

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-2744

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

BRENT DAVID WILLIS,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, United States Securities and Exchange Commission (“Commission”), alleges as follows against Defendant Brent David Willis.

INTRODUCTION

1. From approximately July 2017 through April 2019 (the “relevant period”), Brent D. Willis, CEO of previously NASDAQ-listed securities issuer NewAge, Inc. (“NewAge” or the “Company”), made numerous materially false and misleading public statements concerning NewAge’s development and sale of beverages during investors conferences, earnings calls, media interviews, and in at least 12 press releases. These false and misleading public statements concerned a wide range of matters that were critical to the Company’s growth and success, and thus to NewAge’s investors, including purported new and expanded product distribution deals with large domestic and international beverage distributors and retailers. In reality, these distribution deals either did not exist or were significantly smaller than claimed in the public statements.

2. For example, between January 2018 and August 2018, Defendant made and authorized NewAge to make a series of materially false and misleading public statements announcing a supposed distribution agreement with the U.S. military through which NewAge would sell its beverage products at all commissaries and exchanges worldwide. In reality, NewAge never entered into a distribution agreement with the military; never had plans to sell its products at all commissaries and exchanges worldwide; and did not even have the inventory to do so.

3. Several months later, between September 2018 and January 2019, Defendant and NewAge, at the direction of Defendant, made additional false and misleading public statements about NewAge's purported development of a portfolio of cannabidiol ("CBD")-infused beverages. Capitalizing on current media and public attention focused on the legalization of cannabis and growth in the cannabis industry, Defendant falsely stated that NewAge had secured substantial retail and distribution orders and commitments to sell its CBD products, and that NewAge's CBD products were being sold in retail stores. In fact, NewAge never completed the development of a CBD beverage product and never received orders or commitments from any retailer for CBD beverage products.

4. Defendant made these and other statements, which served to artificially inflate NewAge's stock price, improve its financial position, and financially benefit himself, despite knowing, or recklessly failing to know, that the statements were false and misleading.

5. In addition, Defendant made selective disclosures of material nonpublic information concerning NewAge's business activities to select analysts and investors. For example, in early January 2018, Defendant made statements to select investors about an alleged expansion of the U.S. military's relationship with NewAge in advance of the Company's late

January 2018 press release concerning its alleged worldwide distribution agreement with the military. Similarly, Defendant sent emails to select equity analysts concerning NewAge's purported development, testing, and debut of CBD beverage products the day before NewAge's September 2018 press release announcing that information. On both occasions, Defendant failed to publicly disclose the material nonpublic information simultaneously with or promptly after these selective disclosures, placing other investors and the public not privy to the selective disclosures at a disadvantage.

6. By engaging in this conduct, Defendant violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder; and aided and abetted NewAge's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD (Fair Disclosure) [17 C.F.R. § 243.100 *et seq.*] thereunder. Unless restrained and enjoined, Defendant will continue to violate these provisions and is likely to engage in future violations of the federal securities laws.

7. The Commission seeks permanent injunctions; disgorgement of ill-gotten gains derived from the conduct alleged in the Complaint plus prejudgment interest thereon; civil penalties; an officer and director bar; and a penny stock bar.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

9. The Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

10. Defendant, directly or indirectly, made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the acts, transactions, practices, and courses of business alleged in this complaint.

11. Venue is proper in the District of Colorado 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(a)] because many of the acts and transactions constituting violations of the Securities Act and Exchange Act occurred in this district, including the dissemination of false and misleading press releases and other false public statements as well as selective disclosures of material information. In addition, Defendant resides in this district and NewAge’s principal place of business was in this district during the relevant period.

DEFENDANT

12. **Brent D. Willis**, age 62, is a resident of Denver, Colorado. Willis was appointed as CEO and a director of the NewAge on March 24, 2016, and remained in these positions until January 10, 2022.

RELEVANT ENTITY

13. **NewAge, Inc.** (formerly New Age Beverages Corporation, Inc.) is a Delaware corporation based in Midvale, Utah. NewAge describes itself as a developer and global seller of “organic and healthy products,” including numerous beverage product lines. The Company’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act.

During the relevant period, NewAge's stock traded on the NASDAQ under the ticker symbol "NBEV." NASDAQ suspended trading and filed to delist NewAge in September 2022 and the Company's stock currently trades on the OTC market under the ticker symbol "NBEVQ." On August 30, 2022, NewAge filed for bankruptcy under Chapter 11 of the Bankruptcy Code.

