

Ramos, J

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
MANHATTAN DIVISION**

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JOHN DOE ONE and JOHN DOE TWO, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

EXPRESS SCRIPTS, INC., and DOES 1-10,  
inclusive,

Defendants.

Case No. 1:16-cv-03399-ER

KAREN BURNETT, BRENDAN  
FARRELL, and ROBERT SHULLICH,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

EXPRESS SCRIPTS, INC., and ANTHEM,  
INC.,

Defendants.

Case No. 1:16-cv-04948-ER

**~~PROPOSED~~ PRE-TRIAL ORDER NO. 1**

WHEREAS, Plaintiffs in the above actions have filed Complaints (the "Complaints") alleging violations of ERISA, 29 U.S.C. § 1131 and § 1132 *et seq.*, RICO, 18 U.S.C. §§ 1961 *et seq.*, and supplemental state law claims;

WHEREAS, the above captioned matters (the "Actions") and other related matters all arise out of a common nucleus of operative facts, and are styled as putative class actions, such that the consolidation of these and any subsequently filed putative class actions that may be related to the Actions will encourage economies of scale and efficiency ;

NOW, THEREFORE, THE COURT ORDERS AS FOLLOWS:

I. CONSOLIDATION OF CASES

1. Pursuant to Federal Rule of Civil Procedure 42(a), Plaintiffs' motion to consolidate the Actions is granted. The above-captioned actions are consolidated for all purposes, along with any other actions filed hereafter asserting substantially similar claims against the Defendants named in those actions.

2. The action *DOE v. Express Scripts, Inc.*, No. 1:16-cv-03399-ER (S.D.N.Y.), is hereby designated the lead case for consolidation purposes.

3. The terms of this Case Management Order ("CMO") shall not have the effect of making any person, firm, or corporation a party to any action in which he, she, or it has not been named, served or added as such, in accordance with the Federal Rules of Civil Procedure. The terms of this CMO and the consolidation ordered herein shall not constitute a waiver by any party of any claims or defenses or positions under the Federal Rules of Civil Procedure or any other statute or common law to the Actions, or any other filed consolidated or related action. The terms of this CMO and the consolidation ordered herein shall have no relevance to or bearing upon any motion for class certification. Defendants reserve all rights, defenses and positions concerning any motion to certify a class.

4. A Master Docket and Master File are hereby established for the Actions. The caption of the consolidated actions shall be "In re Express Scripts/Anthem ERISA Litigation," and the Master File number shall be 1:16-cv-03399-ER (the "Consolidated Action"). A Master Docket will be maintained for the Consolidated Action with all entries to be docketed under the

Master File number. Every pleading, motion, brief or other document filed in any action governed by this CMO shall be filed in the Master Docket.

5. When a document is filed and the caption shows that it is applicable to the Consolidated Action, the Clerk of the Court shall file such document in the Master File and note such filing on the Master Docket. No further copies need to be filed and no other docket entries need to be made.

6. All actions filed in the future in this District or transferred to this District that allege claims arising out of the same or substantially similar facts as alleged in the Actions will be, until further order of this Court, consolidated with the Consolidated Action.

7. The Parties shall file a Notice of Related Case pursuant to Civil Local Rule 13 whenever a new case alleging claims arising out of the same or substantially similar facts as alleged in the Consolidated Action is filed in, or transferred to, this District. If the parties agree that a case should be consolidated as part of these proceedings, they shall file a stipulation for an order of consolidation with the Court. If the Court determines the case is related and should be consolidated, the clerk shall:

- a. Place a copy of this Order in the separate file for such action;
- b. Serve on Plaintiffs' counsel in the new case a copy of this Order;
- c. Direct this Order be served upon Defendants in the new case to the extent not already a named Defendant; and
- d. Make the appropriate entry in the Master Docket.

If the parties do not agree that the new case should be consolidated, any party may file a motion for consolidation of that action into this action under Rule 42 for the Court's consideration.

8. All discovery taken in the Consolidated Action will apply to any subsequently filed and consolidated action and the parties will not be required to repeat discovery already undertaken in the Consolidated Action.

9. The organizational structure established by this CMO shall bind plaintiffs' counsel in all related actions, including actions filed or transferred subsequent to the entry of this Order, and are consolidated or governed by this CMO until and unless otherwise ordered by this Court.

