at Albertsons Companies' pharmacies.

6. But rather than reimbursing Albertsons Companies for the amounts it is contractually owed for services indisputably provided, Express Scripts significantly underpaid Albertsons Companies by taking drugs designated by Express Scripts itself as brand at the point of sale, then improperly re-classifying them as generic for purposes of the annual reimbursement reconciliation process.

7. Express Scripts' misconduct has caused Albertsons Companies to suffer millions in losses, which Albertsons Companies is entitled to recover under applicable Delaware law.

THE PARTIES

8. Albertson's LLC is a Delaware limited liability company with its principal place of business in Boise, Idaho.

9. New Albertsons L.P. is a Delaware limited partnership with its principal place of business in Boise, Idaho.

10. Safeway Inc. is a Delaware corporation with its principal place of business in Pleasanton, California.

11. United Supermarkets, LLC is a Texas limited liability company with its principal place of business in Lubbock, Texas.

12. Albertson's LLC, New Albertsons L.P., Safeway Inc., and United Supermarkets, LLC are all affiliated, with the ultimate parent company being Albertsons Companies, Inc.

13. Express Scripts is a Delaware corporation with headquarters located at 1 Express Way, Saint Louis, MO 63121.

JURISDICTION

14. This Court has subject-matter jurisdiction over this action pursuant to 10 *Del. C.* § 541.

15. This Court has personal jurisdiction over Express Scripts because Express Scripts is incorporated in the State of Delaware and is, therefore, a resident of the State of Delaware.

FACTUAL BACKGROUND

A. An Overview of PBMs

16. PBMs are companies that manage prescription-drug benefits on behalf of commercial health plans, self-insured employer plans, government-sponsored plans, and other organizations with principal financial responsibility to pay for prescription drugs (“Sponsors”).

17. In this role, PBMs, among other things, contract with a network of pharmacies; establish payment levels for network pharmacies; negotiate rebate arrangements with drug manufacturers; develop and manage formularies, preferred drug lists, and prior authorization programs; maintain patient compliance programs; perform drug utilization review; and operate disease management programs.

18. PBMs play a significant role and yield tremendous power in administering prescription benefits to beneficiaries of both commercial insurance plans and government-funded insurance plans.

19. In fact, the majority of Sponsors contract with PBMs to manage their prescription drug benefit plans for the Sponsors' members ("Plan Members").¹

20. The Federal Trade Commission ("FTC") has explained "how dominant pharmacy benefit managers can hike the cost of drugs,"² showing the PBMs' power and influence over drug pricing in the United States, which can increase drug costs.

21. The FTC has raised issues of how increased concentration and vertical integration enabled PBMs to "wield enormous power and influence" over access to and prices of prescription drugs, such that "these powerful middlemen may be profiting," including at the expense of pharmacies and patients.³

¹ See National Conference of State Legislatures, State Policy Options and Pharmacy Benefit Managers (PBMs) (last updated Dec. 13, 2024), <https://www.ncsl.org/health/state-policy-options-and-pharmacy-benefit-managers> ("According to the Kaiser Family Foundation, consumers filled over 3.7 billion retail prescriptions in 2019. The Centers for Medicare & Medicaid Services (CMS) reports that consumer purchases of prescription drugs totaled \$378 billion in 2021. Approximately 90% of prescription drug claims are processed by a pharmacy benefit manager (PBM).").

² See FTC Releases Interim Staff Report on Prescription Drug Middlemen (July 9, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-releases-interim-staff-report-prescription-drug-middlemen>; see also FTC Releases Second Interim Staff Report on Prescription Drug Middlemen (Jan. 14, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-releases-second-interim-staff-report-prescription-drug-middlemen> (evaluating specialty generic drugs dispensed from 2017-2022).

³ See FED. TRADE COMM'N, PHARMACY BENEFIT MANAGERS: THE POWERFUL MIDDLEMEN INFLATING DRUG COSTS AND SQUEEZING MAIN STREET PHARMACIES 1 (2024).

22. The FTC notes that the three largest PBMs, one of which is Express Scripts, “manage nearly 80 percent” of the approximately 6.6 billion prescriptions U.S. pharmacies dispensed in 2023.⁴

23. The FTC has detailed how PBMs “lessen competition, disadvantage rivals, and inflate drug costs” through steering mechanisms, reimbursement rates, and outsized bargaining leverage.⁵

24. Consistent with the FTC’s concerns, the FTC recently brought suit against the three largest PBMs, including Express Scripts, for allegedly engaging in anticompetitive and unfair rebating practices that have inflated certain drug prices at the expense of vulnerable patients.⁶

25. Congress has also recognized the inherent conflict of interests present in the PBM industry. On December 11, 2024, Congress introduced bipartisan, bicameral legislation, the “Patients before Monopolies (“PBM”) Act,” to, among other things, prohibit the joint ownership of PBMs and pharmacies.⁷

⁴ *See id.*

⁵ *See id.* at 30.

