

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS

STATE OF MISSOURI

RICHARD WEISGLAS, derivatively on)
behalf of EXPRESS SCRIPTS)
HOLDING COMPANY,)

Plaintiff,)

vs.)

EXPRESS SCRIPTS HOLDING)
COMPANY)

Serve: Registered Agent:)
CSC-Lawyers Incorporating)
Service Company)
221 Bolivar Street)
Jefferson City, Missouri 65101)

and)

GEORGE PAZ)

Serve: One Express Way)
St. Louis, Missouri 63121)

and)

MAURA C. BREEN)

Serve: One Express Way)
St. Louis, Missouri 63121)

and)

GARY G. BENANAV)

Serve: One Express Way)
St. Louis, Missouri 63121)

and)

**VERIFIED PETITION FOR BREACHES OF
FIDUCIARY DUTIES, UNJUST
ENRICHMENT, AND ABUSE OF CONTROL**

JURY TRIAL DEMANDED

Cause No.:

Division:

WILLIAM J. DELANEY)
)
Serve: One Express Way)
 St. Louis, Missouri 63121)
)
and)
)
ELDER GRANGER)
)
Serve: One Express Way)
 St. Louis, Missouri 63121)
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and)
)
NICHOLAS J. LAHOWCHIC)
)
Serve: One Express Way)
 St. Louis, Missouri 63121)
)
and)
)
THOMAS P. MACMAHON)
)
Serve: One Express Way)
 St. Louis, Missouri 63121)
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and)
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FRANK MERGENTHALER)
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Serve: One Express Way)
 St. Louis, Missouri 63121)
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and)
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WOODROW A. MYERS JR.)
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Serve: One Express Way)
 St. Louis, Missouri 63121)
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and)
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RODERICK A. PALMORE)
)
Serve: One Express Way)
 St. Louis, Missouri 63121)

and)
)
WILLIAM L. ROPER)
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Serve: One Express Way)
St. Louis, Missouri 63121)
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and)
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SEYMOUR STERNBERG)
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Serve: One Express Way)
St. Louis, Missouri 63121)
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and)
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TIMOTHY WENTWORTH)
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Serve: One Express Way)
St. Louis, Missouri 63121)
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and)
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ERIC SLUSSER)
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Serve: One Express Way)
St. Louis, Missouri 63121)
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and)
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DAVID QUELLER)
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Serve: One Express Way)
St. Louis, Missouri 63121)
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and)
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JAMES M. HAVEL)
)
Serve: One Express Way)
St. Louis, Missouri 63121)
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Defendants.)
)
_____)

Plaintiff Richard Weisglas (“Plaintiff”), by and through his counsel, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief are based upon, *inter alia*, counsel’s investigation, which included review and analysis of: (a) regulatory filings made by Express Scripts Holding Company (“Express Scripts” or the “Company”) with the United States Securities and Exchange Commission (“SEC”); (b) press releases and media reports issued by and disseminated by the Company; (c) analyst reports concerning Express Scripts; (d) the complaints filed in *Anthem, Inc. v. Express Scripts, Inc.*, No. 16-cv-2048 (S.D.N.Y. filed Mar. 21, 2016) and *Melbourne Municipal Firefighters’ Pension Trust Fund v. Express Scripts Holding Company et al.*, Case No. 16-cv-03338 (S.D.N.Y. filed May 14, 2016); and (e) other public information regarding the Company.

INTRODUCTION

1. This shareholder derivative action is brought on behalf of Express Scripts against certain officers and directors of the Company, alleging breaches of fiduciary duty that have caused substantial damages to the Company, which conduct occurred between February 23, 2015 and the present (the “Relevant Period”). The claims asserted herein are alleged against the Company’s Board of Directors as well as certain of the Company’s officers, including Chief Executive Officer (“CEO”) George Paz, President, Timothy Wentworth, Chief Financial Officer (“CFO”), Eric Slusser, Senior Vice President - Sales & Account Management, David Queller, and Executive Vice President and Interim CFO, James M. Havel.

2. Express Scripts is the largest independent pharmacy benefit manager (“PBM”) in the country. As a PBM, Express Scripts administers the prescription drug benefit component of its customers’ health insurance plans. Express Scripts also negotiates drug prices with pharmacies and establishes a network of pharmacies through which patients can fill their prescriptions. As part of its core PBM business, the Company also provides Medicare Part D-related products and services to Medicare Part D plan sponsors. The Company’s PBM services accounted for over 97% of Express Scripts’ revenues over the past three years.

3. Express Scripts' largest client is Anthem, Inc. ("Anthem"), one of the largest health benefits companies in the United States, which represented 16.3% of Express Scripts' 2015 revenues and 14% of Express Scripts' 2014 annual revenues. Accordingly, the Company's relationship with Anthem and its ability to provide Anthem with high quality service is critical to investors.

4. Under the terms of the Company's contract with Anthem, Anthem may periodically perform a market analysis to determine whether Anthem is receiving "competitive benchmark pricing" on drugs purchased through plans administered by Express Scripts. If Anthem concludes that the pricing terms under the agreement with the Company are no longer market competitive, then Anthem may propose new pricing terms to ensure that Anthem is receiving competitive benchmark pricing, and Express Scripts is obligated to negotiate in good faith over the proposed new pricing terms.

5. Throughout the Relevant Period, the Individual Defendants caused Express Scripts to repeatedly assure investors that the Company's relationship with Anthem was strong and that it was providing Anthem, and all its customers, with high quality service. Express Scripts also told investors that it was performing at a high level financially and operationally. In addition, the Company addressed the ongoing drug pricing negotiations with Anthem, stating that Express Scripts was committed to reaching a mutually beneficial agreement, and continuing its successful working relationship with its most important client. As a result of these misrepresentations, Express Scripts stock traded at artificially inflated prices during the Relevant Period.

6. The truth began to be revealed on January 12, 2016, when Anthem publicly threatened to terminate its relationship with Express Scripts unless the Company would renegotiate its agreement with Anthem to deliver more than \$3 billion in annual savings to Anthem. Anthem's statement made clear that Anthem and Express Scripts had engaged in contentious pricing negotiations for some time, and made clear that if Express Scripts remained unwilling to engage in good-faith negotiations regarding drug pricing, Anthem would terminate

its relationship with Express Scripts and seek out a competing PBM. These disclosures caused the price of Express Scripts shares to fall \$5.89 per share, or 7%, wiping out \$3.9 billion in shareholder value. However, the Company's stock price remained inflated because Defendants offered false and misleading explanations for, and continued to conceal, the true extent of the Company's deteriorating relationship with Anthem.