10. An original of this CMO shall be filed by the Clerk in the Master File and in the files for each consolidated action captioned above, and in the file of every action subsequently consolidated herewith.

II. APPOINTMENT AND DUTIES OF INTERIM CO-LEAD CLASS COUNSEL

11. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appoints the following firms as Interim Co-Lead Counsel on behalf of the proposed Class: Whatley Kallas, LLP, Consumer Watchdog and Keller Rohrback LLP.

12. Interim Co-Lead Counsel for the proposed Class shall be solely responsible for coordinating and organizing the litigation on behalf of the proposed Class in the conduct of this litigation, and, in particular, shall have the following responsibilities:

- a. To file consolidated pleadings and to brief and argue motions and file opposing briefs in proceedings initiated by other parties;
- b. To initiate and conduct discovery proceedings;
- c. To act as spokespersons at pretrial conferences;
- d. To negotiate with defense counsel with respect to settlement and other matters;
- e. To call meetings of plaintiffs' counsel when appropriate;

f. To make all work assignments to plaintiffs' counsel to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort;

g. To conduct pre-trial, trial and post-trial proceedings;

h. To consult with and employ experts;

i. To allocate any Court awarded fees and reimbursement of disbursements amongst plaintiffs' counsel after settlement or verdict;

j. To perform such other duties and undertake such other responsibilities as they deem necessary or desirable; and

k. To coordinate and communicate with defense counsel with respect to matters addressed in this paragraph or case.

13. Interim Co-Lead Counsel will separately designate a person or persons who will be responsible for contacting and coordinating communications with the Court and its staff.

14. No Complaint, motion, request for discovery, or other pre-trial proceedings shall be initiated or filed by any Plaintiff in any Action except through Interim Co-Lead Counsel for the proposed Class.

15. Interim Co-Lead Counsel for the proposed Class shall be the contacts between counsel for the proposed Class and Defendants' counsel as well as the spokespersons for proposed Class. Such counsel shall call meetings of and direct and coordinate the activities of all proposed Class counsel. Interim Co-Lead Counsel for the proposed Class shall also be responsible for communicating with the Court to coordinate the conduct of the litigation, including the receipt and dissemination of Court orders and notices.

16. All plaintiffs' counsel in the Actions, and in any subsequently consolidated or coordinated actions, shall keep contemporaneous time records. In such manner as Interim Co-Lead Counsel for the proposed Class shall require, all plaintiffs' counsel shall periodically submit summaries or other records of recorded billable time and expenses to Interim Co-Lead Counsel. Failure to provide such documents and/or data on a timely basis may result in the Court's failure to consider non-compliant counsel's application for fees and expenses should this litigation be resolved successfully for plaintiffs.

III. PRESERVATION OF EVIDENCE

17. During the pendency of this litigation, or until further order of this Court, the parties shall comply with the requirements of the Federal Rules of Civil Procedure regarding preservation of documents within their possession, custody or control.

IV. COMMUNICATION AMONG COUNSEL

18. The Court recognizes that cooperation by and among counsel is essential for the orderly and expeditious resolution of this litigation. Accordingly, the mere communication of otherwise privileged information among and between Plaintiffs' counsel shall not be deemed a waiver of attorney-client privilege or attorney work product immunity. Similarly, the mere communication of information among and between counsel for Defendants in any of the related actions in the coordinated defense of these Actions shall not be deemed a waiver of any applicable privilege.

V. FILING OF CONSOLIDATED AMENDED COMPLAINT

19. None of the Defendants shall be required to respond to any of the Complaints on file in the Actions. On or before September 30, 2016, Interim Co-Lead Counsel shall file a First Amended Consolidated Complaint in the Master Docket. In the event any Defendant files a

motion to dismiss directed at this Complaint, that motion shall be filed on or before November 30, 2016; any opposition shall be filed on or before January 30, 2017; and any reply shall be filed on or before February 28, 2017.

20. Counsel for all parties are directed to cooperate with one another, wherever possible, to promote the expeditious handling of pre-trial proceedings in this action, including any motions that might be directed at the pleadings in this action, as well as, to the extent reasonably practicable, coordinate discovery efforts with counsel in the related action *Anthem, Inc. v. Express Scripts, Inc.*, No. 1:16-cv-02048-ER (S.D.N.Y.).

DATED: New York, New York  
August 1, 2016



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EDGARDO RAMOS, U.S.D.J.