⁶ *See* FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices (Sept. 20, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

⁷ *See* Rep. Harshbarger Introduces Legislation to Eliminate the PBM Monopoly on the Pharmaceutical Delivery Chain (Dec. 11, 2024), <https://harshbarger.house.gov/media/press-releases/rep-harshbarger-introduces->

26. Likewise, on May 20, 2025, Congress introduced H.R. 1, the “One Big Beautiful Bill Act,” which contained provisions aimed at regulation of PBMs, including Section 44305, titled “Modernizing and Ensuring PBM Accountability.”⁸ Although the final language of the law passed in July 2025 did not include the PBM-related provisions,⁹ Congress continues to review other federal legislation, including the bipartisan “PBM Reform Act of 2025,” (H.R. 4317), introduced on July 10, 2025, which aims to “protect[] patients and pharmacies from the harmful and anticompetitive business practices of [PBMs].”¹⁰ And PBM reform efforts remain an issue of bipartisan support and focus. At a hearing on health care affordability on November 19, 2025, the Senate Finance Committee Chair Mike Crapo (R-Idaho) said he and ranking member Ron Wyden (D-Ore.) plan to reintroduce legislation shortly targeting PBMs.¹¹

27. States have also recognized these concerns. For instance, Arkansas

legislation-eliminate-pbm-monopoly-pharmaceutical. A companion Senate version was introduced on December 12, 2024. *See* S. 5503, 118th Cong. (2024).

⁸ H.R. 1, 119th Cong. § 44305 (2025).

⁹ “One Big Beautiful Bill Act,” Pub. L. No. 119-21 (2025).

¹⁰ *See* Carter Introduces bipartisan PBM reform package (July 10, 2025), <https://buddycarter.house.gov/news/documentsingle.aspx?DocumentID=15782>.

¹¹ *See* U.S. Senate Comm. on Fin., Crapo Statement at Hearing on the Rising Cost of Health Care (Nov. 19, 2025), <https://www.finance.senate.gov/chairmans-news/crapo-statement-at-hearing-on-the-rising-cost-of-health-care>.

signed Arkansas Act 624 into law on April 16, 2025, which prohibits a vertical-integration model by regulating PBM ownership.¹² Other states have passed laws restricting or addressing PBM practices in the last two years.¹³

B. The Pharmacy Reimbursement Process

28. A PBM generally reimburses a pharmacy for dispensing medications to members of the health plans for which it administers prescription-drug benefits (“Plan Members”) as set forth below.

29. Each time a Plan Member presents a prescription at a retail pharmacy in the PBM’s network, the pharmacy enters the Plan Member’s information into an electronic system that routes the information to a third-party processor for the PBM.

30. The system verifies the Plan Member’s prescription drug coverage and determines the amount owed by the Plan Member, including the patient’s cost-sharing responsibility (e.g., copayment).

¹² H.B. 1150, 95th Gen. Assemb., Reg. Sess. (Ark. 2025), codified at ARK. CODE ANN. § 17–92–416. The law is currently being challenged, with the court recently granting a preliminary injunction, blocking enforcement of the PBM pharmacy ownership ban, and the defendants filing an interlocutory appeal. *See Express Scripts, Inc. et al. v. Richmond*, No. 4:25-cv-00520-BSM (E.D. Ark.).

¹³ *See, e.g.*, S.F. 383, 91st Gen. Assemb., Reg. Sess. (Iowa 2025) (regulating PBM conduct via restrictions in pricing and unfair practices); S.B. 41, 2025-2026 Leg., Reg. Sess. (Cal. 2025) (implementing pricing reforms and reimbursement parity between affiliated and unaffiliated pharmacies, among other reforms); S.B. 1236, 89th Leg., Reg. Sess. (Tex. 2025) (requiring mutual agreement for “adverse material changes” to PBM contracts).

31. The system also provides the pharmacy with the amount the PBM expects to reimburse the pharmacy for the cost of dispensing the prescription drug to the Plan Member, which the PBM will typically remit to the pharmacy on a regular basis. This process is known as claim adjudication.

32. After receiving that information, the pharmacy fills the prescription, the Plan Member pays the pharmacy the cost-sharing amount, and the pharmacy dispenses the prescription drug to the Plan Member. This process is referred to as the “point of sale,” and PBMs regularly provide initial reimbursement amounts to pharmacies based on the point-of-sale transactions.

33. In addition to the point-of-sale process, the PBM and the pharmacy typically engage in an annual reconciliation process to evaluate the total amount of the pharmacy’s reimbursement for the prescriptions dispensed to Plan Members (e.g., for that applicable calendar year).