7. Then, on March 21, 2016, *Anthem sued Express Scripts for \$13 billion*, alleging that the Company breached its contract with Anthem by failing to negotiate drug pricing terms in good faith. The lawsuit revealed a deep (and never before disclosed) conflict between Express Scripts and Anthem dating back to at least February 2015, including allegations that Express Scripts was experiencing severe operational problems that interfered with its ability to adequately serve Anthem and exposed Anthem to increased regulatory scrutiny by the Centers for Medicare & Medicaid Services ("CMS"). More importantly, investors learned that Anthem would almost certainly either renegotiate its contract to pay billions of dollars less to Express Scripts, or worse, seek to engage a competing PBM resulting in the complete loss of Anthem's business. These disclosures caused the price of Express Scripts shares to decline by \$1.82 per share, or 2.6%.

8. As a result of Defendants' wrongful acts and omissions, the Company has suffered significant losses and damages.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action because Express Scripts is headquartered in St. Louis County, Missouri, because Defendants Paz, Wentworth, Slusser, Havel and Queller are citizens and residents of Missouri, and because the other defendants engaged in substantial conduct in St. Louis, Missouri relating to the wrongdoing alleged herein.

10. Plaintiff brings this action under Missouri Rev. Stat. Section 507.070 on behalf of the Company.

11. Venue is proper in this Court because a substantial portion of the transactions and wrongs complained of herein, including the Defendants' primary participation in such wrongful

acts, occurred in St. Louis, Missouri. Specifically, Nominal Defendant Express Scripts has its principal office in this County at One Express Way, St. Louis, MO, 63121, where it transacts its usual and customary business activities, including substantial activity relating to the wrongdoing alleged herein.

PARTIES

A. Plaintiff

12. Plaintiff is a current shareholder of Express Scripts and has owned Express Scripts stock continuously at all relevant times, including since at least 2010.

B. Defendants

13. Defendant Express Scripts is a Delaware corporation with its principal executive offices located at One Express Way, St. Louis, MO. The Company's common stock trades on NASDAQ under ticker symbol "ESRX." Express Scripts currently has over 630 million shares of stock outstanding.

14. Defendant George Paz ("Paz") was, at all relevant times, Chairman and CEO of Express Scripts. Paz resigned as CEO in approximately May 2016, at which time Wentworth became CEO.

15. Defendant Timothy Wentworth ("Wentworth") was, at all relevant times, President of Express Scripts. Wentworth was named CEO in addition to President in approximately May 2016.

16. Defendant Eric Slusser ("Slusser") has been from approximately September 10, 2015 to the present, CFO of Express Scripts.

17. Defendant David Queller ("Queller") was, at all relevant times, Senior Vice President - Sales & Account Management of Express Scripts.

18. Defendant James M. Havel ("Havel") was, from January 2015 to September 2015, Executive Vice President and Interim CFO of Express Scripts. In September 2015, Havel became the Company's Executive Vice President of Finance. Havel left the Company on March 11, 2016.

19. Defendant Gary G. Benanav was a director of the Company during the Relevant

Period and reviewed, approved, and signed the Company's Form 10-K Annual Reports dated February 23, 2015 and February 16, 2016. Benanav resigned from the Board in approximately May 2016, subsequent to the Company's Annual Meeting held in St. Louis.

20. Defendant Maura C. Breen ("Breen") serves as a director of Express Scripts.
21. Defendant William J. DeLaney ("DeLaney") serves as a director of Express Scripts.
22. Defendant Elder Granger ("Granger") serves as a director of Express Scripts.
23. Defendant Nicholas J. LaHowchic ("LaHowchic") serves as a director of Express Scripts.
24. Defendant Thomas P. MacMahon ("MacMahon") serves as a director of Express Scripts.
25. Defendant Frank Mergenthaler ("Mergenthaler") serves as a director of Express Scripts.
26. Defendant Woodrow A. Myers, Jr. ("Myers") serves as a director of Express Scripts.
27. Defendant Roderick A. Palmore ("Palmore") serves as a director of Express Scripts.
28. Defendant William L. Roper ("Roper") serves as a director of Express Scripts.
29. Defendant Seymour Sternberg ("Sternberg") serves as a director of Express Scripts.
30. Defendants Paz, Wentworth, Slusser, Queller, Havel, Benanav, Breen, DeLaney, Granger, LaHowchic, MacMahon, Mergenthaler, Myers, Palmore, Roper, and Sternberg are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with Express Scripts, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases, and presentations to securities analysts, money and portfolio managers, and institutional investors. Each of the Individual Defendants was provided with copies of the Company's reports and press releases alleged herein

to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading.

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

31. By reason of their positions as officers and directors of Express Scripts, each of the Individual Defendants owed and owe the Company and its stockholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Express Scripts in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of the Company and not in furtherance of their personal interests or benefits.

32. To discharge their duties, the officers and directors of the Company were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of Express Scripts. By virtue of such duties, the officers and directors of the Company were required to, among other things:

- a. ensure that the Company complied with its legal obligations and requirements, including complying with all state and federal laws concerning disclosure of all material facts to the Company's investors;
- b. conduct the affairs of the Company in an efficient, business-like manner in compliance with all applicable laws, rules, and regulations so as to make it possible to provide the highest quality performance of the Company's business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock; and
- c. remain informed as to how Express Scripts conducted operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, and of any alleged breach of contract by the Company to its significant customers, make reasonable inquiries in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with applicable laws and the Company's contracts.

Direct Role of the Board in Enterprise Risk Management

33. Each member of the Express Scripts board has direct responsibility for risk management at the Company. In fulfilling such responsibility, the Board meets with and receives regular reports from senior management. As stated in the Company's March 21, 2016 Proxy Statement: "The board of directors has general oversight responsibility for our affairs, including risk management, while senior management of the Company is responsible for our day-to-day operations. In order to assist the board of directors in overseeing risk management, we have implemented "enterprise risk management" or "ERM," which is a company-wide initiative that involves the board of directors in an oversight capacity, as well as our senior management and other personnel acting in an integrated effort to identify, assess and manage risks that may affect our ability to execute on our corporate strategy and fulfill our business objectives. These activities involve the identification, prioritization and assessment of a broad range of risks (*e.g.*, financial, operational, business, reputational, governance and managerial), and the formulation of plans to manage these risks or mitigate their effects." *Id.* at p. 23.

34. The Company's Proxy Statement also indicates that senior management provides frequent updates to the Board regarding material developments: "***Management provides periodic updates to our board of directors with respect to key risks*** which allows the board to oversee the formulation and implementation of plans to manage these risks or mitigate their effects. At least annually, the board of directors discusses with management the appropriate level of risk relative to our corporate strategy and business objectives and reviews with management the structure of our existing risk management processes. Further, at least annually, our Audit Committee discusses with our management and internal audit team our major financial risk exposures and the steps that have been taken to monitor and control such exposures, including a discussion of our risk assessment and risk management policies. In addition, our Compensation Committee regularly reviews risks related to our compensation policies and practices, and, at least annually, reviews and discusses the relationship between our risk management policies, corporate objectives, and compensation arrangements."

35. Moreover, Defendant Paz served as both Chairman of the Board and CEO during the key events of the Relevant Period, including the period when Anthem notified Express Scripts of alleged material breaches of the PBM contract.¹ Thus, Paz had direct, first-hand knowledge of Anthem's allegations regarding material breaches of the PBM contract which Paz shared with the Board as its Chairman.

