

II. JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity between Defendant and at least one member of the class; there are more than one hundred members of the class; and the amount in controversy exceeds \$5,000,000 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes. All other factual conditions precedent necessary to empower this Court with subject matter and personal jurisdiction have been satisfied.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the Defendant is subject to personal jurisdiction in this District, has a registered agent in this District and a substantial portion of Defendant's conduct that forms the basis of this action occurred in this District.

5. This Court has personal jurisdiction over the Defendant because Plaintiff's claims arise out of, among other things, the Defendant conducting, engaging in, and/or carrying on business in Alabama and the acts/omissions giving rise to this action occurred in this District. Defendant also purposefully availed itself of the opportunity of conducting activities in the State of Alabama by marketing its services within the State, and intentionally developing relationships with customers within the State.

6. The compensatory damages sought by Plaintiff and the class is not the full amount of the prescription records fee paid by each class member, but rather is that amount charged and collected which is above and beyond what can legally and reasonably be charged for such records under Alabama law.

III. FACTS COMMON TO ALL CLASS MEMBERS AND ALL COUNTS

7. Express Scripts is one of the largest pharmacy benefit management companies in the United States, serving more than 100 million Americans. Express Scripts provides processing of network pharmacy claims, home delivery of pharmaceutical prescriptions, and pharmacy benefit management services to the consuming public throughout Alabama and the United States.

8. In the ordinary course of its business, Express Scripts stores and maintains pharmacy records and prescription histories for its customers. Upon information and belief, these pharmacy records and prescription histories are stored and maintained by Express Scripts in electronic format on a centralized data storage and retrieval computer system. Upon information and belief, because customer pharmacy records and prescription histories are maintained by Express Scripts in electronic format on a centralized computer system, they can be tracked, identified, transmitted, and printed in relative short order with minimum effort and usually with just the touch of a button.

9. Beginning at a date currently unknown to Plaintiff, Express Scripts began the widespread and systematic business practice of charging and collecting an established flat fee to customers and/or their authorized representatives who request the customer's pharmacy records from Express Scripts. For example, in the case of Plaintiff Reid, Express Scripts assessed a \$90 fee for her pharmacy records. Upon information and belief, over the years, Express Scripts has increased the amount of the flat fee which is systematically assessed for pharmacy records requests.

10. This flat fee assessed for a request for pharmacy records or prescription histories is reflected on the standard form billing invoices issued by Express Scripts and is represented on the standard form billing invoices as follows:

A complete submission is required in order to process your request. **Please resubmit all enclosed documents and required processing fee, for further processing.**

Currently the authorization is missing the following:

To cover our costs of processing your request, Express Scripts charges a non-refundable processing fee of \$90.00 **NOTE: THIS IS NOT A COPYING FEE; IT IS A DATA PROCESSING FEE.** Please submit the \$90.00 fee in the form of a check or money order payable to:

Express Scripts, Inc.
Attn: Records HWQ21-06
8455 University Place Drive
St Louis, MO 63121

Exhibit 1, *Express Scripts Invoice*. This same flat fee is charged and collected by Express Scripts regardless of the number of pages printed or provided and is assessed even when no records are provided by Express Scripts at all.

11. Despite the statement on Express Scripts's standard form billing invoices that its flat fee "**IS A DATA PROCESSING FEE**", the fee is, in truth, completely arbitrary and is in no way rationally or reasonably related to the actual cost incurred by Express Scripts in processing a request for customer pharmacy records. *Id.* In other words, Express Scripts's flat fee assessment is **not** for goods or services furnished or performed, but is instead an improper means to collect inflated, excessive, and unreasonable amounts which far exceed any actual costs incurred by Express Scripts in processing a pharmacy records request. Upon information and belief, Express Scripts stores and maintains all customer pharmacy records and prescription histories electronically on a centralized computer system located at its Missouri headquarters. The time, effort, and expense incurred by Express Scripts to retrieve, transmit, and provide copies of pharmacy records is *de minimis*, and can be done with the touch of a button. Yet, by charging an arbitrary and excessive flat fee for pharmacy records requests and misrepresenting it as being for services rendered, Express Scripts collects an unreasonable fee that is in no way related to the

actual cost incurred in processing a records request. Rather than covering the expense for processing prescription records, Express Scripts's flat fee instead covers fictitious costs and is nothing more than an improper profit center for Express Scripts. Consequently, the fee assessed and collected by Express Scripts for pharmacy records requests is unreasonable.