34. Based on formulas or other provisions in the contracts, the parties will typically reconcile any identified need for the PBM to provide additional reimbursement or repayment to the pharmacy for the applicable time period. This process is known as “reconciliation.”

C. Brand Drugs and Generic Drugs

35. Relevant to how a prescription drug is reimbursed is the drug’s designation as a brand or generic. As compared to brand drugs, pharmacies are

typically reimbursed less for generic drugs.

36. A brand drug is a pharmaceutical drug product, approved by the FDA, protected by a period of patent exclusivity that prevents the patent holder's competitors from producing and marketing the same chemical compound. The brand drug is sold under a name or trademark by the patent holder or its licensee.

37. A generic drug is a pharmaceutical drug product, approved by the FDA, that is a copy of a brand drug that has lost patent exclusivity – same active ingredient, conditions of use, dosage form, strength, route of administration, and (with certain permissible differences) labeling – and yields the same therapeutic effect.

38. Brand and generic drugs can be manufactured or sourced by one drug company (“single-source”) or multiple drug companies (“multi-source”), as well as co-licensed (e.g., single-source product available from multiple labelers).

39. Because of the high costs associated with developing, obtaining approval for, marketing, and selling a brand drug, brand drugs typically cost more than their generic drug counterparts.¹⁴

40. In addition, relative to their generic drug counterparts, brand drugs typically cost more for Plan Members to obtain at the point of sale (e.g., higher

¹⁴ *Frequently Asked Questions on Popular Topics*, Generic Drugs: Questions & Answers, Food and Drug Administration (Aug. 8, 2022), <https://www.fda.gov/drugs/information-consumers-and-patients-drugs/frequently-asked-questions-popular-topics>.

patient copayments).

41. Although PBMs may differ on whether certain drugs should be classified as brands or generics, PBMs often use a nationally recognized third-party source of drug information (e.g., Medi-Span or First DataBank) to determine, among other things, whether a covered medication that is dispensed to a Plan Member is a brand or generic drug. This decision impacts how a PBM reimburses the dispensing pharmacy at the point of sale, and whether a Brand Effective Rate (“BER”) or a Generic Effective Rate (“GER”) applies during reconciliation.

42. Medi-Span provides a drug database that includes a list of drugs by National Drug Code (“NDC”) and categorizes the drugs by manufacturer, dosage, strength, and other similar types of groupings. In relevant part, Medi-Span’s drug database contains multi-source indicators and brand indicators that may be considered in assessing brand or generic status of a drug product.

43. First DataBank also provides a drug database that includes a list of drugs by NDC and categorizes the drugs by manufacturer, dosage, strength, and other similar types of groupings. In relevant part, First DataBank’s drug database contains several indicators that may be considered in assessing brand or generic status of a drug product.

D. The Agreements With Express Scripts

44. Express Scripts and Albertsons Companies have a long-standing

relationship pursuant to which Albertsons Companies' pharmacies served as in-network pharmacies for Plan Members who have prescription-drug insurance benefits administered by Express Scripts for various Sponsors.

45. Albertsons Companies and Express Scripts have memorialized their current relationship in an "Express Scripts, Inc. Pharmacy Provider Agreement" (the "Agreements") as to the four relevant entities bringing this action. *See* Exhibit A. Express Scripts' contract with United Supermarkets, LLC is dated November 9, 2015, while the contracts with New Albertsons L.P., Albertsons, LLC, and Safeway Inc. are dated January 1, 2016. The Agreements incorporate amendments, exhibits,¹⁵ and attachments effective on that date or later dates.

46. The Agreements at issue in this matter are governed by, and construed in accordance with, the laws of the State of Delaware, and are defined to incorporate, among other things, all exhibits, the Express Scripts Provider Manual (defined at § 1.14),¹⁶ and any requirements of a Sponsor's Prescription Drug Program communicated to Provider. *See* Exhibit A, Agreements §§ 7.3, 7.8.

47. The parties' Agreements define "Generic Drug" as follows:

¹⁵ Exhibits include rate sheets, such as the ES1000, as amended in September 2019 (the "ES1000"), which are attached as Exhibit A to the Agreements. A copy of the ES1000 for each Plaintiff, which is virtually identical among the Albertsons entities, is attached as **Exhibit B**.

¹⁶ A copy of the 2023 Provider Manual is attached as **Exhibit C**.

[REDACTED]

See Agreements at § 1.8.

48. The parties' Agreements do not specifically define "Brand Drug;" however, the 2023 Provider Manual, which is incorporated by reference into the Agreements,¹⁷ defines "Brand Drug" as a [REDACTED]

[REDACTED]¹⁸

49. Under the Agreements, Express Scripts agreed to pay Albertsons Companies for covered medications dispensed to Plan Members "the rates as set forth in the applicable rate sheet(s) . . . less the applicable Copayment." See Agreements at § 3.1.a.

