

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**DAVID M. MAHAN,**

**Defendant.**

**Case No. 20-CV-\_\_\_\_\_**

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Securities and Exchange Commission (the “SEC”) files this Complaint against defendant David M. Mahan (“Mahan”) and alleges as follows:

**SUMMARY**

1. On January 19, 2017, Mahan illegally traded on inside information about his employer Rite Aid Corp. (“Rite Aid”), selling off over \$650,000 in Rite Aid securities before Rite Aid’s stock price dropped a day later.

2. Mahan had learned confidential, market-moving information about Rite Aid relating to the likelihood that the publicly-announced merger with Walgreens Boots Alliance, Inc. (“Walgreens”) would close by January 27, 2017 as expected.

3. Mahan knew or was reckless in not knowing that he was prohibited from trading based on this information, but he traded anyway, liquidating all of his Rite Aid stock and nearly all of his Rite Aid options before the news about the merger became public. Through his illegal insider trading in Rite Aid securities, Mahan avoided \$87,277 in losses.

4. By engaging in the conduct described in this Complaint, Mahan violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77v(a)] and Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa].

6. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15

U.S.C. § 78aa]. Among other things, certain of the acts, practices, and courses of business constituting the violations of the federal securities laws alleged herein occurred within the Middle District of Pennsylvania. Mahan worked for, and improperly traded in the securities of, Rite Aid, a company that is headquartered in the Middle District of Pennsylvania.

### **DEFENDANT**

7. **Mahan**, age 58, lives in Marlton, New Jersey. He has worked for Rite Aid since 1984, and has been a regional vice president at Rite Aid since 2003. Mahan reported to individuals in Camp Hill, Pennsylvania.

### **RELEVANT ENTITIES**

8. **Rite Aid** is a Delaware corporation headquartered in Camp Hill, Pennsylvania, and is a retail pharmacy chain. At all relevant times, Rite Aid's stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under the symbol RAD.

9. **Walgreens** is a Delaware corporation headquartered in Deerfield, Illinois, and is a global holding company that owns the Walgreens, Duane Reade, and Boots retail pharmacy chains. At all relevant times, Walgreen's stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act and traded on NASDAQ under the symbol WBA.

## **FACTUAL ALLEGATIONS**

### **A. Rite Aid Expressly Prohibited Insider Trading**

10. As a regional vice president of Rite Aid, Mahan had a fiduciary duty to Rite Aid and its shareholders not to trade Rite Aid securities based on material nonpublic information.

11. At all relevant times, Rite Aid had in place a Code of Business Ethics & Conduct (the “Code of Conduct”) which applied to all Rite Aid employees, and which expressly prohibited insider trading (the “Insider Trading Provision”).

12. The Code of Conduct stated that employees may learn confidential information about Rite Aid in the course of their work for Rite Aid. The Code of Conduct prohibited employees who possess or have access to confidential information about Rite Aid from using the information for their own benefit or for the benefit of persons outside the company.

13. The Insider Trading Provision provided that all employees who possess material nonpublic information are prohibited from buying or selling Rite Aid securities. The Insider Trading Provision also noted that information is considered material if “there is a substantial likelihood that a reasonable investor would find the information important in determining whether to trade in a security,” or if “the information, if made public, would likely affect the market price of a company’s securities.”

14. As an employee of Rite Aid, Mahan reviewed and agreed to abide by the complete Code of Conduct, including the Insider Trading Provision.

**B. Mahan Learned Material Nonpublic Information Through His Work at Rite Aid**

15. On October 27, 2015, Rite Aid and Walgreens announced publicly that they had entered into a definitive agreement (the “Merger Agreement”) under which Walgreens would acquire all outstanding shares of Rite Aid for \$9.00 per share in cash. The purchase price represented a 48% premium over the closing price per share of Rite Aid on the previous day. In the press release announcing the agreement, Rite Aid and Walgreens stated that the transaction was expected to close in the second half of 2016.

16. The Merger Agreement had an end date of October 27, 2016. Under the terms of the Merger Agreement, either Rite Aid or Walgreens had the right to extend the end date from October 27, 2016 to January 27, 2017.

17. The merger of Rite Aid and Walgreens was subject to approval by the Federal Trade Commission (“FTC”).

18. By October 2016, the FTC had not yet approved the merger of Rite Aid and Walgreens.

19. On October 20, 2016, Rite Aid and Walgreens announced that they had mutually agreed to extend the end date of the Merger Agreement to January 27, 2017, stating that they expected the transaction would close in early 2017.

20. On December 20, 2016, Rite Aid and Walgreens announced that they had entered into an agreement with another pharmacy chain to sell 865 Rite Aid stores to the pharmacy chain. Rite Aid and Walgreens stated that they entered into the agreement with the pharmacy chain to respond to concerns identified by the FTC in its review of the proposed acquisition of Rite Aid.