Additional Duties of the Audit Committee

36. Under its Charter, the Audit Committee Defendants, defendants Frank Mergenthaler (Chair), William J. DeLaney, Nicholas J. LaHowchic, and Seymour Sternberg owed additional specific duties to Express Scripts, including the following:

- (a) Assist the board of directors in its oversight of (i) the integrity of the Company's financial statements; (ii) the Company's compliance with securities laws, including financial and disclosure requirements; (iii) the Company's system of internal controls and the performance of the internal audit function; and (iv) the qualifications, independence and performance of the Company's independent registered public accountants;
- (b) Select, retain and oversee the Company's independent registered public accountants;
- (c) Review the Company's annual and interim financial statements; and
- (d) Establish procedures for the receipt and handling of complaints regarding accounting, internal accounting controls or auditing matters.

Additional Duties of the Compliance Committee

37. Under its Charter, the Compliance Committee Defendants, defendants William L. Roper (Chair), Elder Granger, and Woodrow A. Myers, Jr. owed additional specific duties to Express Scripts, including the following:

- (a) Review and make recommendations to the board of directors addressing the Company's legal and regulatory compliance practices generally (excluding SEC and

¹ The Company's March 2016 Proxy states: "Mr. Paz has served as both the chair of our board of directors and our chief executive officer since May 2006."

financial reporting matters);

(b) Review the Company's Code of Conduct and Ethics at least annually and make recommendations to the board of directors with respect to any proposed changes;

(c) Oversee implementation by management of procedures intended to ensure compliance with the Company's Code of Conduct and Ethics; and

(d) Meet regularly with the Company's management to assess the Company's compliance policies and procedures.

Breaches of Duties

38. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of Express Scripts, the absence of good faith on their part, and a reckless disregard for their duties to Express Scripts that the Individual Defendants were aware or reckless in not being aware posed a risk of serious injury to Express Scripts.

39. The Individual Defendants breached their duties of loyalty and good faith by causing Express Scripts to fail to disclose highly material information concerning the Company's financial results, operations, and relationship with Anthem. These breaches of fiduciary duties constituted bad faith, a breach of the defendants' fiduciary duty of loyalty to the Company, and conduct which has caused Express Scripts to incur substantial damages.

40. The Individual Defendants, because of their positions of control and authority as officers and/or directors of Express Scripts, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the other Individual Defendants from taking such illegal actions. As a result, and in addition to the damage Express Scripts has already incurred, Express Scripts has expended, and will continue to expend, significant sums of money.

BACKGROUND

41. Express Scripts is headquartered in St. Louis and provides PBM services, including network-pharmacy claims processing, home delivery pharmacy care, specialty

pharmacy care, and other related services. Express Scripts is the largest stand-alone PBM in the United States. A PBM is a company that administers the prescription drug benefit component of a health insurance plan. A PBM processes and pays for prescription drug claims and is responsible for assisting employers and other third-party payors with managing the prescription benefit. PBMs also negotiate drug prices with pharmacies and establish a network of pharmacies through which patients can fill their prescriptions. Through its core PBM business, the Company also provides Medicare Part D-related products and services to Medicare Part D plan sponsors. The Company's PBM services accounted for over 97% of Express Scripts' revenues in each of the past three years.

42. In December 2009, Express Scripts acquired certain subsidiaries of Anthem – formerly known as WellPoint, Inc. – that provide PBM services. As part of the acquisition, Express Scripts signed a ten-year contract to provide PBM services to members of the affiliated health plans of Anthem. After the acquisition, Express Scripts integrated Anthem's former PBM clients into Express Scripts' existing systems and operations. As a result of that contract, Anthem quickly became Express Scripts' most important client, alone representing approximately 14% of the Company's annual revenues for 2014 and 16.3% of revenues for 2015. Accordingly, the Company's relationship with Anthem and its ability to provide Anthem with high quality service is critically important to investors. The contract has been amended at least once, and the operative contract, entitled the Amended Restated Pharmacy Benefit Services Agreement, is dated January 1, 2012.

43. Prescription drug prices are a very important component of health insurance plans. Moreover, prescription drug costs and prices change over time. Due to these factors, the Anthem contract contains a "repricing provision," under which Anthem or a third-party consultant retained by Anthem may periodically conduct a market analysis to ensure that Anthem is receiving "competitive benchmark pricing" on drugs purchased through plans administered by Express Scripts. If Anthem or its third-party consultant conclude that the pricing terms under the agreement with the Company are no longer competitive, Anthem has the right to

request new pricing terms from Express Scripts to ensure that Anthem is receiving competitive benchmark pricing. Express Scripts is then obligated to negotiate in good faith over the proposed new pricing terms. Express Scripts and Anthem last engaged in a successful price check in 2012.

44. Approximately halfway through the ten-year contract with Express Scripts, Anthem started to publicly discuss its relationship with Express Scripts. Specifically, on several occasions Anthem executives commented that they were developing a strategy and reviewing their options with respect to how Anthem might rework its PBM agreement once the contract with Express Scripts expired. In response to these comments from Anthem, the Individual Defendants caused Express Scripts to repeatedly assure investors during the Relevant Period that the Company's relationship with Anthem remained strong and that it was providing Anthem with quality service.

**DEFENDANTS CAUSE THE COMPANY TO MAKE MATERIALLY
FALSE AND MISLEADING STATEMENTS**

45. On February 23, 2015, the Company filed its annual report on Form 10-K for the year ended December 31, 2014 (the "2014 Form 10-K"). The 2014 Form 10-K was prepared, reviewed, and signed by Defendants Paz, Havel, Benanav, Breen, DeLaney, Granger, LaHowchic, Mergenthaler, Myers, MacMahon, Palmore, Roper, and Sternberg and contained certifications by Defendants Paz and Havel that attested to the purported accuracy and completeness of the 2014 Form 10-K. In the 2014 Form 10-K, the Company warned that:

If one or more of our large clients either terminates or does not renew a contract for any reason or if the provisions of a contract with a large client are modified, renewed or otherwise changed with terms less favorable to us, our financial results could be materially adversely affected and we could experience a negative reaction in the investment community resulting in stock price declines or other adverse effects.

The Company omitted that, with respect to Anthem, such risks had already materialized.

46. In the 2014 Form 10-K, the Company also generally warned that "the administration of the Medicare Part D program is complex and any failure to effectively execute the provisions of the Medicare Part D program may have an adverse effect on our financial

position.” The Company omitted that such risks had already materialized.

47. On February 25, 2015, Express Scripts held a conference call with analysts and investors to discuss the Company’s earnings and operations. During the conference call, Defendant Queller assured investors of the strength and health of the Company’s relationship with Anthem. Specifically, Defendant Queller stated that “we’ve got a great relationship with Anthem. We’re right now working with them very closely to help them prepare for their 1/1/16 business.” Defendant Queller further stated that “[o]ur teams work together closely each and every day. The relationship is very, very solid.” Defendant Queller also acknowledged the ongoing contract negotiations with Anthem, but assured investors that “we look forward to having them as a client through the end of the contract term which is at the end of 2019 and we’d love to have them for a longer time as well.”