50. Those rate sheets, which are attached as Exhibit A to the Agreements,

¹⁷ Where the terms and conditions of the Agreements and the Provider Manual conflict, however, the terms of the Agreements control. See **Exhibit A**, Agreements § 7.3.

¹⁸ **Exhibit C** § 11.

include, among others, the ES1000, as amended in September 2019 (the “ES1000”)¹⁹ that sets forth schedules with the parties’ negotiated rates for dispensing brand and generic covered medications to Plan Members. *See generally* Exhibit B, ES1000.

51. Negotiated rates for prescription drugs are typically a discount off of a benchmark called the “Average Wholesale Price,” or the “AWP,” with generic versions of a drug having a deeper discount as compared to brand versions. By way of illustration, if the AWP for a drug is \$100, then the brand version of that drug may be paid at a 20% discount off of this \$100 benchmark (that is, \$80), and the generic version of that drug may be paid at 40% discount off of this \$100 benchmark (that is, \$60).

52. In the ES1000, the negotiated rates for generic drug claims are lower than those for brand drug claims. For example, below is the rate table for Express Scripts’ “broadest, open access national commercial network of pharmacy providers,” which provides that all “Generics – A” drugs will be reimbursed at a [REDACTED] discount off of the AWP for Generics – A, as compared to brand drugs, which will be reimbursed at a [REDACTED] discount off of the AWP. *See, e.g.*, Exhibit B § 2.4.a. That is, reimbursement for generics is roughly [REDACTED] off of the benchmark, and reimbursement for brands is roughly [REDACTED] off.

¹⁹ A copy of the ES1000 for each Plaintiff, which is virtually identical among the Albertsons entities, is attached as **Exhibit B**.

	BRANDS Up to an Average Discount for Single-Source & Multi-Source ^(B.1) Brands not paid on ESI MAC + Not less than an Average Dispense Fee:	GENERICS - A Up to an Average Discount for Generic Drugs not paid on ESI MAC + Not less than an Average Dispense Fee:	GENERICS - B Generic Drugs and Multi-Source Brands paid on ESI MAC + Not less than an Average Dispense Fee:
30 Day Network Participation			
Year 1			
Year 2			
Year 3			

53. Accordingly, whether Express Scripts classifies – and ultimately reimburses – a drug claim as a brand versus a generic affects how much payment the pharmacy receives.

E. Express Scripts Underpaid Albertsons Companies, Including by Reimbursing Brand Drugs as if They Were Generic Drugs

54. Express Scripts underpaid Albertsons Companies by millions of dollars for prescriptions dispensed in 2023.

55. Throughout 2023, Express Scripts appeared to designate certain drugs as brand during the adjudication process at the point of sale. That is, when Albertsons Companies initially sold these drugs to patients, Express Scripts appeared to view these drugs as brands.

56. As described above, brand drugs are paid at higher reimbursement rates than generic drugs under the parties’ Agreements.

57. Moreover, for purposes of assessing the cost-sharing responsibilities of Plan Members, Express Scripts may have assessed Albertsons Companies’ customers the higher copays associated with higher prices for brand drugs, as

compared to generic drugs.

58. After the end of calendar year 2023, the parties engaged in the 2023 reconciliation process. In February 2024, Express Scripts delivered End of Period (“EOP”) Reports related to this process as to each of the four entities that contract with Express Scripts (together, the “2023 EOP Reports”). See Exhibit D. Express Scripts also delivered claims details.

59. The 2023 EOP Reports provided by Express Scripts indicated that Express Scripts underpaid Albertsons Companies by \$3,665,627, which Express Scripts has admitted is due and owing as a result of an underpayment during the 2023 reconciliation. Below is the total amount underpaid by Express Scripts for the four entities bringing claims.

	Underpayment Amount According to 2023 EOP Reports Provided by Express Scripts
United Supermarkets, LLC	\$678,675
Safeway Inc.	\$1,065,961
New Albertsons L.P.	\$890,895
Albertson’s LLC	\$1,030,096
Total	\$3,665,627

60. Separate from Express Scripts’ admitted underpayment, Albertsons Companies determined that Express Scripts appeared to flip many drugs previously classified as brand to generic drugs, lowering the ultimate pharmacy reimbursement.

61. In other words, although Albertsons Companies initially appeared to be reimbursed at prices for brand drugs, and Plan Members paid higher copays for

brand drugs that Express Scripts initially treated as brands, during this annual true-up process, Albertsons Companies received lower reimbursement because Express Scripts reversed course on its prior approach, and re-classified brand drugs as generics. These conflicting categorizations maximized Express Scripts' profits, to the detriment of both Plan Members and Albertsons Companies.

