

EXHIBIT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK AND THE STATE OF CALIFORNIA, THE STATE OF CONNECTICUT, THE STATE OF ILLINOIS AND THE COMMONWEALTH OF PENNSYLVANIA,

No. 1:19-cv-05934 (BMC)

Plaintiffs,

-against-

UNITED STATES POSTAL SERVICE and LOUIS DeJOY, *in his official capacity as Postmaster General*,

Defendants.

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SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the City of New York, acting through its Corporation Counsel, the State of California, the State of Connecticut, the State of Illinois, and the Commonwealth of Pennsylvania, acting through their respective Attorneys General, (collectively, “Plaintiffs”) and the United States Postal Service and Louis DeJoy, in his official capacity as Postmaster General (collectively, “USPS”). Plaintiffs and the USPS are collectively referred to herein as the “Parties.”

WHEREAS, the instant action is currently pending in the United States District Court for the Eastern District of New York, Docket Number 1:19-cv-05934 (BMC), entitled “The City Of New York, the State of California, the State of Connecticut, the State of Illinois, and the Commonwealth of Pennsylvania v. United States Postal Service and Louis DeJoy, in his official capacity as Postmaster General”;

WHEREAS, on October 22, 2019, Plaintiffs the City of New York and the State of California commenced the instant action against Defendants United States Postal Service and the United States Postmaster General (“USPS”), alleging that the USPS accepted for delivery and transmitted packages that the USPS knew or had reasonable cause to believe contained cigarettes in violation of the cigarette nonmailability provision of the Prevent All Cigarettes Trafficking Act, 15 U.S.C. § 375 *et seq.* and 18 U.S.C. § 1716E (“PACT Act”);

WHEREAS, on January 6, 2020, Plaintiffs the City of New York and the State of California filed an Amended Complaint to add the State of Connecticut, the State of Illinois and the Commonwealth of Pennsylvania as additional plaintiffs;

WHEREAS, on February 16, 2021, the Court denied-in-part and granted-in-part the USPS’s motion to dismiss the instant action and the case proceeded to discovery;

WHEREAS, the USPS has denied the allegations of unlawful conduct or wrongdoing and has asserted various defenses to the Plaintiffs' Amended Complaint;

WHEREAS, in order to resolve the issues pending between the Parties without the risks, expenses, delays, and uncertainties of further litigation, the USPS and Plaintiffs agree to settle this dispute under the terms and conditions of this Settlement Agreement set forth below;

WHEREAS, the Parties agree that this Settlement Agreement is in the public interest, is a compromise of disputed claims, and is an appropriate means of resolving the instant action;

WHEREAS, this Settlement Agreement shall not constitute an admission of liability or fault on the part of the USPS;

WHEREAS, the goal of this Settlement Agreement is to enhance the USPS's identification of Cigarette Packages, as defined below, and to remove them from the USPS's delivery system in furtherance of the purposes of the PACT Act as articulated by Congress, including creating strong disincentives to illegal cigarette smuggling, providing government enforcement officials with more effective enforcement tools to combat cigarette smuggling, making it more difficult for cigarette traffickers to engage in and profit from their illegal activities, increasing collection of excise taxes on cigarettes and reducing tax evasion, and protecting the public health, including reducing youth access to cigarettes;

WHEREAS, the Parties agree in the Settlement Agreement to form and serve on a Joint Committee to continue to discuss and collaboratively advance the goals of the Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein, and in further consideration of the Parties' reliance upon the substantive accuracy and good faith of the representations and submissions made by each Party, the Parties intend to be legally bound and mutually agree as follows:

I. Definitions

- A. The terms "Parties" and "Party" means the USPS and any and all Plaintiffs.
- B. The term "USPS" means the United States Postal Service, an independent establishment of the Executive Branch of the Government of the United States (39 U.S.C. § 201) and the Postmaster General, within the Postmaster General's official capacity.
- C. The term "USPIS" means the U.S. Postal Inspection Service, the law-enforcement component of the USPS.
- D. The term "DOJ" means the United States Department of Justice.