48. The statements and omissions set forth in ¶¶ 45-47 were materially false and misleading because: (1) on February 16, 2015, Anthem sent Express Scripts a 14-page, single-spaced letter, giving Express Scripts notice of default arising from material operational breaches caused by Express Scripts’ systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts’ personnel, inordinately high employee turnover, and lack of required expertise; and (2) as a result of those breaches, Anthem was exposed to increased risk of regulatory scrutiny from CMS. In addition, Express Scripts had failed to engage in good-faith negotiations with Anthem regarding drug pricing, and, in fact, had been intentionally stonewalling those negotiations. Moreover, pursuant to its contract with Express Scripts, Anthem was entitled to lower pharmaceutical pricing that would equate to an annual savings of more than \$3 billion. As a result of the foregoing, Express Scripts’ relationship with Anthem had seriously deteriorated, creating a significant risk that the Company would lose Anthem’s business.

49. On April 28, 2015, the Individual Defendants caused the Company to issue a press release announcing financial results for the first quarter ended March 31, 2015. The press release and the Company’s quarterly financial statements were reviewed and approved by

Defendants Paz, Havel, Queller, Mergenthaler, DeLaney, LaHowchic, Wentworth, and Sternberg. In the press release, which was also filed with the SEC on Form 8-K, Defendant Wentworth emphasized that the quality of the Company's product offerings drove client retention, stating that "[c]lient retention starts with a simple concept: patient care," and that "[o]ur model . . . is embedded in our innovative solutions that are clearly differentiated and in high demand."

50. That same day, Express Scripts filed with the SEC its Form 10-Q for Q1 2015, reiterating the financial results announced by the Company in the April 28, 2015 press release. The Form 10-Q was reviewed and approved by Defendants Paz, Havel, Queller, Mergenthaler, Delaney, LaHowchic, Wentworth, and Stenberg, and signed by Defendants Paz and Havel and contained certifications by Defendants Paz and Havel that attested to the purported accuracy and completeness of the 10-Q. In the quarterly report, the Company incorporated by reference the general risk warnings included in 2014 Form 10-K and set forth herein in ¶¶ 45-46. The Company omitted that such risks had already materialized.

51. On April 29, 2015, Express Scripts held a conference call with analysts and investors to discuss the Company's earnings and operations. During the conference call, Defendant Paz assured investors of the Company's strong and healthy relationship with Anthem, stating that "Anthem is an incredibly important client to us. And I think we do very good things together." Defendant Paz also stated that Express Scripts "really enjoy[s] that relationship" and "really enjoy[s] providing services to their members."

52. The statements and omissions set forth in ¶¶ 49-51 were materially false and misleading because: (1) on February 16, 2015, Anthem sent Express Scripts a 14-page, single-spaced letter giving Express Scripts notice of default arising from material operational breaches caused by Express Scripts' systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts personnel, inordinately high employee turnover, and lack of required expertise; and (2) as a result of those breaches, Anthem was exposed to increased risk of regulatory scrutiny from CMS. In addition, on April 1, 2015, Anthem served

Express Scripts with a notice of breach arising from the Company's failure to negotiate drug pricing in good faith. Moreover, pursuant to its contract with Express Scripts, Anthem alleged it was entitled to lower pharmaceutical pricing that would equate to an annual savings of more than \$3 billion, for a total of \$13 billion over the remaining term of the PBM contract. As a result of the foregoing, Express Scripts' relationship with Anthem had seriously deteriorated, creating a significant risk that the Company would lose Anthem's business.

53. On July 28, 2015, Express Scripts issued a press release announcing its financial results for the second quarter ended June 30, 2015. The press release and the Company's quarterly financial statements were reviewed and approved by defendants Paz, Havel, Queller, Mergenthaler, DeLaney, LaHowchic, Wentworth, and Sternberg. In the press release, which was also filed with the SEC on Form 8-K, Defendant Paz stated that the Company's "business model [is] fully aligned with client needs" and that Express Scripts' "focused size and scale helps us make prescription drugs safer and more affordable which benefits everyone in healthcare – patients, plan sponsors and medical professionals."

54. On July 28, 2015, Express Scripts also filed with the SEC its Form 10-Q for Q2 2015, reiterating the financial results announced by the Company in the July 28, 2015 press release. The Form 10-Q was reviewed and approved by defendants Paz, Havel, Queller, Mergenthaler, DeLaney, LaHowchic, Wentworth, and Sternberg. It was signed by Defendants Paz and Havel and contained certifications by Defendants Paz and Havel that attested to the purported accuracy and completeness of the 10-Q. In the quarterly report, the Company incorporated by reference the general warnings included in 2014 Form 10-K and set forth herein in ¶¶ 45-46. The Company omitted that such risks had already materialized.

55. On July 29, 2015, Express Scripts held a conference call with analysts and investors to discuss the Company's earnings and operations. During the conference call, Defendant Wentworth touted the Company's strong client retention rate, stating that Express Scripts' "performance to date and the positive feedback we continue to receive gives us confidence that we will have strong retention across the board." Defendant Wentworth also

stated that the Company's "business outlook remains strong and our momentum continues" and touted the Company's "close collaboration with our clients."

56. The statements and omissions set forth in ¶¶ 53-55 were materially false and misleading because: (1) on February 16, 2015, Anthem served Express Scripts with a notice of default arising from material operational breaches caused by Express Scripts' systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts personnel, inordinately high employee turnover, and lack of required expertise; and (2) as a result of those breaches, Anthem was exposed to increased risk of regulatory scrutiny from CMS. In addition, on April 1, 2015, Anthem served Express Scripts with a notice of breach arising from the Company's failure to negotiate drug pricing in good faith. Moreover, pursuant to its contract with Express Scripts, Anthem was entitled to lower pharmaceutical pricing that would equate to an annual savings of more than \$3 billion. As a result of the foregoing, Express Scripts' relationship with Anthem had seriously deteriorated, creating a significant risk that the Company would lose Anthem's business.

57. On October 27, 2015, the Company issued a press release announcing its financial results for the third quarter ended September 30, 2015. The press release and the Company's quarterly financial statements were reviewed and approved by defendants Paz, Havel, Queller, Mergenthaler, DeLaney, LaHowchic, Slusser, Wentworth, and Sternberg. In the press release, which was also filed with the SEC on Form 8-K, Defendant Wentworth stated that the Company was "confident in the upper range of our expected retention rate, a reflection of the trust clients have in Express Scripts." Wentworth also touted that Express Scripts' "unique collection of cost-saving solutions and our business model of client alignment position us well for continued growth."