FACTS

I. BACKGROUND

A. NewAge's Dire Financial Straits Leading up to Defendant's False and Misleading Press Releases and Public Statements

14. Throughout 2017 and 2018, NewAge was in dire financial straits. In 2017, NewAge incurred losses and struggled to pay for inventory and its operating expenses. For the year ended December 31, 2017, NewAge reported a net loss of approximately \$3.5 million and had only approximately \$285,000 in cash. For the first six months of 2018 (ending on June 30, 2018), New Age reported a net loss of approximately \$3.4 million and had only approximately \$213,000 in cash. NewAge's share price also declined substantially in late 2017 amid the Company's inability to secure national accounts for its existing brands or develop promising new products. During the first nine months of 2018, NewAge's financial condition continued to worsen, as it regularly lacked the cash to purchase the inventory needed to fill even limited beverage orders. The Company also struggled to secure financing and, in June 2018, obtained a high-interest loan in order to meet basic financial obligations.

15. As CEO of NewAge, Defendant was fixated on raising the Company's lagging share price, reversing the Company's deteriorating financial position, and growing the Company, which Defendant believed was necessary for the Company to become profitable. Defendant repeatedly expressed frustration with the Company's inability to secure distribution with major

retailers and imposed substantial pressure on his employees, particularly his sales personnel, to generate positive news for the company.

16. During the relevant period, Willis was also frustrated with his compensation at NewAge and repeatedly urged the Company's Board of Directors (the "Board") to increase it, in part to pay personal tax liabilities. In or around 2017 and early 2018, the Board told Defendant that once the Company was on better financial footing, it would revisit his compensation package.

B. Defendant was Well-Informed and Knowledgeable about NewAge's Business Operations and Activities

17. During most of the relevant period, NewAge was a small company of fewer than 200 employees with limited sales, marketing, and operations staffs who worked in close proximity to each other. Defendant was a hands-on CEO who communicated frequently with his sales and marketing personnel and insisted upon receiving regular updates about major business developments within NewAge, including, but not limited to, the existence and scope of new or expanded distribution deals with national and international distributors and retailers and the status of products in development. Defendant had final editorial control and ultimate authority over the content of the earnings call scripts and press releases, and often disseminated press releases to the media directly by placing them on a newswire himself.

II. DEFENDANT'S MATERIALLY FALSE AND MISLEADING STATEMENTS

A. Defendant Made Materially False and Misleading Statements Regarding NewAge's Distribution Agreements with Distributors and Retailers

18. Between July 2017 and April 2019, Defendant, through NewAge, issued numerous materially false and misleading press releases and made false public statements concerning purportedly new or expanded distribution of its products with major retailers and distributors. These misstatements about purported major distribution agreements led to increases

in NewAge's share price and increased focus from investors and equity analysts alike about the potential impacts on NewAge's share price and financial metrics.

1. July 2017 and August 2017 False and Misleading Statements about Expanded Relationship with 7-Eleven

19. Defendant's false and misleading statements to investors during the relevant period began on July 21, 2017, when NewAge issued a press release announcing an "expansion of XingTea with 7 Eleven in the U.S.," whereby this NewAge product line (XingTea) would be distributed "throughout the Heartland Division of 7 Eleven, one of the chain's largest divisions spanning more than 1,400 outlets throughout the Midwest ... effective immediately." The press release further stated that "this new distribution represents a major expansion of the brand in the world's largest convenience store chain."

20. Defendant made the sole and ultimate decision to issue the July 21, 2017 NewAge press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

21. Defendant repeated the false and misleading statement from the July 21, 2017 press release again during a NewAge quarterly earnings call on August 15, 2017, during which Defendant stated, "On the brand front . . . XingTea, a key piece of our core portfolio, expanded with 7-Eleven in the United States, initially, in the Heartland Division across around 1,500 stores."

22. The above statements were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) 7-Eleven only sold NewAge XingTea products within the State of Colorado, constituting approximately 250 stores; (2) 7-Eleven had not committed or agreed to expand sales of the XingTea product line beyond the

State of Colorado; and (3) no such expansion to sell XingTea throughout 7-Eleven's Heartland Division had occurred.

23. Defendant's false and misleading statements about the purported "immediate[]" expansion throughout 7-Eleven's Heartland Division were material and caused a significant spike in NewAge's share price. Following the July 21, 2017 press release announcing the purported expanded distribution with 7-Eleven, NewAge's share price increased 9.2% for the day. And following Defendant's August 15, 2017 earnings call during which he repeated false claims about the expansion with 7-Eleven, an equity analyst issued a report re-affirming its "buy" rating and setting a \$10 price target for NewAge's stock, in part, because of the "extension" of the "Xing Tea brand into the Midwest region of 7-11 stores."

