UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

PRIME THERAPEUTICS LLC; EXPRESS SCRIPTS, INC.,

Defendants.
_____/

Case No.: 8:26-cv-

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1442(a)(1) and 1446, Express Scripts, Inc. ("**ESI**") removes this action from the Circuit Court of the Tenth Judicial Circuit for Polk County, Florida, captioned *Office of the Attorney General, State of Florida, Department of Legal Affairs v. Prime Therapeutics LLC, et al.*, Case No. 53-2026-CA-004256-A000-BA (the "**Action**").

I. INTRODUCTION

1. Florida's Attorney General (the "**State**") has sued ESI to dismantle a business model that saves Floridians and their health plans money on prescription drugs. The State's allegations are wrong. They also strike at work that ESI performs

for the U.S. Department of Defense ("**DoD**"), under the Federal Employees Health Benefits Act ("**FEHBA**"), and for the Centers for Medicare & Medicaid Services ("**CMS**"), to serve military and government personnel, their families, and the elderly members of Medicare Part D plans. That makes this case removable under the federal officer removal statute. *See* 28 U.S.C. § 1442(a)(1).

2. ESI is a pharmacy benefit manager ("**PBM**"). It contracts with clients—both private entities and federal agencies—to administer prescription-drug benefits. Among other work, ESI contracts with DoD to administer the TRICARE pharmacy benefit for active-duty and retired service members and their families. It also assists the Office of Personnel Management ("**OPM**") and CMS in providing pharmacy benefits to current and former federal employees and to Medicare Part D enrollees.

3. Under its federal contracts, ESI must establish and maintain a nationwide retail pharmacy network so that millions of service members and their families can reliably fill their prescriptions. ESI does not negotiate separate network participation agreements with retail pharmacies client by client. It enters one agreement with each pharmacy that allows for participation in many networks, commercial and federal alike, which lowers costs for all clients.

4. The State has sued ESI over an agreement ESI entered into with Prime Therapeutics LLC ("**Prime**"), regarding the network of pharmacies ESI created to

serve its federal and commercial clients alike. Specifically, the State claims that an agreement ESI and Prime entered in 2019 amounts to "price fixing" that suppresses retail pharmacy reimbursement. **Exhibit A**, Complaint ("**Compl.**") ¶¶ 25, 42–46. ESI denies those allegations and will prove them false at the appropriate time. But on the State's theory, ESI allegedly used the "market power" of its pharmacy network and its 100 million covered lives (including those covered by TRICARE and other federal plans) to negotiate low pharmacy rates. *See id.* ¶¶ 70–71. The State alleges that the agreement gave Prime access to ESI's network and allegedly allowed Prime to "adopt[]" ESI's rates. *See id.* ¶¶ 33, 39, 54. The State further alleges that ESI added Prime's covered lives to its own, allegedly pushing its pharmacy reimbursement rates lower. *See id.* ¶¶ 44–45.

5. Removal is accordingly proper under the federal officer removal statute, which lets a "person acting under" a federal officer remove a state suit "for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). The State's claims clearly qualify. Those claims relate to networks of pharmacies that ESI created on behalf of its federal and commercial clients together.

6. Federal courts have repeatedly held that PBMs may remove under the federal officer statute based on the services they provide under detailed federal contracts. *See, e.g.*, *Kentucky ex rel. Coleman v. Express Scripts, Inc.*, --- F.4th ---, 2026 WL 2796078, at *2–5 (6th Cir. Sept. 18, 2026); *Cnty. of Westchester v. Express*

Scripts, Inc., 191 F.4th 82, 95–98 (2d Cir. 2026); *Griffin v. Optum, Inc.*, 175 F.4th 897, 902–05 (8th Cir. 2026); *Ohio ex rel. Yost v. Ascent Health Servs., LLC*, 165 F.4th 999, 1004–12 (6th Cir. 2026); *West Virginia ex rel. Hunt v. CaremarkPCS Health, L.L.C.*, 140 F.4th 188, 197–99 (4th Cir. 2025); *Gov't of P.R. v. Express Scripts, Inc.*, 119 F.4th 174, 189–92 (1st Cir. 2024); *Cnty. Bd. of Arlington Cnty. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 251–57 (4th Cir. 2021).

7. Courts have applied the statute to ESI's TRICARE work specifically, *Yost*, 165 F.4th at 1005; *Grider Drug, LLC v. Express Scripts, Inc.*, 2009 U.S. Dist. LEXIS 107515, at *7–8 (W.D. Ky. Nov. 17, 2009) (holding that ESI acted under DoD "when executing its duties under" a TRICARE contract requiring it to "provid[e] the retail pharmacy network and act[] as a fiscal intermediary"), *aff'd*, 500 F. App'x 402 (6th Cir. 2012) (affirming on waiver grounds), as well as to ESI's work for FEHBA plans, *Griffin*, 175 F.4th at 902; *Yost*, 165 F.4th at 1005; *Westchester*, 191 F.4th at 96–97. In 2026, the Sixth Circuit upheld federal officer removal of an antitrust suit alleging that ESI and Prime "used their power over pharmacies." *Yost*, 165 F.4th at 1003. The court relied on ESI's TRICARE and FEHBA work in doing so. *Id.* at 1005.