E. The term “CBP” means Customs and Border Protection, an agency within the U.S. Department of Homeland Security.

F. The term “Plaintiffs” means the City of New York, the Commonwealth of Pennsylvania, and the States of California, Connecticut, and Illinois, their agents, any consultants retained by them, and any department, agency, corporation, or other juridical entity controlled by such governments.

G. The term “ISC” means any facility where the USPS receives foreign-origin mailpieces from agents of foreign postal operators that are intended for delivery in the United States. As of the date of this Settlement Agreement, ISCs refer to the following USPS facilities: New York International Service Center; Chicago (J.T. Wecker) International Service Center; Honolulu Processing & Distribution Center; Los Angeles International Service Center; Miami International Service Center; and New Jersey International/Network Distribution Center. The USPS may modify its operations such that one or more of these facilities no longer performs the functions in the first sentence of this paragraph, and/or that other facilities do perform such functions; in such event, the scope of the term “ISC” will be understood to change accordingly. The USPS agrees to notify Plaintiffs of any changes in the list of facilities that qualify as ISCs pursuant to section IV.C.2 below.

H. The term “Cigarette” has the same meaning as in section 1(2) of the Jenkins Act (15 U.S.C. § 375(2)) as of December 26, 2020.

I. The term “Cigarette Package” means a foreign-origin mailpiece with a U.S. delivery address that (1) the USPS receives at an ISC from an agent of a foreign postal operator, (2) contains Cigarettes, and (3) enters USPS’s operational control after inspection or an opportunity to inspect by CBP.

J. The term “Sender” means a person and/or address identified on a mailpiece exterior as intending that a package be delivered via the USPS.

K. The term “Addressee” means the intended U.S. recipient identified on a mailpiece exterior.

L. The term “AED” means advance electronic data relating to customs declarations on mailpieces that the USPS receives from foreign postal operators.

M. The term “DOJ Noncompliant List” means the Attorney General’s List of Unregistered or Noncompliant Delivery Sellers established and maintained pursuant to section 2A(e) of the Jenkins Act (15 U.S.C. § 376A(e)).

N. The term “Joint Committee” means the committee described in section IV hereof.

O. The term “Court” means the U.S. District Court for the Eastern District of New York.

P. The term “Action” means the lawsuit giving rise to this Settlement Agreement (No. CV-19-5934 (BMC) (E.D.N.Y.)).

Q. The term “Competent Authority” means Congress, a court, the President, and any other person or entity external to and independent of the USPS that exercises lawful authority binding the USPS.

R. The term “Effective Date” means the date on which the Settlement Agreement takes effect as described in section II.B.

II. Form of Agreement; Term; Benchmark Agreement

A. Upon execution of the Settlement Agreement, the Parties will file a joint motion requesting that the Court enter an order (the “Court Order”) dismissing the Action with prejudice, which dismissal shall be conditioned on the Court retaining jurisdiction to enforce this Settlement Agreement and resolve disputes pursuant to Section VI. The joint motion shall include a copy of this Settlement Agreement as an exhibit. Without a Court Order retaining jurisdiction to enforce this Settlement Agreement and resolve disputes pursuant to Section VI, the Settlement Agreement shall be void, and the case will continue.

B. This Settlement Agreement will take effect upon the date the Court signs the Court Order (the “Effective Date”) requested in section II.A.

C. The terms of the Settlement Agreement may be modified only by a subsequent written agreement signed by all Parties. Such amendment or modification must be signed by a representative of each Party who has the power to bind that Party.

D. If the Parties are able to reach the Benchmark Agreement referenced in paragraph E below, the Settlement Agreement will terminate six (6) years after the date on which the AED screening pursuant to section III.C.1 is implemented. If the Parties are unable to reach the Benchmark Agreement, the Settlement Agreement shall terminate three (3) years after the date on which the AED screening pursuant to section III.C.1 is implemented. Notwithstanding the term of the Settlement Agreement stated here, section III.D.3 governs the termination of the USPS’s practice of returning Cigarette Packages to foreign postal operators.