58. That same day, Express Scripts filed with the SEC its Form 10-Q for the third quarter of 2015, reiterating the financial results announced by the Company in its October 27 press release. The Form 10-Q was reviewed and approved by defendants Paz, Havel, Queller, Mergenthaler, DeLaney, LaHowchic, Slusser, Wentworth, and Sternberg. The Form 10-Q was

signed by Defendants Paz and Slusser and contained certifications by Defendants Paz and Slusser that attested to the purported accuracy and completeness of the 10-Q. In the quarterly report, the Company incorporated by reference the general warnings included in 2014 Form 10-K and set forth herein in ¶¶ 45-46. The Company omitted that such risks had already materialized.

59. On October 28, 2015, Express Scripts held a conference call with analysts and investors to discuss the Company's earnings and operations. During the conference call, Defendant Wentworth touted Express Scripts' strong relationship with its clients. Specifically, Defendant Wentworth stated that "[b]ased on our results this year, we are confident about next year's selling and retention season." Defendant Wentworth also touted that, among other things, the Company's "strong client relationships position us well for 2016" and that Express Scripts "will keep our clients and patients in the center of everything we do."

60. The statements and omissions set forth in ¶¶ 58-59 were materially false and misleading because: (1) on February 16, 2015, Anthem served Express Scripts with a notice of default arising from material operational breaches caused by Express Scripts' systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts personnel, inordinately high employee turnover, and lack of required expertise; and (2) as a result of those breaches, Anthem was exposed to increased risk of regulatory scrutiny from CMS. In addition, on April 1, 2015, Anthem served Express Scripts with a notice of breach arising from the Company's failure to negotiate drug pricing in good faith. Moreover, pursuant to its contract with Express Scripts, Anthem was entitled to lower pharmaceutical pricing that would equate to an annual savings of more than \$3 billion and \$13 billion over the life of the PBM contract. As a result of the foregoing, Express Scripts' relationship with Anthem had seriously deteriorated, creating a significant risk that the Company would lose Anthem's business.

61. On December 22, 2015, Express Scripts held a conference call with analysts and investors to discuss the Company's financial guidance for 2016. During the conference call, Defendant Paz addressed the ongoing pricing negotiation with Anthem. Specifically, Defendant

Paz assured investors that Express Scripts was “fully committed to reaching a mutually beneficial agreement, and continuing our successful working relationship.” Defendant Paz also stated that “[s]ince 2009, we have delivered quality care for Anthem’s members.” Finally, Defendant Paz stated that discussions with Anthem were “very early on” and that the Company was working its way through the repricing negotiations.

62. The statements and omissions set forth in ¶ 61 were materially false and misleading because: (1) the relationship between Express Scripts and Anthem was not “working” and had seriously deteriorated; (2) Express Scripts had not been delivering quality care for Anthem’s members; (3) on February 16, 2015, Anthem served Express Scripts with a notice of default arising from material operational breaches caused by Express Scripts’ systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts personnel, inordinately high employee turnover, and lack of required expertise; and (4) as a result of those breaches, Anthem was exposed to increased risk of regulatory scrutiny from CMS. In addition, on April 1, 2015, Anthem served Express Scripts with a notice of breach arising from the Company’s failure to negotiate drug pricing in good faith. Moreover, pursuant to its contract with Express Scripts, Anthem alleged it was entitled to lower pharmaceutical pricing that would equate to an annual savings of more than \$3 billion. As a result of the foregoing, Express Scripts’ relationship with Anthem had seriously deteriorated, creating a significant risk that the Company would lose Anthem’s business.

THE TRUTH BEGINS TO EMERGE

63. On January 12, 2016, Anthem publicly threatened to terminate its relationship with Express Scripts unless the Company agreed to renegotiate in good faith its agreement with Anthem to deliver significant savings on drug costs. Specifically, Anthem’s CEO, Joseph Swedish, stated for the first time that Anthem was entitled to lower pharmaceutical pricing that equates to an annual savings of more than \$3 billion – a sum many multiples larger than Express Scripts had previously indicated to investors. Anthem’s CEO also stated that if Express Scripts remained unwilling to renegotiate drug pricing, Anthem would terminate its relationship with

Express Scripts and seek out another PBM partner. Both the scale of the pricing concessions Anthem was seeking and the threat to terminate the Express Scripts relationship provided investors with the first indication that relations between the two companies had seriously deteriorated during contract negotiations, and that Express Scripts risked losing Anthem's business. As a result of these disclosures, Express Scripts shares fell \$5.89 per share, or 7%, representing a \$3.9 billion loss in market value.

64. Faced with Anthem's threat to terminate its relationship with Express Scripts, the Individual Defendants caused the Company to reassure investors that it was providing all its clients, including Anthem, with quality service and that the negotiations with Anthem were routine and would soon be resolved.

65. On February 16, 2016, the Company issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2015. The press release was reviewed and approved by defendants Paz, Havel, Queller, Mergenthaler, DeLaney, LaHowchic, Slusser, Wentworth, and Sternberg. In the press release, which was also filed with the SEC on Form 8-K, Defendant Wentworth stated that 2015 was the Company's "strongest retention year ever" and that "Express Scripts has momentum that maintains our confidence in our 2016 guidance and justifies our excitement about our future."

66. That same day, the Company filed its annual report on Form 10-K for the year ended December 31, 2015. The Form 10-K was prepared, reviewed, approved and signed by Defendants Paz, Slusser, Wentworth, Benanav, Breen, DeLaney, Granger, LaHowchic, MacMahon, Mergenthaler, Myers, Palmore, Roper, and Sternberg, and contained certifications by Defendants Paz and Slusser that attested to the purported accuracy and completeness of the 10-K. In the annual report, the Company warned that: If one or more of our large clients either terminates or does not renew a contract for any reason or if the provisions of a contract with a large client are modified, renewed or otherwise changed with terms less favorable to us, our financial results could be materially adversely affected and we could experience a negative reaction in the investment community resulting in stock price declines or other adverse effects.

The Company omitted that such risks had already materialized.

67. In the annual report, the Company also discussed the pricing review negotiations with Anthem. Specifically, Express Scripts stated that it was “actively engaged in good faith discussions with Anthem and intend[s] to continue to comply with the requirements of the agreement.” The Company also generally warned that it was “unable to provide a timetable or an estimate as to the potential outcome of these events, any of which could result in a material adverse effect on our business and results of operations.” The Company omitted that such risks had already materialized.

68. In the annual report, the Company also generally warned that “[t]he administration of Medicare Part D is complex and any failure to effectively execute the provisions of Medicare Part D may have an adverse effect on our business and our results of operations.” The Company omitted that such risks had already materialized.

69. On February 17, 2016, Express Scripts held a conference call with analysts and investors to discuss the Company’s earnings and operations. During the conference call, Defendant Paz assured investors that Express Scripts was “performing at a high level financially and operationally” and that “[o]ur team is delivering great service to Anthem and its members.” Defendant Paz also stated that the Company “remain[ed] fully committed to good faith negotiations in hopes of reaching a mutually beneficial agreement within the framework of our 2009 contract.” In addition, Defendant Paz quelled investor concern about the ongoing price-check noting that the pricing negotiations are “pretty routine” and noting that the Company conducts “bunches of those, every year.”