62. On the day that customers purchased drugs at issue in this dispute, Express Scripts returned to Albertsons Companies an expected reimbursement to the pharmacy of a roughly [REDACTED] discount off of the benchmark price of AWP, not the roughly [REDACTED] discount off of the benchmark price for generics. As a result, Express Scripts appeared to view these as brand drugs. Yet often months later, during the reconciliation process, Express Scripts re-classified those very same claims as "generics," to be paid at much lower rates of roughly [REDACTED] off of, not [REDACTED] off of, the benchmark price.

63. Below are a few examples of retail drug claims that Express Scripts appeared to treat as brand drugs at the point of sale, based on the reimbursement Albertsons Companies initially received, that Express Scripts later treated as generic drugs during the reconciliation process:

Example Drug Claims That Express Scripts Should Have Reimbursed as Brand

Albertson's LLC

Drug NDC	Drug Name	Date of Service	Reimbursement for the Pharmacy on Date of Service	Benchmark Price (AWP)	Discount off of Benchmark Price for Initial Reimbursement (Consistent with Brand Rates)	Classification for Final Reimbursement at Reconciliation
713088509	CLOMID 50 MG TAB COSE	9/5/2023	██████	\$39.00	██████	GENERIC
71036924	DILANTIN 100 MG CAP PFIZ	11/21/2023	██████	\$238.44	██████	GENERIC
555905167	VELIVET 0.1/0.125/0.15 - 0.025 MG PAK TEVA	5/17/2023	██████	\$36.67	██████	GENERIC
12496120803	SUBOXONE 8-2 MG MIS INDI	3/9/2023	██████	\$603.46	██████	GENERIC
00009027101	DEPO-ESTRADIOL 5 MG/ML INJ PFIZ	2/13/2023	██████	\$184.92	██████	GENERIC

New Albertsons L.P.

Drug NDC	Drug Name	Date of Service	Point of Sale Drug Reimbursement	Benchmark Price (AWP)	Discount off of Benchmark Price for Initial Reimbursement (Consistent with Brand Rates)	Classification for Final Reimbursement at Reconciliation
713088530	CLOMID 50 MG TAB COSE	9/22/2023	██████	\$78.00	██████	GENERIC
52937000120	VASCEPA 1 GM CAP AMAR	8/14/2023	██████	\$425.46	██████	GENERIC
71036924	DILANTIN 100 MG CAP PFIZ	11/26/2023	██████	\$115.37	██████	GENERIC
555905167	VELIVET 0.1/0.125/0.15 - 0.025 MG PAK TEVA	8/24/2023	██████	\$36.67	██████	GENERIC
234057508	HIBICLENS 4 % LIQ MOLN	8/14/2023	██████	\$5.54	██████	GENERIC

Safeway Inc.

Drug NDC	Drug Name	Date of Service	Point of Sale Drug Reimbursement	Benchmark Price (AWP)	Discount off of Benchmark Price for Initial Reimbursement (Consistent with Brand Rates)	Classification for Final Reimbursement at Reconciliation
713088509	CLOMID 50 MG TAB COSE	9/1/2023	██████	\$78.00	██████	GENERIC
12496120803	SUBOXONE 8-2 MG MIS INDI	4/3/2023	██████	\$969.84	██████	GENERIC
57844012001	ADDERALL 20 MG TAB TEVA	11/16/2023	██████	\$352.87	██████	GENERIC
71036924	DILANTIN 100 MG CAP PFIZ	12/28/2023	██████	\$230.75	██████	GENERIC
13811000710	TRINATAL RX 1 60-1 MG TAB TRIG	7/18/2023	██████	\$9.49	██████	GENERIC

United Supermarkets, LLC

Drug NDC	Drug Name	Date of Service	Point of Sale Drug Reimbursement	Benchmark Price (AWP)	Discount off of Benchmark Price for Initial Reimbursement (Consistent with Brand Rates)	Classification for Final Reimbursement at Reconciliation
713088509	CLOMID 50 MG TAB COSE	2/12/2023	██████	\$47.64	██████	GENERIC
00555905167	VELIVET 0.1/0.125/0.15 - 0.025 MG PAK TEVA	11/6/2023	██████	\$36.67	██████	GENERIC
37682210	PROCTOFOA M HC 1-1 % AER MYLA	1/20/2023	██████	\$211.56	██████	GENERIC
74706990	SYNTHROID 150 MCG TAB ABBV	3/31/2023	██████	\$54.10	██████	GENERIC
57844011001	ADDERALL 10 MG TAB TEVA	1/23/2023	██████	\$352.87	██████	GENERIC

64. These examples demonstrate that Express Scripts initially treated these drug claims as brand at the point of sale, only to later re-classify – and ultimately reimburse – the claims as generic during the reconciliation process.