12. Express Scripts's excessive and inflated overcharges for pharmacy records requests are not only unreasonable, but they are so high as to be unconscionable, both procedurally and substantively. Express Scripts requires that a uniform price which is unreasonably favorable to Express Scripts be paid in order to provide a customer's pharmacy records or prescription history, thus allowing Express Scripts to reap an exorbitant return. Under these circumstances, Express Scripts charges an unconscionably high fee for pharmacy records.

13. In addition to being unreasonable and unconscionable, Express Scripts's fee for pharmacy records requests violates Alabama law imposing limits or caps on charges that can be assessed and collected for records, and/or which otherwise impose a reasonableness standard when assessing and collecting charges for such records.

14. Like most states, Alabama has a statute which expressly governs the types and amounts of charges that medical and healthcare providers can assess for customer records and services/searches related thereto. *See* ALABAMA CODE § 12-21-6.1. The statute applies to "[a]ny medical provider or company or other legal entity that maintains medical records." *Id.* Accordingly, Defendant, is subject to the mandates of ALABAMA CODE § 12-21-6.1.

15. ALABAMA CODE § 12-21-6.1 provides, in part, as follows:

The reasonable costs of reproducing copies of written or typed documents or reports shall not be more than one dollar (\$1) for each page of the first 25 pages, not more than 50 cents (\$0.50) for each page in excess of 25 pages, and a search fee of five dollars (\$5). If the medical records are mailed to the person making the request, reasonable costs shall include the actual costs of mailing the medical records.

16. The purpose of this statute is to ensure a person has reasonable and efficient access to their own records at a reasonable cost which is neither exorbitant nor excessive and would preclude one from accessing their own records. Stated otherwise, implicit in this statute is a reasonableness standard applicable to records charges and records accessibility. Further, this statute reflects a public policy of allowing reasonable access to one's own records at a reasonable cost. Express Scripts's uniform practice of charging an unreasonable fee for pharmacy records is violative of Alabama's statute and the public policy behind it.

IV. FACTS SPECIFIC TO THE CLASS REPRESENTATIVE

17. Plaintiff Reid is a customer of Express Scripts. In a separate matter, Plaintiff retained the law firm of Swiney & Bellenger, LLC to represent her. In retaining the law firm of Swiney & Bellenger, LLC to represent her in her in a separate matter, Plaintiff executed a representation agreement with Swiney & Bellenger, LLC and authorized them to act on her behalf as her authorized agent and legal representative. In accordance with this representation agreement executed with the firm of Swiney & Bellenger, LLC, Plaintiff was legally and contractually obligated to reimburse the firm for any expenses incurred on Plaintiff's behalf with respect to Plaintiff's separate legal matter. Plaintiff provided consent and authorization to the firm as her legal representative to obtain any needed records on her behalf, including pharmacy records. Per her agreement with the firm, Plaintiff was legally and contractually obligated to reimburse the firm for any such expenses incurred on Plaintiff's behalf, including costs for records.

18. During the summer of 2021, Plaintiff Reid's legal and authorized representative requested on Plaintiff's behalf that Express Scripts furnish a copy of her pharmacy records. In response, Express Scripts sent Plaintiff's legal and authorized representative an invoice for \$90, which stated: "Express Scripts is unable to process your request for prescription claims information

because it” lacked the “**required processing fee . . . [t]o cover our costs of processing your request, Express Scripts charges a non-refundable processing fee of \$90.00. NOTE: THIS IS NOT A COPYING FEE; IT IS A DATA PROCESSING FEE.**”

19. Plaintiff’s legal and authorized representative paid that invoice on Plaintiff’s behalf to obtain pharmacy records.

20. In accordance with her representation agreement, Plaintiff was legally obligated to reimburse the firm for any expenses it incurred on Plaintiff’s behalf with respect to her separate legal matter, including expenses to obtain pharmacy records. As stated, Plaintiff’s legal and authorized representative did, in fact, incur expenses on Plaintiff’s behalf which Plaintiff was contractually obligated to pay back. Accordingly, Plaintiff has or is legally obligated to reimburse her legal and authorized representative for the expenses the firm incurred on Plaintiff’s behalf as her legal and authorized representative including expenses incurred for obtaining the necessary pharmacy records from Express Scripts that were paid to Express Scripts.

