

## **NON-PROSECUTION AGREEMENT**

1. The United States Attorney's Office for the Southern District of West Virginia ("USAO") and the Rite Aid Corporation ("Rite Aid") enter into this Agreement to resolve the USAO's criminal investigation of potential violations of 21 U.S.C. §§ 841 and 846, resulting from the sale of a listed chemical, pseudoephedrine ("PSE"), by Rite Aid stores in the Southern District of West Virginia, from January 2009 through October 2012.
2. This Agreement binds Rite Aid and the USAO. Further, Rite Aid agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a stock sale, merger, or transfer, Rite Aid shall include in any contract for sale, merger, or transfer a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. That provision shall not apply to the acquirer's existing stores, but only to those stores acquired from Rite Aid in the transaction described in this paragraph. The parties agree that this paragraph does not cover the asset purchase agreement for the sale of close to two thousand stores to Walgreens Boots Alliance, Inc. because that is not a sale of substantially all of Rite Aid's business operations within the meaning of this Agreement.

## **BACKGROUND**

3. PSE has legitimate medical uses, but it can also be used for an illegal purpose—to manufacture a controlled substance, methamphetamine, in violation of 21 U.S.C. § 841. The Combat Methamphetamine Epidemic Act of 2005 ("CMEA") imposed quantity restrictions on the sale and purchase of PSE, as well as recordkeeping requirements on retailers such as Rite Aid. In addition, 21 U.S.C. § 841 and § 846 prohibit the distribution of PSE while knowing or having reasonable cause to believe that it will be used to manufacture methamphetamine, or conspiring to do so.
4. From January 2009 through October 2012, sales of PSE by pharmacies contributed to a significant problem with methamphetamine in the Southern District of West Virginia, which resulted in substantial clean-up costs incurred by the State of West Virginia and substantial treatment costs for drug abusers. During that time, Rite Aid sold over 850,000 grams of PSE for over \$5 million in West Virginia. Further, Rite Aid did not train its employees on how to deny sales of PSE to suspicious people, that is, Rite Aid did not affirmatively train or instruct its West Virginia employees that they were required to deny a sale of PSE if the employee suspected the sale was not for a legitimate medical reason. As a result, some Rite Aid employees in the Southern District of West Virginia believed that they were permitted to deny sales of PSE to individuals only if the sale would cause the individual to exceed PSE purchase limit amounts.

## **BASIS FOR AGREEMENT**

5. The USAO enters into this Agreement based, in part, on the following factors: a) Rite Aid's willingness to accept responsibility for the manner in which it sold PSE in the Southern District of West Virginia; b) Rite Aid's remedial efforts as detailed below; c)

Rite Aid's agreement to pay funds for the costs incurred in cleaning up methamphetamine laboratories; and d) Rite Aid's agreement to pay funds to support drug treatment facilities.

### **REMEDATION AND CORPORATE COMPLIANCE**

6. Rite Aid represents that since October 2012 it has made significant remedial efforts to insure that its employees do not sell PSE products to individuals who the employees suspect intend to use the PSE to manufacture methamphetamine. Rite Aid represents that it has further made significant remedial efforts to insure compliance with the CMEA, 21 U.S.C. Sections 830(d), (e), 842(a)(12)-(14). Rite Aid's efforts include and will continue to include the following:
  - a. To require additional safeguards in West Virginia and in other locations Rite Aid determines to be high-risk areas for methamphetamine abuse. For stores in those areas, Rite Aid will continue to require that: (i) stores not sell any non-tamper-resistant, single-ingredient PSE product (unless instructed, in writing, to cease doing so by an appropriate federal agency); (ii) PSE products be stored out of view of customers; and (iii) pharmacists provide counseling to customers seeking to purchase a PSE product.
  - b. To store and sell PSE products only in pharmacy areas. Rite Aid will continue to prohibit PSE sales through drive-through windows and by delivery.
  - c. To require all PSE sales to be processed through and approved by a computer-based software program (currently MethCheck), and to prohibit all PSE sales when the computer system is unavailable or non-functional. Rite Aid will also continue to maintain electronic systems that automatically route every PSE transaction through the computer system, regardless of whether the product is scanned or its UPC code is manually entered.
  - d. To monitor and audit sales and denial analytics to determine whether any additional locations should be designated as high risk, provide biannual reports of such findings to Rite Aid's Corporate Compliance Committee and Chief Compliance Officer in writing, and maintain such biannual reports for five years.
  - e. To continue to train store employees on how to identify people who may be purchasing PSE to manufacture methamphetamine, and further train its store employees on how to deny sales to such people. Rite Aid will specifically instruct and direct its store employees to deny the sale of PSE to people who the employees have reason to believe do not need the PSE for a legitimate medical reason.
  - f. To require any employee processing a PSE transaction to be logged into a register during the transaction, either using a biometric scanner or the employee's personal user ID and password.