21. The December 20, 2016 announcement stated that Walgreens was actively engaged in discussions with the FTC regarding the transaction and was working toward a close of the Rite Aid acquisition in early 2017.

22. As the January 27, 2017 Merger Agreement end date approached, information concerning the impending merger and the FTC's approval of the merger was highly material to the market. Based on the terms of the Merger Agreement, if the FTC did not approve the proposed merger by January 27, 2017, Rite Aid and Walgreens would need to agree to amend the Merger Agreement in order to extend the end date. Rite Aid, Walgreens, and investors understood that should this occur, Rite Aid and Walgreens would likely be required to divest additional stores and therefore the price per share paid by Walgreens would likely be reduced.

23. On January 18, 2017, through the course of his employment at Rite Aid, Mahan learned material nonpublic information relating to the likelihood that

the FTC would approve the merger in time for it to close by the January 27, 2017 end date.

**C. Mahan Traded Rite Aid Securities Based on Material Nonpublic Information**

24. At approximately 9:19 am the next morning, January 19, 2017, Mahan called the customer service line for the brokerage firm where he held Rite Aid employee stock options and employer-granted stock.

25. Between 9:19 am and 9:43 am, Mahan placed orders to sell 11,985 shares of Rite Aid stock and to exercise 63,675 Rite Aid employee stock options and sell the underlying stock. These trades were executed immediately, and Mahan's Rite Aid securities were sold at prices ranging from \$8.61 to \$8.62 per share, for total sale proceeds of \$651,604.

26. The 75,660 total shares sold by Mahan constituted all of his unrestricted and exercisable Rite Aid holdings.

27. On January 19, 2017, when Mahan sold his unrestricted Rite Aid holdings, Mahan knew or was reckless in not knowing that the fact that the FTC was unlikely to approve the merger before the January 27, 2017 end date was material nonpublic information.

28. Mahan knew or was reckless in not knowing that he had a duty not to trade Rite Aid securities based on material nonpublic information concerning the impending merger.

29. On January 19, 2017, the closing price per share of Rite Aid stock was \$8.60.

30. The next day, January 20, 2017, at approximately 10:40 am, Bloomberg published an article reporting that FTC officials were concerned that Walgreens' and Rite Aid's current efforts to preserve competition were not sufficient, and that the FTC likely would not be approving the merger by the January 27, 2017 end date.

31. After the Bloomberg article became public, Rite Aid's stock price fell, closing on January 20, 2017 at \$7.46 per share—approximately 13% lower than the prior day's closing price.

32. By liquidating the vast majority of his position in Rite Aid in advance of the public disclosure of the failure to obtain FTC approval for the merger, Mahan avoided losses of approximately \$87,277.

33. On January 30, 2017, Rite Aid and Walgreens officially announced an amended merger agreement, extending the end date to July 31, 2017 and lowering the price to \$6.50 to \$7.00 per share.

### **FIRST CLAIM FOR RELIEF**

#### **Violation of Section 17(a) of the Securities Act**

34. The SEC re-alleges and incorporates by reference the allegations in paragraphs 1 - 33, as if they were fully set forth herein.

35. By engaging in the conduct described above, Mahan knowingly or recklessly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, has, directly or indirectly:

- (a) employed a device, scheme, or artifice to defraud;
- (b) obtained money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- (c) engaged in a transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

36. By reason of the foregoing, Mahan has violated and, unless enjoined, will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

### **SECOND CLAIM FOR RELIEF**

#### **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

37. The SEC re-alleges and incorporates by reference the allegations in paragraphs 1 – 33, as if they were fully set forth herein.

38. By engaging in the conduct described above, Mahan directly or indirectly, in connection with the purchase or sale of securities, and by use of

means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, has, knowingly or recklessly:

- (a) employed a device, scheme, or artifice to defraud;
- (b) made an untrue statement of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;  
and/or
- (c) engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person.

39. By reason of the foregoing, Mahan has violated and, unless enjoined, will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

WHEREFORE, the SEC respectfully requests that the Court enter a Final Judgment:

**I.**

Permanently restraining and enjoining Mahan from directly or indirectly engaging in conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];

**II.**

Ordering Mahan to disgorge the avoided losses derived from the illicit trading alleged herein, plus prejudgment interest on that amount;

**III.**

Ordering Mahan to pay a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

**IV.**

Granting such other and further relief as this Court may deem just, equitable, or necessary in connection with the enforcement of the federal securities laws.

Respectfully submitted,

Date: March 26, 2020

s/ Julia C. Green

Julia C. Green NY 4257481  
Jennifer C. Barry  
Scott A. Thompson  
Megan Ryan  
U.S. SECURITIES AND EXCHANGE  
COMMISSION  
Philadelphia Regional Office  
1617 JFK Boulevard, Suite 520  
Philadelphia, PA 19103  
(267) 602-2133 (Green)  
(215) 597-2740 (fax)  
greenju@sec.gov