2. October 2017 False and Misleading Statements about Expanded Relationship with Ahold Delhaize

24. On October 10, 2017, NewAge issued another false and misleading press release announcing that the Company had expanded its relationship with retailer Ahold Delhaize. Specifically, the press release stated that (i) NewAge had begun rollout of its Aspen Pure Probiotic water product "across Ahold Delhaize banners throughout the U.S."; (ii) sales of NewAge's Aspen Pure Probiotic water product would be expanded "throughout the more than 2,000 Ahold Delhaize banner stores across 23 states"; and (iii) NewAge had "began shipment and shelf placement" of its Aspen Pure Probiotic water product across 700 Ahold Delhaize banner stores.

25. Defendant made the sole and ultimate decision to issue the October 10, 2017 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

26. The above statements from the October 10, 2017 press release were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) NewAge did not have sufficient inventory of the Aspen Pure Probiotic water product to fulfill the purported expansion; (2) Ahold Delhaize did not commit to expanding NewAge’s Aspen Pure Probiotic water product to more than 2,000 stores across 23 states; and (3) Aspen Pure Probiotic water was carried by no more than 74 Ahold Delhaize stores.

27. Defendant’s false and misleading statements about the expansion with Ahold Delhaize were material and caused a spike in NewAge’s share price. For example, following the October 10, 2017 announcement of the purported expansion with Ahold Delhaize, NewAge’s share price increased by nearly 6% for the day. And on September 4, 2018, an equity analyst initiated coverage of NewAge with a “buy” rating and a target price of \$3.00 per share, citing, in part, NewAge’s purported deal to place its Aspen Pure Probiotic water product and other products in Ahold Delhaize stores in 23 states with a 700 store initial rollout on the East Coast and eventually a total of 2,000 locations.

3. November 2017 False and Misleading Statements about a Distribution Agreement with Unified Strategies Group

28. Less than a month later, on November 1, 2017, NewAge issued another false and misleading press release announcing that the Company had entered into a written agreement with Unified Strategies Group (“USG”) to expand distribution of its beverage portfolio to USG’s “more than 1 million vending machines, 5,000 micro markets, and over 1,800 client dining facilities throughout the United States.” The press release further falsely stated that USG “will now be offering the New Age Beverages portfolio throughout [USG’s] system” which “reaches 75,000 workplace locations a day”

29. Defendant made the sole and ultimate decision to issue the November 1, 2017 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

30. The above statements were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) the agreement USG entered into with NewAge included no commitment or representation with respect to the number of sales outlets (including vending machines, markets, and other sales locations)¹; and (2) at their sales peak, NewAge's products were sold by only 1 or 2 USG members at a total of approximately 100 vending machines.

31. Defendant's false and misleading statements about the purported expansion with USG were material and caused a significant spike in NewAge's share price. For example, following the November 1, 2017 announcement of the purported expansion with USG, NewAge's share price increased by approximately 17% for the day. And on September 4, 2018, an equity analyst initiated coverage of NewAge with a "buy" rating and a target price of \$3.00 per share, citing, in part, NewAge's deal with "United Strategies Group with 1M+ vending machines."

4. February 2018 False and Misleading Statements about Expanded Distribution with Canadian Retailers

32. On February 1, 2018, NewAge issued a materially false and misleading press release announcing that NewAge (i) "has begun shipments of its Coco-Libre and Bucha Live Kombucha brands in expanded distribution throughout Loblaws and Sobeys, the largest grocery

¹ The agreement between NewAge and USG merely set the rebate terms for the sale of products to USG members, which independently choose the products they offer at their sales locations.

retailers across Canada”; and (ii) “is now expanding to all banners within Loblaws and expanding throughout both Sobeys and Safeway.”

33. Defendant made the sole and ultimate decision to issue the February 1, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

34. NewAge followed this press release with a February 13, 2018 press release stating that its Bucha Live Kombucha brand “has recently expanded to all major retailers throughout Canada” Defendant also made the sole and ultimate decision to issue the February 13, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

35. The above statements from the February 1 and 13, 2018 press releases were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) there was no expansion of NewAge product lines Coco-Libre and Bucha Live Kombucha to all banners within Loblaws and throughout Sobeys (including Sobeys’ subsidiary Safeway); (2) Sobeys never sold Coco-Libre brand beverages; (3) there was no expanded distribution of Coco-Libre brand beverages to Loblaws in 2018; and (4) NewAge did not expand distribution of its Bucha Live Kombucha brand to all major retailers throughout Canada.

36. Defendant’s false and misleading statements about the expansion with Loblaws, Sobeys, and all major retailers throughout Canada were material and caused a spike in NewAge’s share price. For example, following the February 1, 2018 announcement of the expansion with Loblaws and Sobeys, NewAge’s share price increased by more than 6% for the day. On March 5, 2018, an equity analyst maintained a “buy” rating for NewAge and a target price of \$6.00 per share based, in part, on NewAge’s purported expansion with Loblaw and

Sobeys and its expectation that the expansion would generate meaningful revenue growth for NewAge in 2018 and beyond.

