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FILED

APR 2 7 2018

ANGIE SPARKS, Clerk of District Court
By LISA KALLIO Deputy Clerk

7   **MONTANA FIRST JUDICIAL DISTRICT COURT,**
                      LEWIS & CLARK COUNTY
8

9   OFFICE OF THE MONTANA STATE   Cause No. BDV 2018-389
     AUDITOR, COMMISSIONER OF
10   SECURITIES & INSURANCE, STATE OF
     MONTANA
11   **COMPLAINT**
     Plaintiff,
12
     v.
13
                                             MICHAEL F MCMAHON
14   EXPRESS SCRIPTS, INC., and EXPRESS   PRESIDING JUDGE
     SCRIPTS ADMINISTRATORS, LLC,
15
     Defendants.
16

The office of the Montana State Auditor, Commissioner of Securities and Insurance

17   (hereinafter "CSI") complains and alleges as follows:

18   **PARTIES**

19   1.   CSI is a state regulatory agency charged with enforcing the Montana Insurance Code,

20   M.C.A. § 33-1-101, *et seq.*

21   2.   Express Scripts, Inc., (hereinafter "ESI") is a Delaware corporation doing business in the

22   State of Montana.

23   3.   Express Scripts Administrators, LLC (hereinafter "ESA") is a Delaware limited liability

24   company doing business in the State of Montana.

GENERAL ALLEGATIONS

4.   The CSI is authorized to conduct examinations and investigations of insurance matters to determine whether any person has violated any provision of the laws of Montana, or to secure information useful in the lawful administration of any provision of the Montana Insurance Code. *See* § 33-1-311.

5.   With respect to the subject of any examination or investigation, the CSI may subpoena witnesses, administer oaths, examine individuals under oath, and may require and compel the production of records, books, papers, contracts, and other documents. *See* § 33-1-315.

6.   ESI and ESA are "Administrator[s]" as that term is defined in § 33-17-102(3)(a), because ESI and ESA adjust and settle claims related to disability (i.e., health) insurance in Montana.

7.   ESI and ESA are required to maintain adequate records, books, papers, contracts, and other documents, dating back 5 years, related to their business in Montana, and the CSI shall have access to these records, books, papers, contracts, and other documents. *See* § 33-17-611.

8.   Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, are confidential, but nonetheless must be produced to the CSI upon request. *Id.*

9.   By way of letter dated October 3, 2017, and pursuant to §§ 33-1-315 and 33-17-611, CSI ordered ESI and ESA to produce certain records, books, papers, contracts, and other documents dating back to October 1, 2012.

10.   ESI and ESA have produced some, but not all of the records, books, papers, contracts, and other documents requested by CSI.

11.   Despite repeated requests, ESI and ESA have failed to produce the remaining records, books, papers, contracts, and other documents requested by CSI.

12.   Pursuant to § 33-1-315(3), if a person fails to produce records, books, papers, contracts, or documents to the CSI when required to do so, the CSI shall institute proceedings in the district court to compel obedience to the CSI's request.

13.   A person who knowingly fails to produce records, documents, or other evidence requested by the CSI is subject to the penalty provisions of §§ 33-1-317 & 33-1-318, which may include a fine of up to $25,000 for each violation of the Montana Insurance Code.

PRAYER FOR RELIEF

The CSI respectfully requests the following relief:

1.   An order compelling ESI and ESA to produce the records, books, papers, contracts, and other documents requested by the CSI.

2.   An order imposing a fine of $25,000 pursuant to §§ 33-1-315(5), 33-1-317, and 33-1-318 for each separate violation of the Montana Insurance Code.

3.   Any other relief the court deems appropriate.

DATED this 27th day of April, 2018.

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DEREK J. OESTREICHER
Special Assistant Attorney General