- g. To require any employee processing a PSE transaction to input the last four digits of the customer's approved form of identification, in order to ensure the employee visually inspects the identification. Rite Aid will also continue to maintain system controls to block any transaction in which the last four digits of the identification do not match the four digits entered by the employee.
- h. To require the capture of an electronic signature with all PSE sales and to continue to not permit a sale to be made without an electronic signature.
- i. To train and encourage its employees to immediately report, both within Rite Aid and to law enforcement, any suspicious activity regarding PSE sales or attempted sales.
- j. To maintain procedures for appropriate discipline of employees at all levels who violate Rite Aid's standards, policies, or procedures relating to PSE sales.
- k. To maintain a variety of avenues for anonymous reporting by employees to report potential or actual violations of Rite Aid's ethics standards, compliance policies or procedures, or any law or regulation.
- l. To prohibit retaliation against employees who report or seek guidance regarding potential or actual violations of Rite Aid's ethics standards, compliance policies or procedures, or any law or regulation.
- m. To evaluate and implement any other practices, procedures, or training that could further enhance its PSE compliance procedures.

#### **STIPULATED FINANCIAL PAYMENT**

- 7. Rite Aid agrees to pay \$4 million (the Stipulated Financial Payment) as community restitution. The Stipulated Financial Payment is separate and apart from any settlement Rite Aid may reach in any separate civil settlement agreement with the Department of Justice or any United States Attorney's Office. Rite Aid further agrees that the Stipulated Financial Payment shall be treated, for all purposes, including tax purposes, as a penalty paid to the United States government and that it will not claim, assert, or apply for a tax deduction, tax credit, or any other tax-related benefit with regard to any federal, state, local, or foreign tax for any financial payment paid pursuant to this Agreement. Rite Aid and the USAO agree that the Stipulated Financial Payment will be used to pay for the costs associated with cleaning up methamphetamine laboratories in West Virginia to redress the harm caused by the sale of PSE that was later illegally used to manufacture methamphetamine, and to pay for the costs associated with drug abuse treatment in West Virginia to redress the harm caused by illicit methamphetamine usage stemming from the sale of PSE, from January 2009 through October 2012. Rite Aid shall pay the \$4 million within ten (10) days of the execution date of this Agreement, by electronic funds transfer pursuant to instructions to be provided by the USAO. In accordance with 18 U.S.C. § 3663(c)(3), the payment shall be structured as follows:

- i. \$2.6 million (65%) shall be paid to the West Virginia Crime Victim's Compensation Fund; and
- ii. \$1.4 million (35%) shall be paid to West Virginia Department of Health and Human Resources, Bureau of Behavioral Health and Health Facilities.

### **COOPERATION**

8. Rite Aid agrees to cooperate fully with the USAO in any and all criminal investigations related to the sale of PSE, subject to applicable law and regulation and the attorney-client privilege and attorney work-product doctrine. Rite Aid further agrees that in accordance with applicable laws, it shall provide to the USAO, upon request, any relevant document, electronic data, or other items related to its sale of PSE products that are in Rite Aid's possession, custody or control. Whenever such data is in electronic format, Rite Aid shall provide access to such data and assistance in operating computers and other equipment as necessary to retrieve the data. This obligation shall not include production of materials covered by the attorney-client privilege or the work-product doctrine or any other applicable privilege. Further, Rite Aid will make available to the USAO in a timely and voluntary manner all present officers, directors and employees for sworn testimony before a federal grand jury or in a federal trial and for interviews with federal law enforcement authorities. Cooperation under this paragraph will include identification of witnesses not previously identified who, to the knowledge of Rite Aid, may have material information regarding the matters under investigation. Rite Aid's obligation to cooperate pursuant to this paragraph is not intended to apply if a prosecution by the USAO is commenced against Rite Aid as a result of an alleged breach of this Agreement.

### **NON-PROSECUTION FOR CRIMINAL LIABILITY**

9. Subject to Paragraphs 11 and 12, and except as provided within this Paragraph, the USAO agrees that it will not bring criminal charges against Rite Aid or any of its subsidiaries for any violations of 21 U.S.C. §§ 841 and 846, relating to the subject matter of the USAO's investigation, including the sale of PSE products by Rite Aid in the Southern District of West Virginia from January 2009 through October 2012. However, the USAO may use any information related to the conduct described in this Agreement against Rite Aid in a prosecution for perjury, obstruction of justice, or making a false statement. This paragraph does not provide any protection against prosecution for any conduct by Rite Aid subsequent to October 2012.

### **TERM OF AGREEMENT**

10. This Agreement is effective for a period beginning on the date on which the Agreement is executed by all the parties and ending two years from that date (the "Term"). However, Rite Aid agrees that, in the event that the USAO determines, in its sole discretion, that Rite Aid has knowingly violated any provision of this Agreement, an extension or extensions of the Term may be imposed by the USAO for up to a total additional time of one year, without prejudice to the USAO's right to proceed as outlined below. Any extension of the Agreement extends all terms of the Agreement. Conversely, should the



USAO determine, in its sole discretion, that Rite Aid has satisfied the provisions of this Agreement and that there exists a change in circumstances sufficient to eliminate the need to continue under the Agreement, the USAO may terminate the Agreement early. If Rite Aid successfully complies with this Agreement, the USAO will advise Rite Aid within ten (10) days after the end of the Term, in writing, that its investigation and prosecution of Rite Aid for the conduct set forth in this Agreement has concluded.