5. February 2018 False and Misleading Statements about a Distribution Agreement with South Korean Distributor

37. On February 13, 2018, NewAge issued a false and misleading press release announcing that NewAge “has signed a major distribution agreement for expansion of its Bucha Live Kombucha brand with the largest food and beverage distributor in South Korea to expand to all major retail outlets throughout the country effective immediately.” This is the same press release that contained the false and misleading statements concerning NewAge’s purported expansion of its Bucha Live Kombucha product to all major retailers throughout Canada, as described in paragraph Nos. 34 through 36 above. The press release went on to identify 14 department stores, hypermarkets, and convenience and grocery outlets in South Korea in which the Bucha brand would be sold starting by or before June 2018.

38. Defendant made the sole and ultimate decision to issue the February 13, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

39. The above statements from the February 13, 2018 press release were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) the South Korea distributor merely received the right to distribute NewAge products within the Korean market and did not represent that any South Korea retailers would place orders for NewAge products; (2) none of the 14 department stores, hypermarkets, and convenience and grocery outlets identified in the press release made any commitment to purchase NewAge products.

40. In fact, the South Korea distributor did not place its first order of Bucha Live Kombucha until December 2018, and the sales of the product were minimal (approximately 1,500 bottles sold) before the relationship was terminated in October 2019.

41. Defendant's false and misleading statements about the agreement with the South Korean distributor were material and caused a spike in NewAge's share price. For example, following the February 13, 2018 announcement of the agreement with the South Korean distributor, NewAge's share increased by more than 6% for the day and an equity analyst sent an email to Defendant congratulating him on the "win[] in . . . South Korea."

6. April 2019 False and Misleading Statements about Expanded Distribution with Walmart

42. On April 8, 2019, NewAge issued another false and misleading press release announcing (1) the "first national distribution" of its products via an expanded distribution of its Marley beverage line with Walmart; (2) that NewAge had "now begun shipments to Walmart distribution centers across the United States"; and (3) that each of NewAge's three Marley Mate flavors would be available at all Walmart stores in the beginning of April 2019.

43. Defendant made the sole and ultimate decision to issue the April 8, 2019 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and disseminated the press release to the media directly by placing it on a newswire.

44. The above statements from the April 8, 2019 press release were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) NewAge's agreement only covered some, but not all, of Walmart's distribution centers across the U.S.; (2) Walmart did not make specific commitments to NewAge concerning the Marley line and never agreed to make all Marley Mate flavors available at all Walmart stores in the

beginning of April 2019; and (3) at their Walmart-sales peak, NewAge’s Marley brand products were offered in less than 7% of Walmart stores across only 21 of the 50 states.

45. Defendant’s false and misleading statements about the expanded distribution with Walmart were material and caused a significant spike in NewAge’s share price. For example, (1) following the April 8, 2019 press release announcing the expanded distribution with Walmart, NewAge’s share price increased by more than 38% for the day; (2) within hours of the press release being issued, an equity analyst sent an email to Defendant congratulating him about the news; and (3) on April 23, 2019, a NewAge investor emailed NewAge concerning the availability of the Marley product in certain Walmart stores located in Texas and inquiring whether NewAge was capable of handling the supply and demand of these products.

B. Defendant Made Materially False and Misleading Statements Regarding NewAge’s Relationship with the U.S. Military

46. Between January and August of 2018, Defendant made a series of materially false and misleading statements concerning NewAge’s purported expansion of its relationship with the U.S. military. These misstatements led to increases in NewAge’s share price and increased focus from investors and equity analysts alike about the potential impacts on revenue.

47. Beginning at an investor conference held on January 8, 2017, Defendant made the false and misleading statement that the U.S. military had “taken 21 of our SKUs² across NewAge’s entire portfolio, across all military commissaries worldwide.”

48. On January 18, 2018, NewAge issued a false and misleading press release announcing that NewAge had a “new distribution agreement” with the U.S. military which was a “new U.S. military initiative in partnership with NewAge” whereby 21 NewAge SKUs across

² The term “SKU” stands for stock keeping unit and refers to each distinct item for sale.

five product lines were purportedly “shipping out now and throughout the 1st quarter to all commissary locations worldwide,” with the scope of the distribution agreement including 240 military commissaries and 3,100 exchanges in more than 30 countries across the world; and claiming that “[t]he new distribution agreement is expected to have a material impact on the financial results of NewAge.”

49. Defendant made the sole and ultimate decision to issue the January 18, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, authorized its issuance, and disseminated the press release to the media directly by placing it on a newswire.

50. In or around January 2018, Defendant falsely stated to the Board of Directors that NewAge was negotiating the agreement referenced in the January 18, 2018 press release and that it was likely to be finalized.