70. The statements and omissions set forth in ¶¶ 64-69 were materially false and misleading because: (1) on February 16, 2015, Anthem served Express Scripts with a notice of default arising from material operational breaches caused by Express Scripts’ systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts personnel, inordinately high employee turnover, and lack of required expertise; and (2) as a result of those breaches, Anthem was exposed to increased risk of regulatory scrutiny from CMS.

In addition, on April 1, 2015, Anthem served Express Scripts with a notice of breach arising from the Company's failure to negotiate drug pricing in good faith. Moreover, pursuant to its contract with Express Scripts, Anthem was entitled to lower pharmaceutical pricing that would equate to an annual savings of more than \$3 billion. As a result of the foregoing, Express Scripts' relationship with Anthem had seriously deteriorated, creating a significant risk that the Company would lose Anthem's business.

71. Then, on March 21, 2016, Anthem sued Express Scripts for \$13 billion, alleging that the Company breached its contract with Anthem by failing to negotiate pricing terms in good faith. The lawsuit also alleges that Express Scripts materially breached its obligation to perform operational duties in a "prudent and expert manner," as required by the contract. Anthem attributed those breaches to Express Scripts' systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts personnel, inordinately high employee turnover, and lack of required expertise. As a result of those breaches, Anthem was exposed to increased risk of regulatory scrutiny from CMS.

72. In its complaint, Anthem also revealed for the first time that it had been trying to negotiate drug repricing since the beginning of 2015 and Express Scripts had been stonewalling those negotiations. The complaint also revealed that Anthem had served Express Scripts with notices of default on February 16, 2015 and April 1, 2015, arising from the Company's operational breaches and failure to negotiate drug pricing in good faith, respectively. In other words, at the start of the Relevant Period, the Company and its senior executives were aware that Express Scripts' relationship with its most important client, Anthem, had seriously deteriorated and that it had not been satisfying its contractual obligations, and Express Scripts had been stonewalling for months to delay the renegotiation of its most significant contract.

73. Analysts were surprised by Anthem's allegations and immediately questioned whether Express Scripts had adequately disclosed the precariousness of the Company's relationship with Anthem. For example, analysts at Leerink Partners stated that the Company was "under-estimating [Anthem's] desire and willingness to walk away from their contract." The

Leerink analysts also stated that the Company's "relationship with [Anthem] has deteriorated to a point where the most likely outcome is termination of the contract either before or at the 2019 end-date."

74. These disclosures caused the price of Express Scripts shares to decline by \$1.82 per share, or 2.6%.

75. Indeed, Anthem's dispute with Express Scripts and its multi-billion dollar lawsuit against the Company has been the singular event which has depressed Express Scripts' stock in 2016 and caused it to significantly underperform its index. *See* Lewis Krauskopf, "Express Scripts Shares Languish as Anthem Dispute Weighs," June 24, 2016, REUTERS ("The main culprit [behind Express Scripts' languishing stock price]: a contract dispute with a major customer, Anthem Inc., that burst into the open at the start of the year, putting at risk business representing an estimated 16 percent of Express Scripts' 2015 revenue.").

THE DIRECTOR DEFENDANTS' PARTICIPATION IN THE WRONGFUL CONDUCT AND ACTUAL KNOWLEDGE OF THE UNDISCLOSED MATERIAL FACTS

76. All Individual Defendants, including all Board members sued herein, had actual knowledge of the material undisclosed facts alleged herein regarding the Company's relationship with Anthem.

77. First, Anthem sent a 14-page, single-spaced letter to Express Scripts dated February 16, 2015, giving Express Scripts notice of default arising from material operational breaches caused by Express Scripts' systems defects, chronic failure to devote sufficient resources to the work, inadequate training of Express Scripts' personnel, inordinately high employee turnover, and lack of required expertise. This letter was provided to the Company's Board of Directors. The letter detailed Express Scripts' alleged operational breaches pursuant to Sections 6.2(a) and 7.2 of Exhibit I of the PBM contract.

78. Second, on April 1, 2015, Anthem sent a second letter to Express Scripts, notifying the Company of Anthem's belief that the Company was in breach of the PBM and in default. That notice was also provided to the Board. According to Anthem, this was a "formal"

notice of a breach by Express Scripts of Section 6.2(a) of the PBM Agreement.²

79. Third, Defendants Paz and Wentworth personally took part in key negotiations and interactions with Anthem during 2015-2016 related to the formal notice of breach that Anthem served on Express Scripts in early 2015. For example, on October 19, 2015, Defendant Wentworth, who at the time was President of the Company and who now is President and CEO of Express Scripts, asked Anthem for a meeting to discuss the ongoing serious dispute between Anthem and the Company. In addition, on November 11, 2015, Anthem reached out directly to Wentworth to negotiate the parties' dispute regarding the PBM contract. Anthem alleges in its complaint that Wentworth had been a key ESI representative with respect to the pricing issue under the PBM contract.

80. Wentworth worked very closely with Express Scripts employee Matt Totterdale on the Anthem contract and relationship. Totterdale is the Company's V.P. and G.M. of the Anthem Division. Anthem is such a key customer to Express Scripts that there is a whole division of the Company called the "Anthem Division." Both Wentworth and Totterdale were heavily involved in the market check process and pricing negotiations with Anthem. Moreover, Defendant Slusser reports directly to Wentworth and was directly involved in the issues because of the materiality of the revenues from Anthem to Express Scripts' financial results.

81. On December 14, 2015, Anthem sent another email to Wentworth to follow up on the parties' ongoing discussions regarding Anthem's default notice to Express Scripts and request that Express Scripts cure the default and engage in good-faith discussions with Anthem regarding pricing.

82. On February 3, 2016, Anthem traveled to St. Louis to have an opportunity to meet with Wentworth. Anthem alleges that the trip was a waste of time and that "ESI again repudiated the Agreement by improperly stating that ESI was not obligated to negotiate at all

² In its Mar. 21, 2016 complaint against Express Scripts, Anthem states that "In light of ESI's utter refusal to negotiate, on April 1, 2015, Anthem provided ESI with formal notice of a breach under Section 6.2(a) of the Agreement." The formal contract is called the Amended Restated Pharmacy Benefit Management Services Agreement, dated as of Jan. 1, 2012.

over the pricing terms proposed by Anthem for competitive benchmark pricing or otherwise.”

83. As the situation with Express Scripts continued to deteriorate, Anthem sent its CEO, Joseph Swedish, to Chicago on March 1, 2016 to meet with ESI’s CEO, which at the time was Defendant George Paz. Anthem alleges that Paz refused to negotiate in good faith regarding the pricing terms, refused to share market data on pricing information for current and prospective customers, and refused to make a proposal for competitive benchmark pricing. However, Paz told Swedish that Express Scripts would make a revised proposal by March 11, 2016.