8. Federal officer removal is appropriate in this case as well. ESI (1) is a "person acting under" a federal officer, (2) has been sued "for or relating to" its acts under color of federal office, and (3) has colorable federal defenses.

II. BACKGROUND

9. On August 27, 2026, the State filed this Action in the Circuit Court of the Tenth Judicial Circuit for Polk County, Florida (the "**State Court**") against ESI and Prime. The Action was designated for identification by the State Court as Case No. 53-2026-CA-004256-A000-BA. A copy of each paper docketed in the State Court, including the Complaint, is attached as **Exhibits A** (complaint)**, B** (docket sheet from State Court Action), and **C** (docket from State Court Action).

A. ESI

10. As a PBM, ESI administers prescription-drug benefits for health plans. *See* Compl. ¶ 27; *Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 83–84 (2020). It credentials and administers a network of retail pharmacies, negotiates the reimbursement rates at which those pharmacies are paid, adjudicates claims, and pays the pharmacies. *See* Compl. ¶¶ 27–28, 30. ESI does that work for commercial clients, for DoD under TRICARE, and for FEHBA and Medicare Part D plans.

1. ESI's TRICARE Work

11. Congress requires DoD to "establish an effective, efficient, integrated pharmacy benefits program" for TRICARE beneficiaries. 10 U.S.C. § 1074g(a)(1); *see* 32 C.F.R. § 199.21. Roughly 9.5 million people are eligible for that benefit. In turn, DoD contracts with ESI to provide the benefit's core pharmacy functions. It hired ESI to perform claims adjudication—i.e., confirming coverage and pricing each claim—and administer a retail pharmacy network, among other pharmacy

benefit functions. ESI has administered the TRICARE retail network since 2004, and DoD has extended the relationship through 2029. DoD is one of ESI's largest clients by covered lives and drug spend.

12. DoD awarded ESI the current contract in August 2021. **Exhibit D**, Contract No. HT9402-21-C-0007 ("**2021 TRICARE Contract**") § C.1.[1] ESI's prior TRICARE contract, entered in April 2014, is attached as **Exhibit E**, Contract No. HT9402-14-D-0002 ("**2014 TRICARE Contract**").[2] The relevant terms of the two TRICARE contracts are materially similar.

13. The 2021 TRICARE Contract requires ESI to "establish and maintain a retail pharmacy network throughout the 50 United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam." 2021 TRICARE Contract § C.3.3.1. The network must meet drive-time access standards and include "[n]o fewer than 35,000 retail network pharmacies." *Id.* § C.3.3.2. To meet these requirements, ESI negotiates and contracts with tens of thousands of retail pharmacies for network participation.

[1] Exhibit D is a copy of the publicly available 2021 contract between DoD and Express Scripts with certain redactions consistent with the Freedom of Information Act.

[2] Exhibit E is a copy of the publicly available 2014 contract between DoD and Express Scripts with certain redactions consistent with the Freedom of Information Act.

14. When a TRICARE member fills a prescription at a retail pharmacy using the TRICARE pharmacy benefit, that member uses a retail pharmacy that contracts with ESI to participate in ESI's pharmacy networks. DoD pays for the prescriptions filled in that network through ESI. ESI "acts as a Fiscal Intermediary" for the Government, disbursing "Government funds for health care benefits." *Id.* § G.3.6.1. ESI draws those funds from the Federal Reserve Bank and may not release benefit payments until a DoD budget office authorizes them. *Id.* §§ G.3.6.1.1–G.3.6.1.2, G.3.6.12. ESI pays each network pharmacy claim "in accordance with the agreements which exist between [ESI] and its network pharmacies." *Id.* § G.3.6.11.1. Those pharmacy network agreements govern the very network rates the State attacks here, for both TRICARE and commercial claims alike. *See* Compl. ¶¶ 49, 56.

15. Under the 2021 TRICARE Contract, ESI guarantees DoD will pay an average price adjustment to published drug prices and an average dispensing fee to pharmacies for brand and generic drugs. 2021 TRICARE Contract §§ H.3.1, H.3.2. If DoD's actual retail network costs are lower than the guaranteed level, ESI earns ten percent of the savings. *Id.* § H.3.1.3. If DoD's actual costs exceed the guarantee, ESI pays DoD the entire overage. *Id.* § H.3.1.4.

16. ESI does not negotiate separate agreements with retail pharmacies for each of its thousands of clients, including DoD. Instead, it negotiates with

pharmacies to participate in a multitude of ESI pharmacy networks, including networks for commercial clients as well as TRICARE. That approach gives DoD and commercial clients alike significantly lower costs than if such networks were negotiated piecemeal on behalf of each individual client. Participating pharmacies also benefit from this arrangement: members of all those clients, including TRICARE beneficiaries, use those participating pharmacies to fill prescriptions.

17. DoD closely controls ESI's TRICARE work. It dictates almost all of ESI's responsibilities in supporting TRICARE. With respect to the pharmacy networks, DoD requires ESI to carry specified terms into its pharmacy agreements, sets credentialing standards for network pharmacies, and orders audits by DoD or by ESI at DoD's direction. ESI must also report to DoD on its network pharmacies, and it enforces their compliance with DoD's requirements through its contracts and audits. ESI briefs DoD weekly, sits for a formal program review three times a year, and works with DoD daily on contract administration and execution.