51. During a NewAge earnings call on May 15, 2018, Defendant also made a false and misleading statement referencing NewAge having “picked up the military business worldwide.” In another earnings call on August 14, 2018, Defendant made a false and misleading statement that New Age was selling “21 core SKUs” of its brands in the “military channel” that was “as big as Walmart in total sales throughput.”

52. The above statements from the January 18, 2018 press release and the May 15 and August 14, 2018 earnings calls were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) NewAge never entered into a “distribution agreement” or “initiative in partnership” with the military and never had plans to sell its products at all commissaries and exchanges worldwide; (2) NewAge did not have adequate inventory to fulfill this purported agreement; and (3) the only new distribution during this period was to sell

NewAge products at two individual stores in Virginia and Florida for a trial period of four weeks.

53. Defendant’s false and misleading statements about its agreement with the U.S. military were material and caused a significant spike in NewAge’s share price. For example, following the January 8, 2018 investor conference during which Defendant first announced the new agreement with the military, NewAge’s share rose 24%. Following the January 18, 2018 press release describing the new purported distribution agreement, NewAge’s share price increased nearly 16% and an equity analyst report highlighted the agreement, noting “the targeted market this new distribution channel can reach spans a population of nearly 25 million people.” NewAge’s share price climbed 16% on August 14, 2018, the day on which Defendant claimed during an earnings call that “21 core SKUs” of its brands in the “military channel” that was “as big as Walmart in total sales throughput.”

C. Defendant Made Materially False and Misleading Statements Concerning NewAge’s Development of CBD-infused Beverages

54. As described below, between September 2018 and January 2019, Defendant made numerous false and misleading public statements concerning NewAge’s purported development of a portfolio of CBD-infused beverages. These misstatements, capitalizing on investor and media attention centered on the legalization of cannabis, growth in the cannabis industry, and the potential proliferation of CBD-infused beverages, led to increases in NewAge’s share price and increased focus from investors and equity analysts alike about the potential impacts on revenue.

1. Announcement of the CBD Portfolio

55. In September 2018, Defendant made multiple false and misleading public statements announcing that NewAge had been testing and developing a CBD-infused beverage portfolio.

56. During a September 5, 2018 investor presentation, Defendant made the false and misleading claim that NewAge had been testing a CBD beverage over the previous six months. This statement conveyed the false and misleading impression that NewAge was testing a proprietary CBD product in development when, in fact, NewAge had merely been distributing a CBD-infused water that was developed and controlled by a third-party supplier.

57. On September 19, 2018, NewAge issued a press release, stating that NewAge had tested and developed a portfolio of CBD-infused beverages that it planned to unveil at the National Association of Convenience Stores (“NACS”) trade show in Las Vegas, Nevada in October 2018, and stating that NewAge’s Health Sciences Division (“Health Sciences”) was “overseeing and carefully controlling product production, quality, and its supply chain and sales channel partners.”

58. Defendant made the sole and ultimate decision to issue the September 19, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

59. The statements described above from the September 5, 2018 investor presentation and September 19, 2018 press release were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) NewAge had begun development of its CBD portfolio shortly before its September 19, 2018 announcement and had, by that date, taken only preliminary steps towards the development of any CBD-infused beverage; and (2) Health Sciences, which comprised just two part-time employees, had no role in the development of the CBD portfolio as of September 19, 2018, and participated minimally, if at all, in the process thereafter.

2. October 2018 NACS Trade Show

60. On October 10, 2018, NewAge issued a false and misleading press release announcing NewAge’s debut of its purported portfolio of “full spectrum” CBD-infused beverages “from its Health Sciences Division” at the October 2018 NACS trade show in Las Vegas that included a quote attributed to its Chief Medical Officer attesting to NewAge’s “scientifically and medically grounded” approach to its CBD beverage portfolio.

61. Defendant made the sole and ultimate decision to issue the October 10, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

62. At an off-site meeting organized by Defendant and attended by retailers, distributors, and investors during the October 2018 NACS trade show in Las Vegas, NewAge distributed sell sheets, reviewed, edited, and authorized by Defendant, that included the false and misleading statements that (i) NewAge’s “full spectrum” CBD products were manufactured via a “proprietary production process”; (ii) that the purported products were a “proprietary in-house formula developed by New Age Health Sciences”; (iii) that “every batch” of the purported products “is third-party tested”; and (iv) that the purported products benefited from a “full spectrum nano technology-amplified entourage effect.”

