

MINUTE ORDER

CASE NUMBER: CIVIL NO. 23-00464 LEK-RT
CASE NAME: State of Hawai`i, ex rel. Anne E. Lopez, Attorney General v. CaremarkPCS Health, L.L.C. et al.

JUDGE: Leslie E. Kobayashi DATE: 08/13/2024

COURT ACTION: EO: COURT ORDER GRANTING DEFENDANTS EXPRESS SCRIPTS, INC. & OPTUMRX, INC.'S MOTION TO SEAL PORTIONS OF UNREDACTED FIRST AMENDED COMPLAINT

Plaintiff State of Hawai`i, by and through Anne E. Lopez, Attorney General (“the State”) filed its First Amended Complaint on November 6, 2023 (“Amended Complaint”) in state court prior to removal. See Notice of Removal of Civil Action Under 28 U.S.C. §§ 1442(a)(1) and 1446, filed 11/17/23 (dkt. no. 1), Declaration of C. Michael Heihre, Exh. A (Amended Complaint). The Amended Complaint contains various redactions. See, e.g., id. at ¶¶ 18-19, 76-80.

Before the Court is Defendants Express Scripts, Inc. (“Express Scripts”) and OptumRx, Inc.’s (“OptumRx”) Motion to Seal Portions of Unredacted First Amended Complaint (“Motion to Seal”). [Dkt. no. 128.] Express Scripts and OptumRx propose limited redactions to the Amended Complaint. See Motion to Seal at 3 (stating three redactions are at issue); id., Exh. A (proposed redacted version of the Amended Complaint). This Court has also reviewed the unredacted version of the Amended Complaint, which the State previously submitted in connection with its Motion for Leave to File Unredacted First Amended Complaint Under Seal, [filed 7/15/24 (dkt. no. 121)]. Express Scripts and OptumRx represent that Defendant CaremarkPCS Health, L.L.C. (“Caremark”) does not object to their Motion to Seal and Caremark does not intend to seek further sealing of the Amended Complaint beyond what Express Scripts and OptumRx are seeking. [Motion to Seal at 2.]

The Court has previously set forth the standards applicable to a motion to seal the Amended Complaint. See Minute Order - EO: Court Order Denying Plaintiff’s Motion for Leave to File Unredacted First Amended Complaint Under Seal, filed 7/17/24 (dkt. no. 126) (“7/17 EO”), at PageID.2401. For the reasons stated in the 7/17 EO, the compelling reasons standard applies to Express Scripts and OptumRx’s Motion to Seal. The proposed redactions are “the precise rebate percentages Defendants negotiated for

certain drugs.” [Motion to Seal, Mem. in Supp. at 2.] The Motion to Seal is supported by a declaration by an Express Scripts vice president and a declaration by an OptumRx vice president both stating that, if the specific percentages were publicly disclosed, there would be possible loss of competitive advantage, risk of commercial harm, and impaired ability to negotiate in the relevant markets. See Motion to Seal, Declaration of Harold Carter at ¶¶ 1, 6-7; id., Declaration of James Millar at ¶¶ 2, 7, 8, 10.

The precise rebate percentages are relevant to the claims in this case, but, if the information is made publicly available, that information could be used to harm Express Scripts’s and OptumRx’s competitive market positions. See, e.g., San Diego Detox, LLC v. Detox Ctr. of San Diego LLC, Case No. 3:22-cv-01145-RBM-DDL, 2024 WL 1684885, at *2 (S.D. Cal. Apr. 18, 2024); Acevedo v. Russell Cellular, Inc., Case No. 1:20-cv-01440-JLT-SAB, 2023 WL 2620383, at *1 (E.D. Cal. Mar. 23, 2023). The Court therefore FINDS that there are compelling reasons to seal the specific percentages. Express Scripts and OptumRx’s Motion to Seal is GRANTED, and they are ORDERED to file the proposed redacted version of the Amended Complaint, which is attached to their Motion to Seal as Exhibit A, by **August 20, 2024**.

This Court will submit the unredacted version of the Amended Complaint to the Clerk’s Office for filing under seal.

IT IS SO ORDERED.

Submitted by: Carla Cortez, Courtroom Manager