21. The law firm of Swiney & Bellenger, LLC validly and legally assigned, in a written executed document, to Plaintiff Reid all rights, interest, and legal claims or defenses sounding in contract with respect to the pharmacy records obtained on Plaintiff Reid’s behalf and charges in connection therewith.

V. CLASS ACTION ALLEGATIONS

22. Plaintiff adopts and incorporates all previous allegations in the Complaint.

23. **Class Definition.** Plaintiff brings this action against Defendant pursuant to ALA.

R. CIV. P. 23 as members of the following proposed class:

All Alabama citizens residing in Alabama and all Alabama entities located in Alabama who paid the “data processing fee” to obtain health information and/or records from Express Scripts on or after August 16, 2015.

Excluded from the proposed class are Class Counsel, any individuals or entities currently in bankruptcy, the Defendant, any entity in which any Defendant has a controlling interest, and any agents, employees, officers, and/or directors of the Defendant or any other such entities and their representatives, heirs, successors, and/or assigns.

24. **Existence and Predominance of Common Questions of Law and Fact.** There are questions of law and fact common to the class. Said common questions includes, but are not limited to, the following:

- a. Whether Express Scripts engaged in a common and uniform business practice of charging an established, flat fee amount for requests for pharmacy records;
- b. Whether Express Scripts fraudulently induced Plaintiff and class members to pay the “data processing fee” by claiming the fee is necessary for “processing” when it is not;
- c. Whether the amount charged and collected by Express Scripts for pharmacy records is reasonably or rationally related to the actual cost incurred by Express Scripts for processing such requests;
- d. Whether Express Scripts has breached its contracts with Plaintiff and class members by charging and collecting amounts for pharmacy record requests which are unreasonable and/or unconscionable, and which are not for actual services rendered;
- e. Whether Express Scripts has breached its contracts with Plaintiff and class members by charging and collecting amounts for pharmacy record requests which are violative of Alabama’s applicable statute governing records charges and the public policy behind it;

- f. Whether Express Scripts's assessment and collection of the fee for pharmacy record requests as described herein violates the covenant of good faith and fair dealing present in every contract; and
- g. Whether Express Scripts has been unjustly enriched by virtue of the improper business practices described herein.

25. **Typicality.** The claims of the named Plaintiff are typical of the claims of the class.

26. **Adequate Representation.** Plaintiff will fairly and adequately protect the interest of the members of the class and has no interest antagonistic to those other class members. Plaintiff has retained class counsel competent to prosecute class actions and financially able to represent the class.

27. **Superiority.** The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. The interest of judicial economy favor adjudicating the claims for the Plaintiff class rather than on an individual basis. Class treatment is appropriate in that questions of law or fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT ONE
Breach of Contract

28. Plaintiff adopts and incorporates the allegations contained in paragraphs 1-27 in full.

29. A valid and enforceable contract exists, whether express or implied, between Express Scripts and each person or entity who makes a valid request for copies of an Express Scripts customer's pharmacy records, including Plaintiff. The customer or the customer's

authorized representative makes a request to Express Scripts to provide copies of the customer's pharmacy records or information, which Express Scripts accepts and then obligates itself to provide for a payment that is represented on uniform billion invoices "[t]o cover our costs of processing your request, Express Scripts charges a **non-refundable processing fee of \$90.00. NOTE: THIS IS NOT A COPYING FEE; IT IS A DATA PROCESSING FEE.**" Plaintiff and each member of the putative class paid Express Scripts the amount assessed for processing the pharmacy records request. Plaintiff fully performed its obligations under the terms of the parties' contract.

30. Express Scripts's uniform practice of charging and collecting the flat-rate fee described herein for pharmacy records constitutes a breach of contract, whether express or implied, with class members in the following respects:

- a. The fee charged and collected by Express Scripts for processing pharmacy records do not and are not intended to be for "data processing", but instead are merely a ruse to assess and collect fictitious, excessive, and unreasonable amounts which are in no way rationally related to the actual cost incurred by Express Scripts in processing the records request. Express Scripts does nothing in terms of "data processing." The consideration paid by class members was not for goods/services actually furnished or performed, or "data processing," but instead was for fictitious charges levied merely as a profit center for Express Scripts. As stated, the time, effort, and costs incurred by Express Scripts in providing copies of requested pharmacy records is *de minimis*. Yet, Express Scripts charges and collects excessive and inflated amounts which are in no way related to its actual costs incurred, and thus constitutes an unreasonable price or fee under the common law.

Express Scripts's assessment and collection of an unreasonable fee in this regard constitutes a breach of contract between Express Scripts and all class members.