65. Moreover, the drugs set forth above have identifiers in Medi-Span and First DataBank that support that these drugs are brand drugs, not generics.

66. Albertsons Companies has identified that Express Scripts improperly re-classified many thousands of prescription drug claims originally paid for as brand drugs to generic drugs during the reconciliation process, and thus paid Albertsons Companies at much lower rates than the reimbursement initially received when it filled these prescriptions at the point of sale.

67. In total, Express Scripts under reimbursed Albertsons Companies by at least \$7.3 million, which is in addition to the approximately \$3.6 million that Express Scripts admitted in the 2023 EOP Reports is indisputably due to Albertsons Companies.

F. The Parties' Attempts to Resolve This Dispute

68. On March 28, 2024, Albertsons Companies sent an email to Express Scripts to give notice of its dispute with respect to the 2023 reconciliation files. Albertsons Companies provided Express Scripts with claim level details supporting that Express Scripts had inappropriately classified certain drug claims.

69. On March 28, 2024, Express Scripts responded to this email, acknowledging they were able to download its data files and asking for more information, including information Albertsons Companies provided that same day.

70. On April 10, 2024, Express Scripts explained that it had done a preliminary review, and asked follow-up questions. That same day, Albertsons Companies delivered files via a secure message to Express Scripts.

71. On April 11, 2024, Albertsons Companies asked Express Scripts if it had received the files sent via a secure message on April 10, 2024, and if the files were accessible.

72. On April 12, 2024, Express Scripts confirmed receipt and stated that it was able to access the files.

73. On April 16, 2024, Express Scripts then stated it had issues opening the files, which the parties resolved by April 17, 2024.

74. On May 24, 2024, Express Scripts sent an email response with questions and offered to discuss the following week.

75. On July 17, 2024, Albertsons Companies sent Express Scripts an email seeking to resolve this dispute.

76. After receiving no response from Express Scripts as to its July 17, 2024, correspondence, Albertsons Companies followed up with Express Scripts on July 29, 2024.

77. Again, after receiving no response, more than two weeks since sending its email, Albertsons Companies reached out to Express Scripts on August 1, 2024.

78. Approximately three weeks after Albertsons Companies sent its initial email to Express Scripts to resolve the dispute, Express Scripts replied on August 6, 2024, stating its intent to respond by the end of the week.

79. On August 9, 2024, Express Scripts said it had run into unexpected issues, and would instead respond on Monday, August 12, 2024.

80. On August 12, 2024, almost a month after Albertsons Companies sent its email correspondence on July 17, 2024, Express Scripts responded and stated that Express Scripts disagreed with the resolution that Albertsons Companies proposed. Moreover, Express Scripts stated in its correspondence that the classification of

drugs as brand or generic may depend on factors including: Medi-Span, First DataBank, its brand/generic algorithm, and other nationally recognized resources.

81. On August 15, 2024, Albertsons Companies responded and stated that Albertsons Companies disagreed with Express Scripts position, and that Albertsons Companies would likely request a legal-to-legal call.

82. On September 13, 2024, again, Albertsons Companies requested a legal-to-legal call via email.

83. A little over a week later, on September 24, 2024, Albertsons Companies followed up again asking for a legal-to-legal call after no response from Express Scripts.

84. After a call between the parties on October 1, 2024, on October 3, 2024, Express Scripts raised in writing for the first time that Albertsons Companies had forfeited its right to invoke the dispute resolution process or otherwise challenge this reconciliation by not raising issues by June 26, 2024.

85. On October 23, 2024, Albertsons Companies informed Express Scripts that it did not agree with Express Scripts' position, including Express Scripts' position that the good faith negotiations period ended on May 27, 2024. Albertsons Companies explained that Express Scripts waived its ability to assert this contractual deadline has passed because it (1) invited continued negotiations after expiration of the 60-day period, (2) continued to engage in negotiations related to the

reconciliation dispute long after this date, and (3) introduced unreasonable delay into the negotiations period. Albertsons Companies set forth evidence for its position, including the 44-day delay by Express Scripts that consumed nearly 75% percent of the asserted 60-day good faith negotiation period.

86. Albertsons Companies also explained how it did, in fact, invoke the dispute-resolution process in providing sufficient detail of Albertsons Companies' claims, proposing a settlement, and providing the basis for its claims, which is all that the dispute resolution provision in the Agreements required.

87. On November 1, 2024, Express Scripts emailed Albertsons Companies, restating its position and noting that Express Scripts would begin the process of paying the underpayment of \$3,665,6327, as indicated by the 2023 EOP Reports, but not the underpayments related to brand/generic flipping.