#### **BREACH OF THE AGREEMENT**

11. If, during the Term of this Agreement, the USAO determines, in the reasonable exercise of its discretion, that Rite Aid (a) committed any felony under federal law subsequent to the signing of this Agreement, (b) at any time provided in connection with this Agreement deliberately false, incomplete, or misleading information, (c) failed to cooperate as required by Paragraph 8 of this Agreement, (d) failed to pay the Stipulated Financial Payment required by this Agreement, or (e) otherwise breached the Agreement, Rite Aid shall thereafter be subject to prosecution for any federal criminal violation of which the USAO has knowledge as of the date of this Agreement, including any charges related to its sale of PSE products, which may be pursued by the USAO in the United States District Court for the Southern District of West Virginia. Any such prosecution may be premised on information provided by Rite Aid. Any such prosecution that is not time-barred by the applicable statute of limitations, as tolled by any tolling agreement entered into by Rite Aid and the USAO prior to the execution of this Agreement, on the date of the execution of this Agreement may be commenced against Rite Aid notwithstanding the expiration of the statute of limitations between the signing of the Agreement and the expiration of the Term, plus one year. By executing this Agreement, therefore, Rite Aid agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the execution of this Agreement shall be tolled for the Term plus one year.
12. In the event that the USAO determines that Rite Aid has breached this Agreement, the USAO agrees to provide Rite Aid with written notice of such breach prior to instituting any prosecution resulting from such breach. Rite Aid shall, within 30 days of receipt of such notice, have the opportunity to respond to the USAO in writing to explain the nature and circumstances of such breach, to demonstrate that no deliberate breach occurred, and to set forth any actions Rite Aid has taken to address and remediate the situation, which explanation the USAO shall consider in determining whether to institute a prosecution.

#### **PUBLIC STATEMENTS BY RITE AID**

13. Rite Aid agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for Rite Aid make any public statement that contradicts any statement in Paragraphs 4 or 7 of this Agreement. Any such contradictory statement shall, subject to cure rights of Rite Aid described below, constitute a breach of this Agreement and Rite Aid thereafter shall be subject to prosecution as set forth in Paragraphs 11 and 12 of this Agreement. If the USAO determines that a public statement by any such person contradicts a statement contained in Paragraph 4 or 7, the USAO shall so notify Rite Aid, and Rite Aid may avoid a breach

of this Agreement by publicly repudiating such statement within five business days after notification. This Paragraph does not apply to any statement made by any present or former officer, director, or employee of Rite Aid in the course of any criminal, regulatory, or civil proceeding initiated against such individual, unless such individual is speaking on behalf of Rite Aid. This Paragraph is not intended to apply to any statement made by any individual unless such individual has authority to speak, and is speaking, publicly on behalf of Rite Aid. Neither this Paragraph nor Paragraphs 4 or 7 are intended to limit, nor do they have the effect of limiting, any defenses or affirmative claims that Rite Aid may raise or assert in any subsequent litigation.

14. Rite Aid agrees that if it or any of its direct or indirect affiliates or subsidiaries issues a press release or holds any press conference in connection with this Agreement, Rite Aid shall first consult the Attorney for the USAO, or his designee, to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the USAO and Rite Aid; and (b) whether the USAO has any objection to the release or proposed statement.

#### **MISCELLANEOUS PROVISIONS**

15. This Agreement sets forth all the terms of the agreement between Rite Aid and the USAO. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the Attorney for the United States for the Southern District of West Virginia, the attorneys for Rite Aid, and a duly authorized representative of Rite Aid.
16. The USAO and Rite Aid consent to the disclosure of this Agreement, and information about this Agreement, to the public.
17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute the same agreement.

[Signatures to Follow on Next Page]

**SIGNATURE FOR RITE AID CORPORATION**

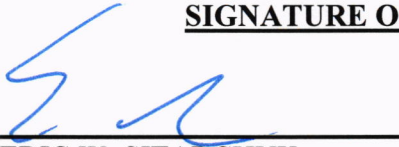


JAMES COMITALE

Sr. Vice President, General Counsel and Corporate Secretary  
Rite Aid Corporation  
30 Hunter Lane  
Camp Hill, PA 17011

DATED: December 19, 2017

**SIGNATURE OF RITE AID CORPORATION'S ATTORNEY**



ERIC W. SITARCHUK

KELLY A. MOORE  
Morgan, Lewis & Bockius LLP

DATED: December 26, 2017

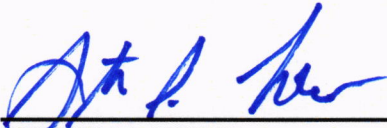


**SIGNATURES FOR THE USAO FOR THE SDWV**



MICHAEL B. STUART  
United States Attorney  
For the Southern District of West Virginia

DATED: January 24, 2018



STEVEN I. LOEW  
Chief, Violent Crime and Narcotics  
Assistant United States Attorney  
For the Southern District of West Virginia

DATED: January 24, 2018



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