18. Many TRICARE beneficiaries live in Florida. From 2019 to 2025, ESI adjudicated more than 52 million TRICARE claims at retail pharmacies in Florida for more than 1.3 million TRICARE members.

2. ESI's FEHBA Work

19. FEHBA creates a health insurance program for federal employees and gives OPM "broad administrative and rulemaking authority over" it. *Coventry*

Health Care of Mo., Inc. v. Nevils, 581 U.S. 87, 91 (2017). OPM contracts with private carriers and authorizes them to subcontract with PBMs to provide prescription-drug coverage. *See* 5 U.S.C. § 8902(a); *Yost*, 165 F.4th at 1005; *Griffin*, 175 F.4th at 902. ESI is one of those subcontractors, providing PBM services to FEHBA plans that cover federal employees nationwide.

20. OPM mandates many of the terms of those subcontracts. OPM's standard carrier contract requires the PBM to "provide pass-through transparent pricing based on the PBM's cost for drugs" and bars the PBM from charging the carrier more than "the amount it pays the pharmacies in its retail network for brand and generic drugs plus a dispensing fee." *See, e.g.*, **Exhibit F**, FEHB Program Standard Contract for Experience-Rated HMO Carriers § 1.28(a)(2), (a)(2)(i) (2019) ("**FEHB Contract**"); *Gov't of P.R.*, 119 F.4th at 182–83; *Yost*, 165 F.4th at 1005. The PBM must identify its sources of profit and disclose each administrative fee to the carrier and OPM. FEHB Contract § 1.28(a)(3)–(4). It must give OPM's Inspector General, on request, "[a]ll PBM contracts with Participating Pharmacies" and its maximum allowable cost price lists. *Id.* § 1.28(a)(9)(i), (v).

21. OPM may audit ESI's FEHBA work, including rebate guarantees, reconciliations, administrative fees, claim payments, and pharmacy rebates. *See Griffin*, 175 F.4th at 903 (describing ESI's removal allegations); FEHB Contract § 1.28(a)(9). When ESI administers FEHBA plans, it is subject to all OPM

contractor requirements and audits by OPM, and operates under OPM direction and supervision.

3. ESI's Medicare Work

22. "Through Medicare Part D, the Government . . . offers prescription-drug coverage to beneficiaries." *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 744 (2023) (citing 42 U.S.C. § 1395w-101 *et seq.*; 42 C.F.R. pt. 423). "To administer that coverage, CMS awards contracts to private plan sponsors." *Id.* (citing 42 U.S.C. § 1395w-115; 42 C.F.R. §§ 423.315, 423.329). Those plan sponsors, in turn, contract with ESI and other PBMs to administer the pharmacy benefit for Medicare Part D plans.

23. CMS exercises pervasive control over ESI's work for Medicare Part D plans. CMS provides detailed guidance and requirements to plan sponsors and PBMs through periodic call letters, memos, and rules (some weekly, some quarterly, some annual) that dictate the content of plan coverage, including formularies and utilization management.

24. CMS then reviews and approves, on at least an annual basis, formularies, utilization management rules, communications with plan members, and other materials that ESI develops for Medicare Part D plans before they can be implemented. After implementation, CMS audits Medicare plan sponsors and their

PBMs, typically annually, and at least once every three years, to ensure that the PBM is in compliance with CMS's requirements.

25. CMS also directs how ESI builds and runs the retail pharmacy networks it administers for Part D plan sponsors. Each sponsor must maintain "a contracted pharmacy network consisting of retail pharmacies" that meets fixed distance standards. 42 C.F.R. § 423.120(a)(1)(i)–(iii). The regulations allow sponsors to delegate "[c]ontracting with or selection of prescription drug providers for inclusion in the Part D sponsor's network," *id.* § 423.505(i)(6)(iv), and Part D plan sponsors delegate that function to ESI. That delegation comes with federal conditions. For example, every downstream contract must require that the PBM's services comply with the sponsor's obligations to CMS and "with all applicable Federal laws, regulations, and CMS instructions," and must provide for "prompt payment of clean claims." *Id.* § 423.505(i)(3)(iii)–(v). CMS also sets the claims rules ESI applies at the pharmacy counter, including federal electronic transaction standards and the rejection of claims that lack a valid prescriber identifier. *Id.* § 423.120(c)(2), (c)(5)(i). CMS expressly requires that it be allowed to inspect and audit the records of PBMs that plan sponsors contract with to administer benefits for Medicare plan members. *Id.* § 423.505(b)(10).

26. From 2019 to 2025, ESI adjudicated more than 77 million Medicare claims at retail pharmacies in Florida for more than 1.8 million Medicare members.

B. The State's Allegations

27. The State alleges that ESI and Prime are competitors that, in December 2019, "entered into a horizontal agreement to fix the price of reimbursement rates paid to retail pharmacies across Florida." Compl. ¶¶ 25, 44. According to the State, ESI has a network of nearly 64,000 pharmacies and more than 100 million covered lives, and it uses those lives to obtain lower reimbursement rates (and lower drug costs for its clients' members) than smaller PBMs like Prime can. *Id.* ¶¶ 33, 39.

28. The State alleges that the December 2019 contract gave Prime access to ESI's pharmacy network and "aligned" Prime's reimbursement rates with ESI's. *Id.* ¶¶ 44–45, 56. In return for "adopting" that network and lower rates, Prime allegedly paid a "portion of its 'savings'" to ESI and let ESI "add Prime's covered lives to its own," which the State alleges increased ESI's "leverage over pharmacies to still lower reimbursements" (and lower drug costs for consumers and payors). *Id.* ¶¶ 45, 54.