E. Subsequent to the Effective Date, the Parties shall engage in reasonable, good faith efforts to reach a further agreement (“Benchmark Agreement”), which shall be incorporated into the Settlement Agreement. The Benchmark Agreement must be signed by a representative from each Party who has the power to bind that Party. Any Benchmark Agreement shall establish, among any other relevant matters:

1. Certain measurable criteria that shall be reasonably designed to measure the USPS’s performance of its commitments under the Settlement Agreement,

with the goal of enhancing the USPS's identification of Cigarette Packages and removing them from the USPS's delivery system ("Criteria"). Criteria shall include the extent to which the USPS has improved its methods for identifying Cigarette Packages, including the effectiveness of the USPS's electronic and manual screening and such other detection methods as may be adopted by the USPS pursuant to consideration by the Joint Committee (e.g., canine or chemical detection). Criteria shall also include a method(s) to measure the quantities of Cigarette Packages entering the ISCs (e.g., compliance checks analogous to a Secret Shopper program), to the extent the Parties agree upon such methods.

2. The methodology and system parameters for measuring the USPS's performance against the Criteria;
3. Periodic reporting of measurement results;
4. Confidentiality of data used to operate the measurement system and to perform other tasks under the Benchmark Agreement.

III. USPS's Commitments

A. Compliance Manager

1. Within 6 months of the Effective Date, the USPS shall designate an employee or contractor as responsible for overseeing compliance with the PACT Act and provide the individual written guidance outlining the job responsibilities ("Compliance Manager"). This individual shall have the requisite training and experience to carry out these duties and will have sufficient authority to oversee the USPS's efforts to comply with the PACT Act, including:
 - a) Serve on the Joint Committee as set forth in IV.A.1;
 - b) Verify (1) the names and addresses on the DOJ Noncompliant List are added to the AED system; (2) holds on packages from those names and addresses are occurring; and (3) the DOJ Noncompliant List is distributed to the individual(s) conducting human review of AED as referenced in section III.C.1;
 - c) Review the internet searches and test purchases described in section III.C.1.d.2 and e.2;
 - d) Verify (1) the names and addresses identified in section III.C.1.d are resulting in holds on packages from those names and addresses; and (2) the list of those names and addresses is being distributed to the individuals conducting human review of AED discussed in section III.C.1;

- e) Verify the transfer to CBP as set forth in section III.D.1.a and the use of the process set forth in III.D.1.c is occurring appropriately and consistently;
- f) Verify training, education and awareness is provided as set forth in section III.C.1.g;
- g) Evaluate any need for adjustment or updates in training, education, awareness, investment in technology or equipment, or policies, procedures, and practices;
- h) Verify the issuance of letters to all addressees of Cigarette Packages, informing postal customers that cigarettes are nonmailable, as referenced in section III.D.2.

B. Existing Detection and Interdiction Practices. In addition to the processes and practices described in section III.C, the USPS shall continue its use of those processes, practices, tools and methods heretofore utilized to detect and interdict Cigarette Packages, except where modified by this Settlement Agreement.

C. Enhanced Processes and Practices for Detection and Interdiction of Cigarette Packages

1. Electronic AED and Manual Screening

- a) *Contents descriptions.* The USPS will employ a sequence of automated and human review of AED pertaining to package contents to match keywords aimed at detecting Cigarette Packages. Upon Plaintiffs' request, the USPS will provide Plaintiffs with any then-current list of keywords. Plaintiffs may propose the addition, deletion, or modification of keywords at any time, and the USPS will not unreasonably reject Plaintiffs' proposals.
- b) *Names and addresses.* By November 1, 2022, or as soon as practicable after that date if good cause can be shown, the USPS shall modify its relevant information technology systems and screening protocols and make such other changes as are necessary to search AED for Sender and Addressee names and Sender and Addressee addresses in order to alert the USPS to the possible presence of nonmailable Cigarette Packages. The USPS will provide Plaintiffs with quarterly updates on the status of implementing the measures under this paragraph.
- c) *Integrity of Holds.* The USPS shall ensure (1) that its AED screening system provides for the placement of alerts ("holds") on any suspected Cigarette Packages; (2) that such holds are communicated to such other USPS data systems and equipment as is necessary to ensure

that such packages are diverted from the mailstream and subjected to the response measures detailed in section III.D.1; and (3) that such packages actually are diverted from the mailstream and subjected to such response measures.