63. The above statements from the October 2018 press release and sell sheets were false and misleading when made because, as Defendant knew or was reckless in not knowing at the time: (1) NewAge had, by that time, taken only preliminary steps towards the development of any CBD-infused beverage; (2) the purported debut of the CBD-infused beverages at the off-site meeting consisted only of samples of existing NewAge products to which drops of CBD purchased from a local shop had been added onsite just before the event; (3) the Company’s

Chief Medical Officer did not supply or endorse the quote attributed to him in the October 10, 2018 press release nor did he ever attest to NewAge’s “scientifically and medically grounded” approach to its CBD beverage portfolio given his lack of involvement in the development of the CBD beverage portfolio.

3. CBD Portfolio Purported Completion and Distribution

64. Between October 2018 and January 2019, Defendant and NewAge, at the direction of Defendant, made several public statements, in press releases, investor calls, and media interviews, which falsely conveyed that NewAge had a completed CBD beverage portfolio, had secured substantial retail and distribution pre-orders and commitments to sell its CBD products, and was even selling it in retail stores.

65. On October 16, 2018, NewAge issued a press release announcing that NewAge’s “portfolio of 9 CBD-infused products generated initial retail distribution commitments spanning more than 110,000 points of distribution” and that NewAge was now privately engaged in “launch plans” for its CBD beverage portfolio “with some of the largest convenience and grocery retailers in North America.”

66. Defendant made the sole and ultimate decision to issue the October 16, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

67. On November 14, 2018, NewAge issued a press release announcing that NewAge’s CBD portfolio was “in production for launch before Christmas.”

68. Defendant made the sole and ultimate decision to issue the November 14, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

69. During a November 14, 2018 earnings call on the same day the press release was issued, Defendant claimed that NewAge, “had commitments of over 125,000 points of distribution” for its CBD beverage portfolio, and that its purported CBD beverage portfolio was developed by Health Sciences.

70. During a December 4, 2018 investor call, Defendant claimed that (i) NewAge had gained 125,000 points of distribution of either preorders or commitments for its CBD products; (ii) NewAge has three CBD manufacturers in different parts of the U.S. “already lined up”; and (iii) NewAge would be launching its CBD-infused beverages by Christmas 2018.

71. During a December 6, 2018 interview with TheStreet.com, Defendant claimed that (i) that NewAge’s CBD portfolio was in production and (ii) that Defendant expected to have NewAge’s CBD products in stores before Christmas 2018.

72. On December 12, 2018, NewAge issued a press release announcing that (i) NewAge expected to complete initial production runs for its CBD beverage portfolio by Christmas 2018; (ii) NewAge was prepared to start selling with independent market and direct store delivery (“DSD”) distributors starting in January 2019; and (iii) the Company has already received major commitments from retailers and distributors spanning over 125,000 points of distribution.

73. Defendant made the sole and ultimate decision to issue the December 12, 2018 press release, had final editorial control and ultimate authority over the content of the press release, drafted the press release, and authorized its issuance.

74. On or around January 15, 2019, Defendant falsely stated to a member of NewAge’s Board that the Company had received approximately \$40 million of orders (in

annualized sales) for its line of CBD products at the January 2019 Winter Fancy Food Show in San Francisco, California (“Winter Fancy Food Show”).

75. During a January 16, 2019 earnings call, Defendant directed the Company’s CFO and Director of Marketing to make the following statements:

- a. NewAge had produced its portfolio of CBD-infused beverages prior to Christmas 2018;
- b. That this purported portfolio of beverages would be available in certain key regional stores starting in March and April 2019;
- c. That every grocery retailer that NewAge met with at the Winter Fancy Food Show had placed an order of a CBD beverage products; and
- d. That NewAge would begin shipments of its CBD-infused beverage portfolio in the first quarter of 2019 and that this portfolio would have a material impact on NewAge’s financial statements during its 2019 fiscal year.

76. Defendant drafted and had final editorial control and ultimate authority over the content of the January 16, 2019 earnings call script and directly instructed the Company’s CFO and Director of Marketing to make the above statements that were a part of the earnings call script.

77. During that same January 16, 2019 earnings call, Defendant also claimed that major Japanese retailer FamilyMart had placed an order with NewAge to sell NewAge’s CBD beverage products in 15,000 outlets.

78. During a January 16, 2019 interview by Stuart Varney of Fox Business News, Defendant claimed that NewAge’s CBD beverages were currently available for purchase at major Japanese retailer FamilyMart.

79. In a January 18, 2019 Forbes article, Defendant stated that FamilyMart stores will carry NewAge's CBD beverages and the products will start shipping in March 2019.

80. At the January 27, 2019 Board Meeting, Defendant falsely stated to the Board that FamilyMart had placed an order for NewAge's CBD line of products.