29. According to the State, every reimbursement to a Florida pharmacy "at an artificially lower, price-fixed rate because of the Agreement" is "a new, overt violation of the law." *Id.* ¶ 60. The State further claims that the agreement is unlawful per se or, alternatively, under the rule of reason, with market power "demonstrated by market shares and the number of covered lives." *Id.* ¶¶ 61–63, 70–71.

30. The State pleads three counts against both Defendants: (1) conspiracy in restraint of trade under Florida's antitrust statute, Fla. Stat. § 542.18; (2) unfair methods of competition under the Florida Deceptive and Unfair Trade Practices Act ("**FDUTPA**"), Fla. Stat. § 501.204, for conduct before January 1, 2024; and (3) unjust enrichment. Compl. ¶¶ 88, 107.[3] It seeks an injunction, civil penalties, actual and treble damages, disgorgement, restitution, and fees. *Id.*, Prayer for Relief ¶¶ 1–10.

III. VENUE

31. Venue lies in this Court because the Circuit Court for Polk County sits in the Middle District of Florida, Tampa Division. 28 U.S.C. §§ 89(b), 1442(a); M.D. Fla. Loc. R. 1.04(a). This Court has jurisdiction under 28 U.S.C. § 1442(a)(1) for the reasons below.

IV. FEDERAL OFFICER REMOVAL IS APPROPRIATE

32. The federal officer removal statute permits "any person acting under" a federal officer to remove a suit "for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). A removing government contractor must show:

[3] The State's statement that it proceeds "exclusively under the laws of the State of Florida" and asserts "[n]o federal claims," Compl. ¶ 14, does not affect removal. Section 1442(a)(1) is an exception to the well-pleaded complaint rule and permits removal "despite the nonfederal cast of the complaint." *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 644 n.12 (2006) (quoting *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999)).

(1) it is a person "acting under" a federal officer, (2) the suit is "for or relating to any act under color of such office," and (3) it has a "colorable federal defense." *Chevron USA Inc. v. Plaquemines Parish*, 608 U.S. 1, 6 (2026); *City of Brunswick ex rel. Mayor & Bd. of Comm'rs v. Honeywell Int'l, Inc.*, 184 F.4th 1230, 1244 (11th Cir. 2026).

33. The statute is "liberally construed." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007) (quoting *Colorado v. Symes*, 286 U.S. 510, 517 (1932)); *Brunswick*, 184 F.4th at 1243. Unlike removal under § 1441, removal under § 1442 is not subject to the well-pleaded complaint rule. *See Jefferson Cnty. v. Acker*, 527 U.S. 423, 430–31 (1999). The federal officer removal statute displaces "the 'well-pleaded complaint' rule" inasmuch as it "allows 'suits against federal officers [to] be removed despite the nonfederal cast of the complaint.'" *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 644 n.12 (2006) (quoting *Acker*, 527 U.S. at 431) (alteration in original). Courts "credit" the removing defendant's "theory of the case" and its plausible factual allegations. *Brunswick*, 184 F.4th at 1244 (quoting *Acker*, 527 U.S. at 432); *see Plaquemines Parish*, 608 U.S. at 12. The right of removal is "absolute . . . regardless of whether the suit could originally have been brought in a federal court." *Willingham v. Morgan*, 395 U.S. 402, 406 (1969).

A. ESI Is A Person Acting Under Federal Officers

34. ESI, a corporation, is a "person" under the federal officer removal statute. *See* 1 U.S.C. § 1; *Gov't of P.R.*, 119 F.4th at 184 n.4.

35. A person "act[s] under" a federal officer when its work involves "an effort to assist, or to help carry out, the duties or tasks of the federal superior" in a relationship of "subjection, guidance, or control." *Watson*, 551 U.S. at 151–52 (emphasis and citation omitted); *Brunswick*, 184 F.4th at 1244; *Town of Pine Hill v. 3M Co.*, 190 F.4th 1314, 1320 (11th Cir. 2026) (opinion of Wilson, J.). "The phrase 'acting under' is broad," and the Eleventh Circuit construes it liberally. *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1142 (11th Cir. 2017). The contractor must (1) "help federal officers fulfill a basic governmental task that the government otherwise would have had to perform," rather than merely comply with federal law, and (2) do so under the officer's "subjection, guidance, or control." *Id.* at 1143 (quoting *Watson*, 551 U.S. at 151); *see Brunswick*, 184 F.4th at 1244–45.

1. ESI Acts Under A Federal Officer For TRICARE

36. ESI's TRICARE work satisfies both requirements. First, ESI helps DoD fulfill a basic governmental task. Congress charged DoD with providing a pharmacy benefit to military families, including through retail pharmacies. 10 U.S.C. § 1074g(a)(1), (a)(2)(E)(ii). DoD hired ESI to adjudicate claims and administer the retail network. 2021 TRICARE Contract § C.1. Without ESI, DoD

would have to build a retail pharmacy network, negotiate pharmacy reimbursement rates, adjudicate claims, and pay pharmacies itself. ESI does that work as DoD's fiscal intermediary, disbursing "Government funds for health care benefits." *Id.* § G.3.6.1. The work ESI does for DoD to fulfill this basic governmental task is inextricably intertwined with the work ESI does for its commercial clients. ESI does not negotiate separate agreements with retail pharmacies for its commercial and federal clients—it negotiates with pharmacies to participate in a multitude of ESI pharmacy networks, including networks for commercial clients as well as TRICARE.

