



U.S. Department of Justice

*United States Attorney
Northern District of California*

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San Francisco, California 94102-3495*

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March 29, 2013

Eugene Illovsky
Morrison Foerster LLP
425 Market Street
San Francisco, CA 94105-2842
Eillovsky@mofo.com

Re: *United Parcel Service*

Dear Mr. Illovsky:

This letter sets forth the Non-Prosecution Agreement ("Agreement") between the United States Department of Justice (the "Government") and United Parcel Service, Inc., a Delaware Corporation headquartered in Atlanta, Georgia, and any and all subsidiaries of United Parcel Service (collectively "UPS, Inc." or the "Company"). UPS, Inc., by its undersigned attorney, pursuant to the authority granted by UPS, Inc.'s Board of Directors, enters into this Agreement with the Government. As used in this Agreement, "UPS, Inc." shall be read to include UPS, Inc. and all of its subsidiaries, unless otherwise stated.

The Government has notified UPS, Inc. that, based upon an investigation by the Government and the Drug Enforcement Administration ("DEA"), in its view, UPS, Inc., engaged in the conduct described in Attachment A hereto. UPS, Inc. admits, acknowledges and accepts responsibility for the conduct set forth in Attachment A.

In exchange for a non-prosecution agreement, the parties have agreed to the following terms and conditions:

Non-Prosecution for Criminal Liability

1. In consideration of the Company's entering into this Agreement and its commitment to: (a) accept corporate responsibility for the conduct described in Attachment A; (b) forfeit \$40,000,000 to the United States; (c) enforce the Compliance Program set forth in Attachment B; and (d) otherwise comply with the terms of this Agreement, the Government agrees not to prosecute UPS, Inc. for (1) the conduct described in Attachment A; or (2) any other conduct relating to the transportation or distribution of controlled substances and prescription drugs for illegal Internet pharmacies from January 2002 through the date of this Agreement that was either the subject matter of the investigation that led to this Agreement or known to the Government as of the date of this Agreement, including but not limited to, conspiracy, 18 U.S.C. § 371, 21 U.S.C. § 846, 18 U.S.C. § 1956(h); distribution of controlled substances, 21 U.S.C. §

841(a)(1); money laundering, 18 U.S.C. §§ 1956 or 1957; and misbranding of pharmaceuticals, 21 U.S.C. §§ 331, *et seq.* This Paragraph does not provide any protection against prosecution for illegal activities, if any, committed in the future by UPS, Inc. or its subsidiaries, nor does it apply to any illegal conduct that may have occurred in the past which is not described in this Paragraph.

Breach of Agreement

2. It is understood that if, in the two years following execution of this Agreement, the Government determines in the reasonable exercise of its sole discretion, that the Company or any of its employees, officers or directors: (a) has deliberately given false, incomplete, or misleading testimony or information in the investigation that led to this Agreement, (b) has committed any knowing and intentional criminal conduct relating to the distribution of controlled substances or prescription drugs by illegal Internet pharmacies after the date of this Agreement, or (c) has otherwise deliberately violated any provision of this Agreement, including that set forth in Attachment B, the Company shall, in the sole discretion of the Government, be subject to prosecution for any Federal criminal violation of which the Government has knowledge, including a prosecution based upon the conduct specified in Attachment A. Conduct by a UPS, Inc. employee who is not an officer or director will not constitute breach of this Agreement unless that employee acted in the course and scope of his or her employment, received the training concerning this agreement required by the Compliance Program contained in Attachment B, and intended to benefit the company.

3. The Company agrees that it is within the sole discretion of the Government to determine whether there has been a deliberate violation of this Agreement. The Company understands and agrees that the exercise of discretion by the Government under this Agreement is not reviewable by any court. In the event that the Government preliminarily determines that the Company has deliberately violated this Agreement, the Government shall provide written notice to the Company of that preliminary determination sufficient to notify the Company of the conduct that constitutes the breach and shall provide the Company with thirty calendar days from the date of that written notice in which to make a presentation to the Government to demonstrate that no deliberate breach has occurred, or to the extent applicable, that the breach has been cured, or that the Government should, in any event, neither revoke the Agreement nor prosecute the Company. The Government shall thereafter provide written notice to the Company of its final determination regarding whether a deliberate breach has occurred and has not been cured and whether the Government will revoke the Agreement.

4. UPS, Inc. further understands and agrees that any prosecution following such determination may be premised on any information provided by UPS, Inc. and its employees, officers and directors to the Government and any leads derived therefrom. UPS, Inc. agrees that, in any such proceeding, it will not seek to suppress the use of any such information, or any leads derived therefrom, under the United States Constitution, Federal Rule of Evidence 410, Federal Rule of Criminal Procedure 11(f), or any other rule; that it will not contradict in any such proceeding the Agreed Statement of Facts in Attachment A; and that it will stipulate to the

admissibility of the Agreed Statement of Facts in Attachment A. UPS, Inc. further agrees that it shall not contest the authenticity of documents and materials provided to the Government by UPS, Inc. and/or UPS, Inc.'s subsidiaries in the course of the Government's investigation, but UPS, Inc. otherwise may challenge the admissibility of any such materials in any prosecution of UPS, Inc. By signing this Agreement, UPS, Inc. waives all rights in the foregoing respects.