88. On November 4, 2024, Express Scripts asked Albertsons Companies for the wire information to send payment for the 2023 reconciliation.

89. On November 14, 2024, Albertsons Companies confirmed to Express Scripts that it was still disputing the 2023 reconciliation. As part of this correspondence, Albertsons Companies confirmed that any receipt of payment proffered by Express Scripts would not satisfy the full amount owed, nor extinguish Albertsons' Companies continuing right to dispute the 2023 reconciliation.

90. On November 25, 2024, Express Scripts stated that it still maintained

the position provided in its November 1, 2024 email.

91. By letter dated December 6, 2024, Albertsons Companies confirmed again its invocation of the 30-day good faith negotiation period under Section 7.12, consistent with its prior invocation, and outlined Express Scripts' underpayment as to 2023. Albertsons Companies noted its multiple attempts to address the matter with Express Scripts in good faith, including by providing documentation on March 28, 2024, April 10, 2024, and July 17, 2024 related to all entities for which Albertsons Companies is currently bringing allegations about the 2023 reconciliation in its parallel complaints. The letter stated that if the parties could not resolve their dispute, then Albertsons Companies was prepared to pursue litigation.

92. On January 8, 2025, Express Scripts responded, reiterating its position.

93. On January 30, 2025, Albertsons Companies responded, stating that it disagreed with Express Scripts' position and shared the claims it anticipated bringing against Express Scripts. Albertsons Companies stated that it intended to file one lawsuit on behalf of all entities for ease of the Court and parties and asked Express Scripts whether it had any objections to that approach. Albertsons Companies also offered to set up time to discuss the matter with Express Scripts.

94. On March 5, 2025, Express Scripts responded to Albertsons Companies' January 20, 2025 letter, stating that it disagreed with Albertsons Companies' position, and reserved its right to object to consolidation of claims.

Additionally, Express Scripts noted that it was awaiting confirmation from Albertsons Companies to proffer payment for the “previously reported amount.” As stated in Express Scripts’ November 1, 2024, correspondence, Express Scripts deems this underpayment amount as \$3,665,637.

95. To date, Express Scripts has made no payment to Albertsons Companies of the amounts that Express Scripts acknowledges are owing, which Albertsons Companies understands is because Albertsons Companies has stated that any receipt of payment proffered by Express Scripts would not satisfy the full amount owed nor extinguish Albertsons Companies’ continuing right to dispute the 2023 reconciliation.

96. Following the parties’ correspondence in early 2025, the parties have continued to engage in negotiations to seek to resolve this dispute, including in connection with other contract negotiations that remained ongoing until mid to late 2025.

97. Although the parties completed their contract negotiations, that did not resolve Albertsons Companies’ concerns about being significantly underpaid through the 2023 reconciliation, and did not resolve this dispute. Since the parties completed their contract negotiations, Express Scripts has still not made any payments to Albertsons Companies related to the 2023 reconciliation, including to pay the undisputed amount it owes.

98. On November 21, 2025, Albertsons Companies confirmed to Express Scripts that as the parties had not resolved this dispute within the meet-and-confer period or through further negotiations, it would be proceeding with litigation.

99. After further correspondence between the parties, on November 25, 2025, Express Scripts affirmed its previously communicated position. In response to Albertsons Companies' request to consolidate for efficiency and to conserve judicial resources, Express Scripts stated that it reserved its right to object to the consolidation of claims. Accordingly, Albertsons Companies initially filed four separate lawsuits. Since that time, Express Scripts agreed to join Albertsons Companies in filing a stipulation to consolidate these matters, and Albertsons Companies proceeded with filing this consolidated complaint.

COUNT I

Breach of Contract

100. Albertsons Companies repeats and re-alleges the above paragraphs as if set forth fully in this section.

101. Under the Agreements, Express Scripts agreed to “pay . . . the rates as set forth in the applicable rate sheet(s) . . . less the applicable Copayment.” *See* Agreements at § 3.1.a.

102. Express Scripts breached the Agreements by failing to pay Albertsons Companies the \$3,665,627 that Express Scripts has admitted is owed as a result of

an underpayment during the 2023 reconciliation and instead insisting that Albertsons Companies is only entitled to those amounts if it agrees to waive its claim to additional amounts for the 2023 reconciliation.

103. Further, Express Scripts breached the Agreements by failing to appropriately reimburse Albertsons Companies for drugs initially paid as brand drugs.

104. The ES1000, which the parties incorporated by reference into the Agreements, is a part of the Agreements between Albertsons Companies and Express Scripts.

105. The definition of “Generic Drug” is set forth in the parties’ Agreements, and the definition of “Brand Drug” is set forth in the Provider Manual, which is incorporated into the parties’ Agreements where terms are not superseded by the language of the Agreements.