37. Second, DoD's control over ESI's work is pervasive. DoD dictates network standards and the terms ESI must carry into its pharmacy agreements, sets the formulary and copayments, orders pharmacy audits, reviews removals of pharmacies from the network, and measures and compensates ESI's retail cost performance. *See* 2021 TRICARE Contract §§ C.3.3.1–C.3.3.2, C.3.3.9, H.3.1–H.3.2. Under that "subjection," "guidance," and "control," ESI performs work "on behalf of the government." *Caver*, 845 F.3d at 1143–44.

38. Three courts of appeals have held that ESI or its subsidiaries act under DoD in performing TRICARE work. *Arlington Cnty.*, 996 F.3d at 253–54 (holding that ESI entities operating TRICARE's mail-order pharmacy were "essentially acting as the statutorily authorized alter ego of the federal government" (emphasis

omitted)); *Westchester*, 191 F.4th at 95–96; *Yost*, 165 F.4th at 1005; *Coleman*, 2026 WL 2796078, at *2. *Yost* addressed ESI's TRICARE "pharmacy negotiations" directly: DoD "mandates the number and location of the pharmacies Express Scripts adds to the network as well as the minimum quality of services the pharmacies must provide," audits ESI, and "requires Express Scripts to perform audits at its direction." *Yost*, 165 F.4th at 1005. The same holds true here.

2. ESI Acts Under A Federal Officer For FEHBA Plans

39. ESI also acts under a federal officer with respect to FEHBA plans. First, FEHBA charges OPM with administering a "comprehensive" health insurance program for federal employees. *Nevils*, 581 U.S. at 91 (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 682 (2006)). To fulfill that statutory mandate, OPM contracts with private carriers—the federal plan sponsors—and authorizes them to subcontract with PBMs to provide pharmacy benefits coverage. *See* 5 U.S.C. § 8902(a); *Yost*, 165 F.4th at 1005. When PBMs like ESI negotiate drug prices for FEHBA plans, they perform "a task that the government itself would otherwise have to perform." *Yost*, 165 F.4th at 1005. The same holds for the retail networks that PBMs build for federal enrollees. *See* FEHB Contract § 1.28 (governing carrier contracts with vendors "providing a retail pharmacy network"). Again, the work ESI does to help OPM fulfill its governmental duties is inextricably intertwined with the services ESI performs for its commercial clients—

ESI does not create new and separate pharmacy networks and agreements for each of its clients; it negotiates for all of those clients together.

40. Second, OPM's control over ESI is pervasive and continuous. OPM fixes ESI's pricing methodology, compels pass-through of what ESI pays pharmacies, demands disclosure of ESI's profits and fees, reserves access to its pharmacy contracts, and audits its work. FEHB Contract § 1.28(a); *Yost*, 165 F.4th at 1005; *Hunt*, 140 F.4th at 197–98. That is "subjection, guidance, or control." *Watson*, 551 U.S. at 151 (citation omitted).

41. Five courts of appeals have held that PBMs act under OPM when they negotiate drug prices with manufacturers for FEHBA plans, and four of them involved ESI specifically. *See Griffin*, 175 F.4th at 902; *Yost*, 165 F.4th at 1005; *Coleman*, 2026 WL 2796078, at *2; *Westchester*, 191 F.4th at 95–97; *Hunt*, 140 F.4th at 197–98; *Gov't of P.R.*, 119 F.4th at 190. Again, the same result follows here.

3. ESI Acts Under A Federal Officer For Medicare Part D Plans

42. Finally, ESI also acts under a federal officer with respect to its work with Medicare Part D plans. First, ESI helps CMS carry out a basic governmental task. Congress created Part D to give Medicare beneficiaries prescription-drug coverage, and CMS delivers it through private plan sponsors that contract with PBMs like ESI to administer the pharmacy benefit. *See* 42 U.S.C. § 1395w-101 *et*

seq.; *Schutte*, 598 U.S. at 744. As with TRICARE and FEHBA, ESI administers the pharmacy benefit for CMS in a manner that is inextricably intertwined with its commercial payor business—one set of networks and pharmacy agreements. Second, CMS's control over that work is pervasive. CMS exercises control over ESI's pharmacy networks by setting network access standards and downstream contract terms. CMS also dictates plan content through detailed guidance, approves formularies and utilization management rules before they take effect, and audits sponsors and their PBMs. *See* 42 C.F.R. §§ 423.120(a)(1), 423.505(b)(10), (i). That is "subjection, guidance, or control." *Watson*, 551 U.S. at 151 (citation omitted); *see also Caris MPI, Inc. v. UnitedHealthcare, Inc.*, 108 F.4th 340, 347–48 (5th Cir. 2024) (upholding federal officer removal by Medicare plan sponsor).

43. ESI thus helps CMS carry out its duties by creating and maintaining a pharmacy network, processing prescription claims, and administering benefits that CMS would otherwise have been required to provide. ESI is therefore "acting under" a federal officer when providing services to Medicare Part D plans. *Caver*, 845 F.3d at 1143.