Tolling of the Statute of Limitations

5. UPS, Inc. agrees to toll and to exclude from any calculation of time the running of the statute of limitations for any criminal conduct relating to the distribution of controlled substances or prescription drugs by illegal Internet pharmacies for two years from the date of execution of this Agreement. By this Agreement, the Company expressly intends to and hereby does waive its rights to make a claim premised upon the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay. Such waivers are knowing, voluntary, and in express reliance upon the advice of the Company's counsel.

Acceptance of Responsibility

6. UPS, Inc. accepts and acknowledges responsibility for the acts of its present and former employees, as set forth in the Agreed Statement of Facts in Attachment A. UPS, Inc. further agrees that the factual statements set forth in the Agreed Statement of Facts in Attachment A are accurate. UPS, Inc. condemns and does not condone the conduct set forth in the Agreed Statement of Facts in Attachment A, and has taken steps to prevent such conduct from occurring in the future, including the creation and implementation of the Corporate Compliance Agreement set forth in Attachment B.

Cooperation

7. During the term of this Agreement, UPS, Inc. will continue to cooperate fully with the Government and the DEA in any ongoing investigation of individuals or entities who may have been involved in the distribution of controlled substances and prescription drugs by illegal Internet pharmacies, including the conduct described in Attachment A. UPS, Inc. agrees that its cooperation shall include, but is not limited to, the following:

- a. timely provision to the Government and the DEA of all non-privileged documents and other materials, including documents and materials located outside the United States (and not otherwise prohibited from disclosure to the Government by foreign law), that the Government and the DEA may request; and
- b. its best efforts upon sufficient notice to make available in a timely and voluntary manner to the Government and/or the DEA all present officers, directors and employees for sworn testimony before a federal grand jury or

in a federal trial and interviews with federal law enforcement authorities. Cooperation under this paragraph will include identification of witnesses not previously identified who, to the knowledge of UPS, Inc., may have material information regarding the matters under investigation.

8. UPS, Inc.'s obligation to cooperate pursuant to the preceding paragraph is not intended to apply if a prosecution by the Government is commenced against UPS, Inc. as a result of a breach of this Agreement.

9. Nothing in this Agreement is intended to request or require UPS, Inc. to waive its attorney-client privilege or work production protections and no such waiver shall be deemed effected by any provision herein.

10. With respect to any information, testimony, document, record, or tangible evidence provided to the Government pursuant to this Agreement, UPS, Inc. consents to any and all disclosures to other government agencies, whether agencies of the United States or a foreign government, of such materials as the Government, in its sole discretion, shall deem appropriate.

Notice of Cooperation

11. The Government agrees to bring to the attention of governmental authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of UPS, Inc.'s cooperation and remediation, upon request. By agreeing to provide this information to any such authorities, the Government is not agreeing to advocate on UPS, Inc.'s behalf, but rather is providing facts to be evaluated independently by those authorities.

Monetary Payment

12. UPS, Inc. agrees to make the above-described \$40,000,000 payment to the federal government as a result of the conduct described in Attachment A. UPS, Inc. shall pay this sum by certified check or bank cashier's check made payable to the United States of America within five (5) business days of the date of execution of this Agreement by the parties. As a result of UPS, Inc.'s conduct, including the conduct set forth in Attachment A, the parties agree that the United States could institute a civil forfeiture action against certain funds held by UPS, Inc. and that such funds would be forfeitable pursuant to Title 21, United States Code, Section 881. UPS, Inc. hereby acknowledges that the forfeited amount was involved in the conduct described in Attachment A. UPS, Inc. hereby agrees that the funds paid by UPS, Inc. pursuant to this Agreement shall be considered substitute *res* for the purpose of administrative forfeiture to the United States pursuant to Title 21, United States Code, Section 881, and UPS, Inc. releases any and all claims it may have to such funds. The total amount paid is a final payment and shall not be refunded should the Government later determine that UPS, Inc. has breached this Agreement and commence a prosecution against UPS, Inc. Further, nothing in this Agreement shall be

deemed an agreement by the Government that this amount is the maximum criminal fine or forfeiture that may be imposed in any such prosecution and the Government shall not be precluded in such a prosecution from arguing that the Court should impose a higher fine or forfeiture. The Government agrees, however, that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amount paid pursuant to this Agreement be offset against whatever fine or forfeiture the Court shall impose as part of its judgment. UPS, Inc. understands that such a recommendation will not be binding on the Court. UPS, Inc. acknowledges that no tax deduction or insurance claim may be sought in connection with this payment.