81. The above statements from the October 16, 2018 press release, November 14, 2018 press release and earnings call, December 4 and 6, 2018 interviews, December 12, 2018 press release, January 16, 2019 earnings call and interview, and January 18, 2018 Forbes article, were all false and misleading when made because, as Defendant knew or was reckless in not knowing that, at the time, NewAge had not completed the development of a single CBD beverage product and never received orders or commitments from any retailer for CBD beverage products.

4. Defendant's False and Misleading Statements Concerning CBD Beverages were Material

82. Defendant's false and misleading statements about its putative CBD beverage portfolio were material and caused significant spikes in NewAge's share price from September 2018 to early 2019. For example, following the September 5, 2018 investor presentation announcing that NewAge had been testing a CBD beverage, NewAge's share price increased as much as 26% and a number of analysts published reports on the announcement. Following the publication of the September 19, 2018 press release announcing the purported debut of its CBD beverage portfolio, NewAge's share price nearly tripled—increasing from a closing price of \$2.82 per share on September 18, 2018 to a closing price of \$7.85 per share on September 20, 2018. The liquidity of NewAge's stock increased even more dramatically, rising from a trading volume of 672,000 shares on September 14, 2018 to approximately 130 million shares on

September 20, 2018. Following the November 14, 2018 announcement of “commitments of over 125,000 points of distribution,” the stock price increased by 23%.

83. In response to its CBD-related false and misleading statements, NewAge also received a substantial number of inquiries from investors and equity analysts from September 2018 to early 2019 seeking information about the status of the CBD beverage program, including the timing of launch, retail interest, and Health Science’s role in it. During the relevant period, Defendant repeatedly confided to members of NewAge’s Board that NewAge’s CBD beverage portfolio was a major driver of the Company’s share price and that NewAge investors were interested in “anything CBD related.”

84. The above misstatements artificially boosted NewAge’s share price and increased the liquidity of its stock, which enabled the Company to turn around its finances and grow the Company. For example, immediately following the false and misleading September 19, 2018 press release, Defendant, citing the increased share price and liquidity, put in place an at-the-market (ATM) securities offering³ that generated net proceeds of approximately \$38 million for NewAge. Taking advantage of the still-elevated share price and liquidity, in November 2018, NewAge conducted a second ATM offering that yielded an additional \$52 million in cash, providing it with a cash balance of more than \$80 million and significantly improving the Company’s balance sheet.

85. The Company relied upon the proceeds received from the ATM offerings to purchase global beverage company Morinda Holdings (“Morinda”), a major acquisition that was

³ An at-the-market (ATM) offering is a type of stock offering used by publicly traded companies in order to raise capital over time. In an ATM offering, the issuing company incrementally sell shares into the secondary trading market at prevailing market prices.

projected to grow NewAge’s annual revenue from approximately \$50 million in 2018 to over \$300 million in 2019.

III. DEFENDANT CASHED IN ON THE FALSE AND MISLEADING PRESS RELEASES AND OTHER FALSE AND MISLEADING STATEMENTS

86. Defendant also personally benefitted from the false and misleading statements described above. For example, while NewAge’s share price and liquidity were still artificially inflated as a result of the misstatements described above, between April and October 2019, Defendant obtained money or property by selling 425,000 NewAge shares for net proceeds of over \$2 million. In addition, the Board awarded Defendant a significant compensation increase starting in 2019 due to the Company’s improved financial position, successful stock offerings, and the completion of the Morinda acquisition, all of which resulted from the above misstatements.

IV. DEFENDANT AIDED AND ABETTED NEWAGE’S VIOLATIONS OF REGULATION FD

87. Regulation FD (Fair Disclosure) protects investors by prohibiting issuers from selectively disclosing material nonpublic information to, among others, securities analysts and institutional investors, before disclosing the same information to the public.

88. Regulation FD requires that when an issuer, or persons acting on its behalf, discloses material nonpublic information to persons outside the issuer, it must simultaneously disclose such information to the public. Where the issuer or person acting on its behalf knows or is reckless in not knowing that the information it is communicating is both material and nonpublic, the disclosure is “intentional” within the meaning of Regulation FD.

89. At a January 8, 2018 conference, an invitation-only event attended primarily by institutional investors, private equity professionals, and equity analysts, Defendant told select investors that the Company would be announcing a supposed expansion of the U.S. military’s

relationship with NewAge that would include the sale of 21 NewAge SKUs to commissaries worldwide.

90. This selective material nonpublic disclosure was made in advance of NewAge's false and misleading January 18, 2018 press release announcing that very same purported expansion. Following the January 18, 2018 press release, NewAge's share price rose by nearly 16% for the day.

91. On or about September 18, 2018, Defendant sent emails to select equity analysts stating that in two days, NewAge intended to announce the then-upcoming debut of its CBD line of beverages at the NACS trade show.