B. The State's Claims Are "For Or Relating To" ESI's Actions Under Color Of Federal Office

44. The "relating to" requirement "sweeps broadly." *Plaquemines Parish*, 608 U.S. at 11. The link may be "indirect," *id.* (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990)), and the defendant "need not show that his

federal duties specifically required or strictly caused the challenged conduct," *id*. The connection need only be more than "tenuous, remote, or peripheral." *Id.* at 12. The Eleventh Circuit asks whether the challenged acts are "closely connected to the performance of [the defendants'] federal duties." *Brunswick*, 184 F.4th at 1250 n.20 (quoting *Plaquemines Parish*, 608 U.S. at 14) (alteration in original). The hurdle is "quite low." *Caver*, 845 F.3d at 1144 (quoting *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 137 (2d Cir. 2008)). The suit need not challenge an act done under "color of such office" at all. The statute reaches suits "for acts that were not done under color of their offices, so long as the suits 'relat[e] to' such acts." *Plaquemines Parish*, 608 U.S. at 15. And a federal contract "d[oes] not have to expressly direct or invite" conduct for that conduct to relate to the contractor's federal work. *Id.* at 14.

45. The State's claims "relate to" ESI's federal work in at least three ways.

46. ***First***, the reimbursement rates the State alleges Prime unlawfully "adopt[ed]" were the result of ESI's indivisible negotiations on behalf of both its commercial and federal clients. *See* Compl. ¶ 54. ESI's work on behalf of DoD, FEHBA, and Medicare plan sponsors to negotiate the challenged reimbursement rates is inextricable from its commercial work, because ESI negotiates with pharmacies to enter into agreements that are applicable to all of its clients, commercial and federal alike. As the Sixth Circuit in *Yost* recognized in another

antitrust lawsuit against ESI and Prime, when PBMs "bargain with drug manufacturers and pharmacies, they conduct a single negotiation on behalf of all of their clients," so "[a]lleged liability arising from this negotiation process necessarily includes federal conduct." 165 F.4th at 1003, 1006; *see Griffin*, 175 F.4th at 904–05 (crediting ESI's theory that it "conducts rebate negotiations indivisibly for both plans under the FEHBA and plans outside of the FEHBA"); *Westchester*, 191 F.4th at 97 (finding relatedness because ESI negotiated opioid rebates with manufacturers for its "entire book of business"); *Hunt*, 140 F.4th at 199 (crediting the theory that the State sought to hold Caremark liable, based on manufacturer rebate negotiations, "for a single negotiation that was undertaken for all its clients").

47. ***Second***, the TRICARE contract incentivizes ESI to secure the lowest cost possible for DoD, including all pharmacy costs. The State challenges ESI's contract with Prime on the grounds that it allegedly resulted in lower rates and reimbursements to pharmacies with ESI network agreements. *See* Compl. ¶¶ 45, 60. But DoD *compensates* ESI for lowering the rates the federal government pays under those same pharmacy network agreements. *See* 2021 TRICARE Contract §§ G.3.6.11.1, H.3.1.3–H.3.1.4, H.3.2. Taken at its word, the State's theory challenges allegedly "artificially lower" payments DoD contractually requires and incentivizes ESI to secure and which it authorized ESI to make with federal money.

48. ***Third***, DoD is one of ESI's largest clients by covered lives and drug spend. The State's "market power" theory thus necessarily includes any market power derived from lives related to TRICARE, FEHBA, and Medicare. Indeed, the State relies on ESI's "over 100 million covered lives" to show ESI's "market power" under its rule-of-reason theory. Compl. ¶¶ 63, 70–71. But TRICARE alone has approximately 9.5 million eligible beneficiaries that make up a significant portion of those covered lives. The State's market-power allegations thus count the millions of lives DoD, FEHBA plans, and Medicare plan sponsors placed in ESI's network.

49. The State attacks Prime's alleged "adopt[ion]" of ESI's pharmacy network rates that ESI negotiated for its federal and commercial clients at once, allegedly lower rates ESI's TRICARE contract incentivizes, and market power derived in part from the millions of federal lives it covers. Accordingly, the State's claims plainly "relate to" ESI's federal work.

C. ESI Has Colorable Federal Defenses

50. The final element, whether ESI has a "colorable federal defense," is also met. This "is not a high bar." *Town of Pine Hill*, 190 F.4th at 1323 (opinion of Wilson, J.); *see Brunswick*, 184 F.4th at 1250. A federal defense "need only be plausible; its ultimate validity is not to be determined at the time of removal." *Caver*, 845 F.3d at 1145 (quoting *Magnin v. Teledyne Cont'l Motors*, 91 F.3d 1424, 1427 (11th Cir. 1996)); *accord Brunswick*, 184 F.4th at 1250. That is because "a core

purpose of federal officer removal is to have the validity of the federal defense tried in federal court." *Caver*, 845 F.3d at 1145. One colorable defense suffices, and it need not address every claim. *See Brunswick*, 184 F.4th at 1249 n.19 (explaining that if one claim is removable under § 1442, the entire action is removed). ESI has at least three.

1. Government Contractor Defense

51. "[G]overnment contractors obtain certain immunity in connection with work which they do pursuant to their contractual undertakings with the United States." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 166 (2016) (quoting *Brady v. Roosevelt S.S. Co.*, 317 U.S. 575, 583 (1943)) (alteration in original).