84. Moreover, as Express Scripts acknowledges, the Board itself is responsible for enterprise risk management (“ERM”) at the Company. In fulfilling such responsibility, the Board meets with and receives regular reports from senior management.

85. The Express Scripts’ Board of Directors met at least seven times in 2015. During those meetings, the Board was presented with updates on the status of the dispute with Anthem by, at a minimum, Paz, Wentworth, and Totterdale.

86. The Board received regular updates regarding the negotiations with Anthem because Anthem is Express Scripts’ most important client. Anthem is one of the largest health benefits companies in the United States, and represents approximately **14% of Express Scripts’ annual revenues**. Due to the significance of Anthem to Express Scripts, the Individual Defendants were continuously updated on the status of Express Scripts’ relationship with Anthem and therefore received regular updates in 2015-2016 from Tim Wentworth, George Paz, and Matt Totterdale regarding the ongoing dispute with Anthem. The Board of Directors thus had actual knowledge since at least February 16, 2015 of the material dispute with Anthem, that Anthem was seeking \$3 billion in cost savings per year (\$13 billion in costs over the term of the PBM contract), and the highly material potential impact on Express Scripts’ financial results and stock price of the concealed information.

87. Defendant Paz served as both Chairman of the Board and CEO during the key events of the Relevant Period, including the period when Anthem notified Express Scripts of

alleged material breaches of the PBM contract.³ Thus, Paz had direct, first-hand knowledge of Anthem's allegations regarding material breaches of the PBM contract which Paz shared with the Board as its Chairman.

88. Moreover, the Audit Committee, comprised of Defendants Mergenthaler, DeLaney, LaHowchic, and Steinberg met at least eight times in 2015. As part of such meetings, they received reports from, at a minimum, Havel and, subsequent to September 2015 when he became CFO, Slusser, on the material dispute with Anthem due to the materiality of Anthem's revenues to the Company's financial results. The Audit Committee Defendants knew the undisclosed information regarding Anthem was material, yet knowingly or recklessly failed to cause the Company to disclose the material facts, in breach of their fiduciary duties.

**THE INDIVIDUAL DEFENDANTS WERE UNJUSTLY ENRICHED AS A
RESULT OF THEIR WRONGDOING**

89. For 2015, Individual Defendants Paz, Wentworth, Havel and Slusser were awarded incentive-based compensation, the achievement of which depended on various financial metrics, including the performance of the Company's stock price, total stockholder return, and earnings per share ("EPS").

90. The criteria for achievement of the incentive-based compensation is set by Express Scripts' Compensation Committee in the first quarter of 2015, and the payouts are then made in the first quarter of 2016 based on the results achieved. The Company's executive officers themselves have a role in making recommendations and providing briefing to the Compensation Committee, as the Company admits in its Proxy: "At the direction of the Chair of the Committee, management generally prepares briefing materials for the Committee in advance of its meetings."

91. Moreover, Restricted Stock Units ("RSUs") were part of the long-term incentive compensation given to the Company's executive officers in 2015. The RSUs are granted with a value based on the fair market value of the Company's stock, vest in three equal installments,

³ The Company's March 2016 Proxy states: "Mr. Paz has served as both the chair of our board of directors and our chief executive officer since May 2006."

and have a realizable value determined based on the Company's stock price at the time of vesting. Thus, maintaining and increasing the Company's stock price was very important for Defendants Paz, Wentworth, Havel, and Slusser in 2015.

92. In the first quarter of 2015, Express Scripts' stock price traded in the approximate range of \$82-87 per share. During the remainder of 2015, the Individual Defendants, by not disclosing the material dispute with Anthem, were able to keep the Company's stock in the high \$80s and actually increase it to almost \$95 in July 2015, with the stock closing the year in the mid to high \$80s range.

93. However, when the truth about the Company's problems with Anthem was revealed in 2016, the Company's stock price tanked to as low as \$67 per share.

94. As a result of the Company's strong stock performance and other financial metrics in 2015, Individual Defendants Paz, Wentworth, Havel and Slusser earned millions of dollars in incentive-based compensation for 2015, as follows:

NAME	2015 Base Salary	Bonus Target Percentage (% of Base Salary)	Target Bonus Amount	2015 LTI Award	Total Target Direct Compensation	Amount Earned Above (Below) Target Bonus Amount	Total Actual Direct Compensation
George Paz	\$1,285,000	150	\$1,914,417	\$10,250,000	\$13,449,417	\$1,091,218	\$14,540,635
Timothy Wentworth	875,000	125	1,086,045	5,750,000	7,711,045	619,046	8,330,091
Eric Slusser	725,000	100	228,425	1,000,000	1,953,425	130,202	2,083,627
James Havel	725,000	100	725,000	5,250,000	6,700,000	413,250	7,113,250

95. Absent the Individual Defendants' wrongdoing, they would not have earned as much incentive-based compensation in 2015.

DAMAGES TO EXPRESS SCRIPTS

96. Due to the wrongdoing committed by the Individual Defendants, Express Scripts has been, and will continue to be, severely damaged and injured by the Individual Defendants' misconduct.

97. The Individual Defendants' wrongdoing has also increased the risk that Anthem will not renew its contract with Express Scripts. As Express Scripts admitted in the Form 10-Q quarterly report it filed with the SEC on July 25, 2016, the Company has already reduced the amortization period for items related to the Anthem contract by 5 years to account for the

increased risk that Anthem will not renew the contract: “[When] we executed our agreement with Anthem in 2009, we considered the overall structure of the agreement and the nature of our relationship with Anthem, including the complexity of the service level required, and attributed a reasonable likelihood of renewal at the end of its term in 2019. Accordingly, we amortized the agreement using a modified pattern of benefit over an estimated useful life of 15 years. ***However, due to the sequence of recent events regarding our discussions with Anthem, culminating in the filing of the lawsuit on March 21, 2016, we felt it prudent to consider the increased likelihood of either non-renewal or renewal on substantially different terms such that, beginning in March 2016, we began amortizing our agreement with Anthem over the remaining term of the contract (i.e. using a life of 10 years from the time the agreement was executed in 2009).*** Previously, we amortized the agreement over 15 years. Therefore, the intangible asset amortization associated with the Anthem agreement will run through the remaining term of the contract at the end of 2019, reducing the previous amortization period by 5 years. This change increases the quarterly intangible asset amortization by approximately \$32.0 million.”

98. Further, as a direct and proximate result of the Individual Defendants’ conduct, Express Scripts has expended and will continue to expend significant sums of money. Such expenditures include, but are not limited to:

- (a) legal fees, settlements, and judgments in the lawsuits filed against the Company by shareholders for violations of the federal securities laws, and by Anthem for breach of contract;
- (b) reduced revenues and profits due to the Company’s alleged breach of contract with Anthem;
- (c) loss of reputation and goodwill, and a “liar’s discount” that will plague the Company’s stock in the future due to the Individual Defendants’ false statements and lack of candor to the marketplace; and
- (d) amounts paid to outside lawyers, accountants, and investigators in

connection with the lawsuits filed against Express Scripts.