- b. Express Scripts has breached contracts, whether express or implied, with Plaintiff and class members by charging fees for pharmacy records which are so high as to be unconscionable, both procedurally and substantively. Express Scripts requires that a uniform price which is unreasonably favorable to Express Scripts be paid in order to provide a customer's pharmacy records or prescription history, thus allowing Express Scripts to reap an exorbitant return. Under these circumstances, Express Scripts charges an unconscionably high fee for pharmacy records. This unconscionability surrounding Express Scripts's fee for pharmacy records requests results in a breach of contract between Express Scripts and class members.
- c. Implicit in every contract between Express Scripts and each class member are the applicable rates and limitations found in ALA. CODE § 12-21-6.1. From this statute, a reasonableness standard surrounding records charges and records accessibility is implied. Further, this statute reflects a statutorily defined public policy in allowing reasonable access to one's records at a reasonable cost. Express Scripts has breached its contracts with Plaintiff and the putative class members by charging an excessive and unreasonable fee for pharmacy records in violation of the amounts, limits, and parameters of Alabama law, which is implied in, and forms a part of, every contract between Express Scripts and each class member. Likewise, Express Scripts has breached its contracts with Plaintiff and the putative class members by charging an excessive and unreasonable fee for pharmacy records in violation of the reasonableness standard implied in Alabama law which forms a part of the

contract between Express Scripts and each class member. Further, by charging an excessive fee for pharmacy records which violates public policy, and which is assessed in violation of established public policy, Express Scripts has violated contracts with Plaintiff and the putative class members.

- d. By virtue of the improper business practice described herein, Express Scripts has violated the covenant of good faith and fair dealing present in every contract. The covenant of good faith and fair dealing present in every contract is premised on, among other things, the observance of reasonable commercial standards of fair dealing. The standard in determining whether the implied covenant of good faith and fair dealing has been breached is whether the actions in question are free from arbitrary or unreasonable conduct. By charging the excessive and unreasonable fee described herein, which in no way relates to Express Scripts's actual costs incurred processing pharmacy records requests, Express Scripts violated and continues to violate the covenant of good faith and fair dealing present in every contract.

31. As a result of Express Scripts's breach of contract, Plaintiff and class members were caused to suffer compensable damages and losses.

COUNT TWO
Unjust Enrichment

32. In the alternative to Count One, Plaintiff asserts this cause of action and adopts and incorporates the allegations contained in paragraphs 1-27 in full.

33. Under the circumstances outlined herein, Defendant has been unjustly enriched by virtue of the improper business practices described herein. It would be inequitable and unjust for Defendant to retain such benefit and gain, which Defendant has received as a result of its

misconduct. Accordingly, this Court should impose a constructive trust on those monies by which Defendant has been unjustly enriched as a result of the improper practices described herein.

COUNT THREE
Fraudulent Misrepresentation and Concealment

34. Plaintiff adopts and incorporates the allegations contained in paragraphs 1-27 in full.

35. Express Scripts has fraudulently represented and/or suppressed and concealed several material facts from Plaintiff and Plaintiff's representative and class members, which caused them to rely to their detriment in overpaying for the pharmacy records described herein. These material facts which were misrepresented and/or suppressed include, but are not limited to:

- a. that the request for Plaintiff's pharmacy records entailed "data processing" when, in truth, it did not;
- b. that the fee assessed and paid to Express Scripts covered Express Scripts's actual cost for services in providing copies of Plaintiff's pharmacy prescription records when, in truth, it did not;
- c. suppressing that Express Scripts's flat fee assessment was not for goods or services actually furnished or performed, but instead an improper means to collect inflated, excessive, and unreasonable amounts which far exceed any actual costs incurred by Express Scripts processing a pharmacy records request; and
- d. suppressing that Express Scripts's flat fee was intended to cover fictitious costs and was nothing more than an improper profit center for Express Scripts.

36. Plaintiff and class members relied on Express Scripts's misrepresentation and/or concealment of these material facts to their detriment.

37. As a result of Express Scripts's fraudulent misrepresentation and concealment, Plaintiff and class members were caused to suffer compensable damages and losses.

COUNT FOUR
Alabama Deceptive Trade Practices Act

38. Plaintiff adopts and incorporates the allegations contained in paragraphs 1-27 in full.

39. The Alabama Deceptive Trade Practices Act, ALA. CODE. § 8-19-5 was enacted to bring a "strong and effective consumer protection program to protect the interest of both the consuming public and the legitimate businessperson." ALA. CODE. § 8-19-2.