106. The parties’ Agreements define “Generic Drug” as follows:

[REDACTED]

See Agreements at § 1.8.

107. Express Scripts was required to treat brand drug claims and generic drug claims consistent with the parties' Agreements.

108. Express Scripts breached the Agreements by treating drugs as generic that Medi-Span, First DataBank, and other nationally recognized sources treated as brand.

109. Express Scripts further breached the Agreements to the extent that it treated drug claims as brand at the point of sale – causing Plan Members to have higher copayments for higher-priced brand drugs – only to later flip those same drug claims to reimburse them at generic rates during the reconciliation. That is, Express Scripts breached the Agreements to the extent that it re-classified drugs during the reconciliation process when Express Scripts had previously provided reimbursement consistent with rates for brand drugs.

110. For example, because the parties' definition references Express Scripts' brand/generic algorithm, because Express Scripts represented to Albertsons Companies in the parties' correspondence that it used its proprietary brand/generic algorithm as a factor to classify drugs as brands or generic, and because many of these drugs appeared to have initially paid for as brands, Express Scripts also breached the Agreements to the extent that it treated brand drug claims as generic that Express Scripts' brand/generic algorithm had classified for reimbursement as

brand at the point of sale.

111. By failing to reimburse these drugs at the reimbursement rate for brand drugs in accordance with its obligations under the Agreements, Express Scripts has caused Albertsons Companies monetary damages of at least \$7.3 million, which is in addition to the approximately \$3.6 million that Express Scripts indisputably owes to Albertsons Companies, meaning that Express Scripts owes Albertsons Companies at least \$10.9 million, subject to increase based on information obtained in discovery.

112. Albertsons Companies is entitled to an award of damages as a result of Express Scripts' breach in an amount to be proven at trial.

COUNT II

Breach of the Implied Covenant of Good Faith and Fair Dealing (In The Alternative)

113. Albertsons Companies repeats and re-alleges the above paragraphs as if set forth fully in this section.

114. To the extent that Express Scripts had any discretion under the Agreements to determine whether the disputed drug claims were brand or generic, Express Scripts was required to do so in good faith. Express Scripts had no discretion to re-classify drugs that Express Scripts appeared to have elected to treat as brand for point-of-sale reimbursement, and instead pay for these drugs at lower

generic rates during the parties' reconciliation process.

115. That is, Express Scripts breached its obligation to act in good faith to the extent that it, among other things, treated drug claims as a brand at the point of sale – potentially causing Plan Members to incur higher cost-sharing amounts associated with the higher-priced brand drug – and then re-classified those drug claims as generics during the reconciliation process. This conduct has the impact of minimizing its reimbursement to Albertsons Companies, adversely affecting patients, and maximizing Express Scripts' profits.

116. For the reasons set forth above, and because there is no basis for Express Scripts to re-classify drugs that previously appeared to be reimbursed at brand rates to instead be reimbursed at generic rates during the reconciliation, Express Scripts failed to re-classify certain drug claims as generic in good faith.

117. By failing to treat brand drug claims as such in good faith, Express Scripts has breached its duty of good faith and fair dealing and caused Albertsons Companies to suffer harm.

118. Albertsons Companies is entitled to an award of damages as a result of Express Scripts' breach in an amount to be proven at trial.

COUNT III

Unjust Enrichment (In The Alternative)

119. Albertsons Companies repeats and re-alleges the above paragraphs as if set forth fully in this section.

120. Express Scripts has been unjustly enriched by failing to pay the \$3,665,637 that Express Scripts has admitted is owed to Albertsons Companies as a result of an underpayment during the 2023 reconciliation.

121. Express Scripts has also been unjustly enriched by, among other things, securing larger profits to the detriment of Albertsons Companies by treating brand drug claims as generic drug claims for reimbursement/reconciliation purposes.

122. In so doing, Express Scripts has unjustly enriched itself by retaining more money than it was entitled had it complied with the Agreements, while impoverishing Albertsons Companies by reimbursing Albertsons Companies less than it would otherwise reimburse under the Agreements.

123. Express Scripts has failed to justify the propriety of its actions, which has resulted in reimbursements that are lower than required or permitted.

124. As a result, Express Scripts has harmed Albertsons Companies in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Albertsons Companies requests that the Court render judgment against Express Scripts and:

- (1) Award monetary damages against Express Scripts owed to Albertsons Companies, including the payment Express Scripts acknowledges it currently owes Albertsons Companies, and with further damages to be proven at trial, plus interest;
- (2) Award all costs related to this action, including any expert witness fees, attorneys' fees, and court costs permitted under law and/or the Agreements; and
- (3) Issue any other relief as the Court deems just and proper.

Dated: January 6, 2026

Respectfully submitted,

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(*pro hac vice* forthcoming)

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