Corporate Compliance Agreement

13. UPS, Inc. agrees to implement the Corporate Compliance Agreement set forth in Attachment B. UPS, Inc. will begin to implement the measures set forth in Attachment B within thirty (30) days of the date of execution of this Agreement by the parties. UPS, Inc. agrees that it will maintain these measures at least through the term of this Agreement.

Basis for Agreement

14. The Government enters into this Agreement based upon the following facts and circumstances: (a) UPS, Inc.'s ongoing cooperation with the Government and the DEA since May of 2007; (b) UPS, Inc.'s willingness to accept responsibility for the conduct of its present and former officers and employees; (c) UPS, Inc. has undertaken, and has agreed to undertake, remedial measures to ensure that this conduct will not recur; and (d) UPS, Inc.'s demonstration of compliance with federal drug and money laundering laws.

Statements to the Media and Public

15. The Company and the Government agree that this Agreement will be disclosed to the public.

16. UPS, Inc. agrees that it will not make any public statement contradicting Attachment A. If the Government notifies the Company that it has preliminarily determined, in its sole discretion, that the Company has made any such contradictory statement, the Company may avoid a finding of breach of this Agreement by repudiating such statement, in a manner satisfactory to the Government, both to the recipients of such statement and to the Government within 48 hours after receipt of notice from the Government. The Company consents to the public release by the Government of any such repudiation. Consistent with the above, the Company may avail itself of any legal or factual arguments available to it in any litigation, investigation or proceeding (not involving the Government), as long as doing so does not otherwise violate any term of this Agreement. This paragraph is not intended to apply to any statement made by any individual in the course of any actual or contemplated criminal, regulatory or administrative proceeding or civil case initiated by any governmental or private party against

such individual.

Term of Agreement

17. This Agreement shall be in effect for a period of two years from the date of its execution. UPS, Inc. may petition the Government to shorten the term of the Agreement after one year. The Government has sole discretion to determine whether a shorter term is warranted.

Corporate Authority

18. UPS, Inc. hereby warrants and represents that it is authorized to enter into this Agreement on behalf of itself and its subsidiaries, and that the person signing on behalf of UPS, Inc. has been granted authority by the UPS, Inc. Board of Directors to bind UPS, Inc. and its subsidiaries.

Binding Nature of the Agreement

19. It is understood that this Agreement is binding on UPS, Inc. and the United States Attorney's Office for the Northern District of California, the United States Attorneys' Offices for each of the other ninety-three judicial districts of the United States and the United States Department of Justice, but that this Agreement does not bind any other federal agencies, or any state or local enforcement or regulatory agencies. The Government will bring the cooperation of UPS, Inc. and its compliance with its obligations under this Agreement, its remedial actions and proactive measures to the attention of such agencies and authorities if requested to do so by UPS, Inc.

Successor Liability

20. UPS, Inc. agrees that in the event it sells, merges or transfers all or substantially all of its business operations as they exist during the term of this Agreement, whether such sale is structured as a stock or asset sale, merger, or transfer, it shall include in any contract for sale, merger or transfer provisions binding the purchaser or any successor-in-interest thereto to the obligations described in this Agreement. UPS, Inc. expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entities unless and until such acquirer or successor formally adopts and accepts this Agreement.

Notice

21. Any notice to UPS, Inc. under this Agreement shall be given by personal delivery, overnight delivery by a recognized courier service, or registered or certified mail, addressed to the General Counsel of UPS, Inc., 55 Glenlake Parkway NE, Atlanta, GA 30328, with a copy to Eugene Illovsky, Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105.

Required Signatures, Authorization and Corporate Seal

22. By signing this Agreement, UPS, Inc.'s duly authorized representative and UPS, Inc.'s counsel acknowledge that the terms set forth above accurately reflect the parties' understanding of the Non-Prosecution Agreement between UPS, Inc. and the Government.

23. Two original copies of this Agreement shall be executed, one of which shall be delivered to the General Counsel of UPS, Inc., and one of which shall be delivered to Kirstin M. Ault, Assistant United States Attorney, Northern District of California.

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Complete Agreement

24. This Agreement sets forth the terms of the Non-Prosecution Agreement between UPS, Inc. and the Government. No promises, agreements, or conditions have been entered into other than those set forth in this Agreement. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral.

25. No amendments or modifications to this Agreement shall be valid unless they are in writing and signed by the Government, the attorneys for UPS, Inc., and a duly authorized representative of UPS, Inc.

FOR THE UNITED STATES :

DATED: 3/29/13

MELINDA HAAG
United States Attorney



KIRSTIN M. AULT
Assistant United States Attorney

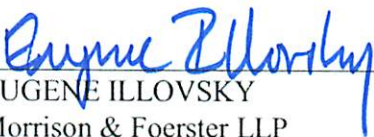
FOR UNITED PARCEL SERVICE:

DATED: 3/29/13



TERI PLUMMER MCCLURE
Senior Vice President of Legal,
Compliance and Public Affairs,
General Counsel & Corporate Secretary

DATED: 3/29/13



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