40. At all relevant times, Plaintiff and Defendant was a "person" within the meaning of ALA. CODE. § 8-19-3(10).

41. In violation of the Alabama Deceptive Trade Practices Act, Defendant engaged in "unconscionable, false, misleading or deceptive act or practice in the conduct of trade or commerce" by charging the improper fee in a uniform manner to Plaintiff and each class member. ALA. CODE. § 8-19-5(27). Such actions or inactions include:

- a. charging and collecting an excessive and unconscionable amount for processing pharmacy records requests;
- b. charging and collecting fictitious, excessive, and unreasonable amounts which are in no way rationally related to the actual cost incurred by Express Scripts in processing records requests;
- c. charging and collecting the fee under the false pretense that it was related to Defendant's actual or increased processing costs; and
- d. suppressing that Express Scripts's flat fee was intended to cover fictitious costs and was nothing more than an improper profit center for Express Scripts.

42. Defendant violated the Alabama Deceptive Trade Practices Act by charging and collecting said fee. In doing so, Defendant misled and deceived Plaintiff and every class member as to the true nature of the uniformly applied “data processing fee”.

43. Defendant’s misleading and deceptive scheme to implement and charge Plaintiff and putative class members the “data processing fee” for prescription records was done with the intent to deceive Plaintiff and members of the putative class and was the proximate cause of injury to Plaintiff and members of the putative class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. that Plaintiff, individually, recover compensatory damages for injuries and damages, described herein;
- b. that this Court certify this action as a class action, and that the Court find and conclude that the Plaintiff herein is an appropriate representative for the Class;
- c. that judgment be entered against the Defendant in such an amount that will adequately compensate Plaintiff and other Class members; and
- d. that this Court grant such other, further relief as it deems just and proper.

JURY DEMAND

Plaintiff hereby demands a struck jury for all issues so triable.

Dated: October 14, 2021

Respectfully Submitted,

s/ Robert G. Methvin, Jr.
Robert G. Methvin, Jr. (ASB-6206-v68r)
James M. Terrell (ASB-0087-173j)
Brooke B. Rebarchak (ASB-6522-S69V)
METHVIN, TERRELL, YANCEY,

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jterrell@mtattorneys.com
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DEFENDANT TO BE SERVED BY CERTIFIED MAIL:

EXPRESS SCRIPTS, INC.
c/o C T CORPORATION SYSTEM
2 NORTH JACKSON STREET, SUITE 605
MONTGOMERY, AL 36104

 /s/ Robert G. Methvin, Jr.
OF COUNSEL

Exhibit 1



8455 University Place Drive
Mail Stop: HQ21-06
St. Louis, Missouri 63121

June 23, 2021

SWINEY & BELLENGER LLC
ATTN: J VINCENT SWINEY II
PO BOX 59609
HOMEWOOD AL 35259-9609

RE: **HANNAH REID**
For Date(s) of Service of: **01/01/2016 - PRESENT**

Express Scripts Inc. is unable to process your request for prescription claims information because it is missing the documents and/or information as indicated below. A complete submission is required in order to process your request. **Please resubmit all enclosed documents and required processing fee, for further processing.**

Currently the authorization subpoena is missing the following:

To cover our costs of processing your request, Express Scripts charges a **non-refundable processing fee of \$90.00. NOTE: THIS IS NOT A COPYING FEE; IT IS A DATA PROCESSING FEE.** Please submit the \$90.00 fee in the form of a check or money order payable to:

Express Scripts, Inc.
Attn: Records HQ21-06
8455 University Place Drive
St Louis, MO 63121

- The provided check does not match the patient(s) name for the requested records. We are unable to accept this check as payment. Please resubmit payment for the applicable patient's request.
- The enclosed check for payment has expired. Please resubmit proper payment for the applicable patient's request.
- In order to process multiple requests, the prepayment of \$90.00 must be submitted individually for each request.

Once Express Scripts Inc. receives the pertinent requested information, it may take up to 8 weeks from the date the request is submitted to process your request. **Prescription claims information is readily available from 2011 to present.**

For questions or concerns, please contact us in writing at the address provided below.

Thank you,

Pharmacy Prescriptions History Records
Direct Claims – Records Team
8455 University Place Drive HQ21-06
St. Louis, MO 63121

INTERNAL USE ONLY		
TP		

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