92. These disclosures to the analysts were made in made in advance of NewAge's false and misleading September 19, 2018 press release announcing that very same purported information. Following the September 19, 2018 press release, NewAge's share price increased by 55% for the day.

93. Defendant's disclosures to investors at the January 8, 2018 conference and to analysts on September 18, 2018 constituted material nonpublic information that was not simultaneously disseminated to the public.

94. Defendant knew or was reckless in not knowing that his disclosures at the January 8, 2018 conference and to analysts on September 18, 2018 constituted material nonpublic information.

95. Defendant's disclosures were intentional selective disclosures within the meaning of Regulation FD.

96. Defendant failed to file with the Commission the required Form 8-K disclosing the material nonpublic information that Defendant had disclosed on January 8, 2018 and

September 18, 2018 within the time periods specified in the Commission’s rules or forms, or to disseminate that information through another method of disclosure reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

97. Because NewAge failed to simultaneously publicly disseminate the material information in accordance with Regulation FD, the investing public was placed at a disadvantage relative to the investors who were privy to the selective disclosures on January 8, 2018, and the analysts who were privy to the selective disclosures on September 18, 2018.

THIS ACTION IS TIMELY FILED

98. Defendant agreed to toll any statute of limitations applicable to the claims alleged herein during the period from June 1, 2022 through August 30, 2022.

CLAIMS FOR RELIEF

First Claim for Relief

Section 10(b) and Rule 10b-5 of the Exchange Act

The Commission realleges and incorporates by reference in this claim for relief the allegations set forth at 1 through 98 above.

99. Defendant, directly or indirectly, in connection with the purchase or sale of a security, and by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, acting with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons. As alleged above, Defendant knowingly or recklessly engaged in deceptive conduct and made materially

false and misleading statements to investors concerning a wide range of matters, including purported new or expanded product distribution deals with large domestic and international beverage distributors and retailers.

100. Defendant acted knowingly or recklessly.

101. By engaging in the conduct described above, Defendant violated, and unless restrained and 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].

Second Claim for Relief
Section 17(a) of the Securities Act

102. The Commission realleges and incorporates by reference in this claim for relief the allegations set forth at 1 through 98 above.

103. By engaging in the conduct described above, Defendant, using the means or instrumentalities of interstate commerce or of the mails, in the offer or sale of securities, directly or indirectly, with scienter or negligently, employed devices, schemes, or artifices to defraud; obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or engaged in transactions, practices, or courses of dealing which operated or would operate as a fraud or deceit upon the purchaser. As alleged above, Defendant knowingly, recklessly, or negligently engaged in deceptive conduct and made materially false and misleading statements to investors concerning a wide range of matters, including purported new or expanded product distribution deals with large domestic and international beverage distributors and retailers.

104. Defendant acted knowingly, recklessly, or negligently.

105. By virtue of the foregoing, Defendant, directly or indirectly, violated and, unless restrained and enjoined, will again violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Third Claim for Relief
Aiding and Abetting NewAge's Violations of Section 13(a) of the Exchange Act and Regulation FD

106. The Commission realleges and incorporates by reference in this claim for relief the allegations set forth at 1 through 98 above.

107. Regulation FD [17 C.F.R. § 243.100, *et seq.*] requires that when an issuer or certain persons acting on its behalf, including officers, privately disclose material nonpublic information to certain persons outside the issuer, the issuer must simultaneously disclose such information to the public. Where the issuer or such persons acting on its behalf knowingly or recklessly disregard that the information being privately disclosed is both material and nonpublic, the disclosure is intentional within the meaning of Regulation FD.

108. As alleged above, Defendant intentionally disclosed material nonpublic information to select investors during a January 8, 2018 conference and via emails sent to equity analysts on September 18, 2018, without making simultaneous disclosure of that information to the public.

109. By engaging in the conduct alleged above, Defendant knowingly or recklessly provided substantial assistance to NewAge with respect to its violations of, and, unless enjoined, will again aid and abet violations of, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Regulation FD [17 C.F.R. § 243.100, *et seq.*] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief:

1. Find that the Defendant committed the violations alleged in this Complaint;
2. Enter an injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant from violating, directly or indirectly, the laws and rules Defendant is alleged to have violated in this Complaint;
3. Order Defendant to disgorge ill-gotten gains received during the period of violative conduct and pay prejudgment interest on such ill-gotten gains;
4. Order Defendant to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];
5. Order that Defendant be barred, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];
6. Order that Defendant be prohibited from participating in an offering of a penny stock pursuant to Section 20(g) of the Securities Act [15 U.S.C. § 77t(g)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]; and
7. Grant such other and further relief as this Court may deem just and proper.

JURY DEMAND

The Commission demands a trial by jury on all claims so triable.

Dated: October 18, 2022

Respectfully submitted,

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