DERIVATIVE ALLEGATIONS

99. Plaintiff brings this action for the benefit of Express Scripts to redress injuries caused by the Individual Defendants as a result of the Individual Defendants' violations of law, as well as the aiding and abetting thereof. Express Scripts is named solely as a nominal party in this action. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

100. Plaintiff is and has continuously been an Express Scripts shareholder at all relevant times. Plaintiff therefore will adequately and fairly represent the interests of Express Scripts in enforcing and prosecuting its rights.

DEMAND FUTILITY ALLEGATIONS

101. A pre-suit demand on the Express Scripts Board is futile, and therefore, excused. The Board of Express Scripts as of the filing of this complaint consists of the following twelve individuals: Defendants Paz, Breen, DeLaney, Granger, LaHowchic, MacMahon, Mergenthaler, Myers, Palmore, Roper, Sternberg, and Wentworth.

102. Demand is futile as to the entire Board because they knew of the material, adverse facts concerning Anthem and failed to disclose the facts, thus breaching their duty of candor and loyalty to Express Scripts and acting in bad faith.

A. Demand Is Futile as to Defendants Paz and Wentworth

103. Demand is futile as to Defendants Paz and Wentworth because the Company admits that Paz and Wentworth do not meet the standards for director independence due to their employment at the Company as CEO and President, respectively. *See* Express Scripts' 2016 Proxy Statement on Form 14A, at p. 2.

104. Demand is also futile as to Paz and Wentworth because they are interested. They are named defendants in the related securities fraud class action complaint – *Melbourne Municipal Firefighters' Pension Trust Fund v. Express Scripts Holding Company et al.*, Case No. 16-cv-03338 (S.D.N.Y. filed May 14, 2016). Paz and Wentworth directly participated in

making many of the statements alleged to be false and misleading and are alleged to have acted with scienter. If Paz and Wentworth are found liable in the securities fraud class action complaint, then the Company will be liable for securities fraud under Section 20A of the Securities Exchange Act of 1934 and under theories of respondeat superior.

105. Moreover, as board members, Paz and Wentworth cannot independently consider a demand that the Company bring suit against them because Paz and Wentworth are heavily and personally interested in such decision due to being named defendants in the 10b-5 class action case. Liability in the 10b-5 case would also run the risk that Paz and Wentworth could be barred by the SEC from serving as an officer or director at any publicly-traded company, thus endangering Paz and Wentworth's livelihood. In 2015, Paz was awarded total compensation of \$14,835,587 by Express Scripts and Wentworth was awarded total compensation of \$8,464,903.

B. Defendants Paz, Breen, DeLaney, Granger, LaHowchic, MacMahon, Mergenthaler, Myers, Palmore, Roper, Sternberg, and Wentworth Are Interested Because They Acted in Bad Faith

106. As demonstrated in this complaint, the entire Board knew or recklessly disregarded the fact that Express Scripts had been advised by Anthem on February 16, 2015 that it was in breach of the PBM contract, and had been served with a formal notice of default by Anthem on April 1, 2015. In derogation of their fiduciary duties of candor, loyalty, and good faith, Defendants Paz, Breen, DeLaney, Granger, LaHowchic, MacMahon, Mergenthaler, Myers, Palmore, Roper, Sternberg, and Wentworth failed to disclose the material information regarding the Company's relationship with Anthem for well over a year. In fact, the Director Defendants did not fully disclose all material facts concerning the dispute with Anthem, and instead the market learned about the material facts from Anthem, when it publicly accused Express Scripts of breaching the PBM on Jan. 12, 2016. Even after such disclosure, the Director Defendants caused Express Scripts to mislead the market by making statements which attempted to downplay the significance of the dispute with Anthem and the potential effect of the dispute on Express Scripts' business. Defendants Paz, Wentworth, Breen, DeLaney, Granger, LaHowchic, MacMahon, Mergenthaler, Myers, Palmore, Roper, and Sternberg prepared, reviewed, approved

and signed the Company's Annual Reports in 2015 and 2016 which failed to disclose the material dispute with Anthem.

107. Because they had actual knowledge of the multi-billion dollar dispute with Anthem, and intentionally failed to disclose this material information to the stock market and the Company's shareholders, Defendants Paz, Breen, DeLaney, Granger, LaHowchic, MacMahon, Mergenthaler, Myers, Palmore, Roper, Sternberg, and Wentworth acted in bad faith and are not entitled to the protection of the business judgment rule. Demand is futile if it is shown that the directors' conduct is not protected by the business judgment rule.

COUNT I
Breaches of Fiduciary Duties
(Against All Individual Defendants)

108. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

109. Each Individual Defendant owes and owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of the Company's business and affairs, particularly with respect to maintaining compliance with applicable laws and regulations in core areas of the Company's business, as well as controls over disclosure.

110. Defendants' conduct set forth herein was due to their intentional, reckless, or negligent breach of the fiduciary duties they owed to the Company. Defendants intentionally, recklessly, or negligently breached or disregarded their fiduciary duties to protect the rights and interests of the Company.

111. All defendants named herein breached their duties of candor, loyalty and good faith by causing the Company to issue false financial statements, press releases, and annual and quarterly SEC filings, by failing to disclose material information regarding the Company's relationship with Anthem, the Company's largest customer, by failing to ensure that the Company had adequate internal controls in place, and by failing to take any action to strengthen the Company's internal controls or bring suit against the defendants for the harm suffered by the Company.

112. As a direct and proximate result of defendants' breaches of their fiduciary obligations, the Company has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, defendants are liable to the Company.

COUNT II
Abuse of Control
(Against All Individual Defendants)

113. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

114. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence the Company, for which they are legally responsible.

115. As a direct and proximate result of defendants' abuse of control, the Company has sustained significant damages.

116. As a direct and proximate result of defendants' breaches of their fiduciary obligations of candor, good faith, and loyalty, the Company has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, defendants are liable to the Company.

117. By reason of the foregoing, the Company has been damaged.

COUNT III
Unjust Enrichment
(Against Individual Defendants Wentworth, Paz, Slusser and Havel)

118. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

119. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, the Company.

120. During the Relevant Period, the Individual Defendants either received bonuses, stock options, or similar compensation from the Company that were tied to the financial performance of the Company or received compensation that was unjust in light of the Individual Defendants' bad faith conduct.

121. Plaintiff, as shareholder and representative of the Company, seeks restitution from the Individual Defendants and seeks an order from this Court disgorging all profits, benefits, and

other compensation, including any performance-based compensation, obtained by the Individual Defendants due to their wrongful conduct and breaches of their fiduciary duties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Determining that this action is a proper shareholder derivative action under Missouri Rev. Stat. Section 507.070;
- B. Awarding compensatory damages in favor of Plaintiff against the Individual Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff reasonable costs and expenses incurred in this action, including attorneys' fees and expert fees; and
- D. Awarding such equitable/injunctive or other further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: August 2, 2016

Respectfully submitted,
THE HEIN LAW FIRM, L.C.

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