52. Under *Boyle v. United Technologies Corp.*, state law cannot impose liability for design defects in military equipment when "(1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States." 487 U.S. 500, 512 (1988); *see Town of Pine Hill*, 190 F.4th at 1323–24 (opinion of Wilson, J.). The defense arose from military procurement, but courts have found it colorable for ESI's work under federal pharmacy contracts. *Coleman*, 2026 WL 2796078, at *4 (finding it "at least plausible" that the defense extends beyond

military procurement (quoting *Bennett v. MIS Corp.*, 607 F.3d 1076, 1090 (6th Cir. 2010))); *Arlington Cnty.*, 996 F.3d at 255; *Westchester*, 191 F.4th at 98.

53. ESI has a government contractor defense here. DoD specified the size and access standards of ESI's pharmacy network and required certain pricing guarantees. *See* 2021 TRICARE Contract §§ C.3.3.2, H.3.1.3–H.3.1.4, H.3.2. Because the State seeks to hold ESI liable for the low reimbursement rates it negotiated to meet its TRICARE obligations, its claims would impose state-law liability for performing the federal contract, the result the defense exists to prevent. *See Arlington Cnty.*, 996 F.3d at 255.

54. ESI also has a defense of derivative immunity as DoD's fiscal intermediary. *See Peterson v. Blue Cross/Blue Shield of Tex.*, 508 F.2d 55, 57–58 (5th Cir. 1975) (holding that Medicare fiscal intermediaries "acting pursuant to a contract with the government" were "under the sovereign immunity umbrella"); *Grider*, 2009 U.S. Dist. LEXIS 107515, at *10 (finding colorable ESI's defense that, as DoD's fiscal intermediary, it shares the government's sovereign immunity). As DoD's fiscal intermediary, ESI reimburses pharmacies with "Government funds" at the network rates the State attacks as allegedly "artificially lower." 2021 TRICARE Contract §§ G.3.6.1, G.3.6.11.1; Compl. ¶ 60. The State's claims thus seek to hold ESI liable for payments it makes on DoD's behalf, with DoD's money, as the

TRICARE contract directs. ESI therefore shares DoD's immunity from that liability.

2. Preemption Defenses

55. *TRICARE preemption.* ESI has a TRICARE preemption defense. A state law "relating to health insurance, prepaid health plans, or other health care delivery or financing methods shall not apply to any contract entered into pursuant to [TRICARE] by the Secretary of Defense." 10 U.S.C. § 1103(a).[4] "The sweeping phrase 'relate to,' . . . conveys 'a broad pre-emptive purpose.'" *Coleman*, 2026 WL 2796078, at *4 (quoting *Nevils*, 581 U.S. at 95–96). DoD's regulation confirms that any such law "is preempted and does not apply in connection with TRICARE pharmacy contracts." 32 C.F.R. § 199.21(o)(2).

56. The Complaint's state-law claims attack Prime's alleged "adopt[ion]" of reimbursement rates set by ESI's pharmacy network agreements, which both govern what DoD pays for drugs under the TRICARE contract and are the product of an indivisible negotiation ESI conducts on behalf of both its commercial clients

[4] Preemption applies to the extent DoD determines, among other things, that "the preemption of the State or local law or regulation is necessary to implement or administer the provisions of the contract or to achieve any other important Federal interest." 10 U.S.C. § 1103(a)(2). DoD has made that determination for TRICARE, citing the federal interest in operating the program "at the lowest possible cost to the Department of Defense." 32 C.F.R. § 199.21(o)(1); *see also id.* § 199.17(a)(7). *See Yost*, 165 F.4th at 1012 (rejecting the argument that DoD had not made the required determination).

and DoD. *See* Compl. ¶¶ 44–45, 54, 60, 90; 2021 TRICARE Contract § G.3.6.11.1; *Yost*, 165 F.4th at 1006. In other words, the State challenges Prime's alleged "adopt[ion]" of rates that ESI negotiated for DoD, and seeks to enjoin Prime's use of them. *See* Compl. ¶ 54. Those claims thus "relat[e] to" TRICARE's "health care delivery or financing methods," and are preempted. *See* 10 U.S.C. § 1103(a).

57. Courts have repeatedly found this TRICARE preemption defense colorable in similar suits against ESI. *See Yost*, 165 F.4th at 1012 (involving Ohio's antitrust claims); *Coleman*, 2026 WL 2796078, at *4; *Westchester*, 191 F.4th at 98; *Arlington Cnty.*, 996 F.3d at 256 (involving claims that, the ESI pharmacies argued, targeted conduct the DoD contract required); *Grider*, 2009 U.S. Dist. LEXIS 107515, at *10. This Court should do the same.

58. *FEHBA preemption.* ESI also has a FEHBA preemption defense. Any contract terms of the FEHBA plans that "relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits)" preempt state law on matters that "relate[] to health insurance or plans." 5 U.S.C. § 8902(m)(1). The phrase "relate to" in a preemption clause "express[es] a broad pre-emptive purpose." *Nevils*, 581 U.S. at 96 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (alteration in original)). OPM's pass-through terms cap what FEHBA plans pay for retail prescriptions at what the PBM pays pharmacies plus a dispensing fee. FEHB Contract § 1.28(a)(2)(i). A state-law claim imposing

liability on those rates conflicts with contract terms relating to "payments with respect to benefits." *See Yost*, 165 F.4th at 1011–12 (holding the defense colorable against Ohio's antitrust claims because "the drugs are a benefit"); *Coleman*, 2026 WL 2796078, at *4; *Westchester*, 191 F.4th at 98; *Gov't of P.R.*, 119 F.4th at 190.

59. *Medicare preemption.* And ESI has a Medicare preemption defense. The Medicare Part D statute incorporates the express preemption clause in the Medicare Part C statute. 42 U.S.C. § 1395w-112(g) (incorporating by reference 42 U.S.C. § 1395w-26(b)(3)). That preemption clause provides that "[t]he standards established under [Part D] shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to [Part D] plans which are offered by [Part D plan sponsors] under [Part D]." 42 U.S.C. § 1395w-26(b)(3); *see* 42 C.F.R. § 423.440(a). This clause "is 'akin to field preemption' and precludes States from regulating Part D plans except for licensing and plan solvency." *Pharm. Care Mgmt. Ass'n v. Mulready*, 78 F.4th 1183, 1206 (10th Cir. 2023) (citation omitted); *see also Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1148–53 (9th Cir. 2010).

60. ESI's Medicare preemption defense is colorable because the State's claims relate to subjects federal Part D standards already govern: ESI's retail pharmacy networks that are used for Part D. *See* 42 C.F.R. §§ 423.120(a)(1), (c)(2), (c)(5)(i); 423.505(i)(3); *see also Coleman*, 2026 WL 2796078, at *4 (finding PBM's

Medicare preemption defense colorable); *Caris*, 108 F.4th at 347 (finding plan sponsor's Medicare preemption argument colorable).

3. Intergovernmental Immunity

61. Finally, ESI has an intergovernmental immunity defense. The Supremacy Clause bars States from "regulat[ing] the United States directly or discriminat[ing] against the Federal Government or those with whom it deals." *United States v. Washington*, 596 U.S. 832, 838 (2022) (quoting *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality opinion)) (emphasis omitted). A state law directly regulates the federal government when it "mandates the ways in which [a contractor] renders services that the federal government hired [it] to perform." *Boeing Co. v. Movassaghi*, 768 F.3d 832, 840 (9th Cir. 2014). "[P]rivate parties are protected by intergovernmental immunity when the state law substantially interferes with their ability to carry out their work on behalf of the government." *CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315, 329 (3d Cir. 2025).

62. When a Florida pharmacy fills a TRICARE prescription, DoD pays for the drug with federal funds, through ESI. 10 U.S.C. § 1074g(f); 2021 TRICARE Contract §§ G.3.6.1–G.3.6.1.2, G.3.6.2.3.1. The State attacks ESI's agreement with Prime as allegedly "artificially lower[ing]" the rates at which ESI reimburses Florida pharmacies. Compl. ¶ 60. For TRICARE claims, ESI pays those allegedly "artificially lower" network rates with federal funds as DoD's fiscal intermediary.

The penalties and disgorgement the State seeks rest on the same alleged rate decrease, which the federal government shared with ESI's other clients.

63. Florida could not impose liability for allegedly lower rates on the federal government directly. *See Washington*, 596 U.S. at 838. As DoD's fiscal intermediary, ESI shares the government's immunity.

V. PROCEDURAL COMPLIANCE

A. Notice Is Timely

64. The State filed the Complaint on August 27, 2026, and ESI executed a waiver of service on October 2, 2026, which the State filed on October 5, 2026. A filed waiver operates as service "at the time of filing the waiver." Fla. R. Civ. P. 1.070(i)(5). ESI timely files this Notice within thirty days of both waiver dates. *See* 28 U.S.C. § 1446(b)(1); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999).

B. Prime Consents To Removal

65. Removal under § 1442 does not require a co-defendant's consent. *See Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1253 (9th Cir. 2006) (explaining that, unlike removal under § 1441, removal under § 1442 does not require the consent of all defendants). Prime nonetheless consents. **Exhibit G**, Consent to Removal of Prime Therapeutics LLC.

C. All Other Procedural Requirements Are Satisfied

66. A copy of each paper docketed in the State Court, including the Complaint, is attached as **Exhibits A** (complaint)**, B** (docket sheet from State Court Action), and **C** (docket from State Court Action). *See* 28 U.S.C. § 1446(a); M.D. Fla. Loc. R. 1.06(b). Promptly after filing this Notice, ESI will give written notice to the State and Prime and file a copy of this Notice with the Clerk of the Circuit Court for Polk County. *See* 28 U.S.C. § 1446(d). ESI is filing its disclosure statement with this Notice. *See* Fed. R. Civ. P. 7.1; M.D. Fla. Loc. R. 3.03.

VI. NO WAIVER

67. By removing, ESI waives no defense, objection, or motion, including any defense under Federal Rule of Civil Procedure 12(b) and any objection to service. ESI reserves the right to amend or supplement this Notice and asks for the opportunity to submit briefing and evidence if any question arises about the propriety of removal.

VII. CONCLUSION

ESI gives notice that the Action is removed to the United States District Court for the Middle District of Florida, Tampa Division.

DATED: November 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 2, 2026, I filed this Notice with the Clerk of Court through the CM/ECF system and served a copy by email on the State and Prime.

/s/ David Nabors