d) *Initial List of Names and Addresses.* Not later than 14 days prior to the anticipated implementation date of the system modifications prescribed in paragraph b, the USPS shall develop an initial list of name and address keywords to be used for purposes of such screening (“USPS Screening List”). The list shall include the following:

- (1) Any person then identified on the DOJ Noncompliant List;
- (2) Any person that the USPS has identified, upon a reasonable search of at least one publicly available internet search engine, as currently stating or advertising that they will mail Cigarettes to the United States in return for payment, and as confirmed through test purchase by the USPS or third parties, including Plaintiffs; and
- (3) Any Addressee, Sender, Sender address or Recipient address that has previously been associated with the sending, receipt, or attempted sending or receipt of such quantity of Cigarette Packages that the USPS determines the name or address to constitute reasonable cause to suspect future shipments of Cigarette Packages associated with that name or address, based upon a reasonable review of available USPS records (including, but not limited to, such information from Cigarette Packages that were returned to the sender of such packages, USPS investigative case files and historical AED);
- (4) Any Addressee, Sender, Sender address or Recipient address provided to the USPS by Plaintiffs with reasonable documentation that the relevant name and/or address have been used in the transaction or business of mailing cigarettes through the USPS, if the USPS determines the name and/or address to constitute reasonable cause to suspect future shipments of Cigarette Packages associated with that name and/or address.

e) *Updates to list.* The USPS will add, delete, or modify entries on the USPS Screening List and update the AED system holds accordingly, based on the following sources of information:

- (1) Any updates to the DOJ Noncompliant List;
- (2) Periodic internet searches and test purchases as described in paragraph d.2, conducted not less frequently than each quarter;

(3) Periodic reviews of available internal records (including review of AED and manual detection) as described in paragraph d.3, conducted not less frequently than each quarter;

(4) Ongoing assessment and periodic review of AED as described in paragraph d.3 and d.4.

f) *List distribution.* The USPS will provide a copy of the initial USPS Screening List to Plaintiffs not later than 7 days following its adoption under paragraph d. The USPS will provide Plaintiffs any updates to the USPS Screening List on a quarterly basis, clearly showing any additions, deletions, or other modifications. The USPS may redact information on any copy of the USPS Screening List (or any update) provided to Plaintiffs to the extent that (1) provision of such information is prohibited by law or (2) the provision of such information is associated with an open investigation.

g) Development and Implementation of Policies, Procedures, Internal Guidance, and Training

(1) Not later than 90 days after the Effective Date, the USPS shall develop amended policies, procedures, and internal guidance documents to comply with its obligations in the Settlement Agreement and the requirements under the PACT Act regarding Cigarette Packages. The USPS will consider Plaintiffs' recommendations when developing any updates and will promptly provide a copy of any issued updates to Plaintiffs. Upon Plaintiffs' reasonable request, the USPS will explain any decision not to adopt a recommendation by Plaintiffs.

(2) Not later than 90 days after the Effective Date, the USPS will develop training materials that instruct the relevant personnel regarding (i) how to identify suspected Cigarette Packages through visual inspection and (ii) what to do with such suspected Cigarette Packages, consistent with the Settlement Agreement. These training materials shall include corrective information, as necessary, to address and supersede prior inconsistent PACT Act instructions. Such materials may vary for different internal audiences, to the extent that the USPS deems appropriate. The USPS will solicit and consider Plaintiffs' input prior to issuing the instructions and training materials. Plaintiffs' proposed changes shall not be unreasonably rejected.

(3) Not later than 120 days after the Effective Date, the USPS will take reasonable steps to provide the instructions and

appropriate training developed under this section III.C.1.(g) to relevant personnel, including all relevant personnel hired thereafter, at each ISC and any other facility where the USPS reasonably determines that such detection efforts could materially increase the likelihood of detecting Cigarette Packages.

(4) The USPS shall take reasonable steps to educate relevant personnel about all policies, procedures, internal guidance relative to Cigarette Packages under the PACT Act by use of training materials, presentations and/or standup talks, and other means, and such training shall provide that questions regarding known or suspected Cigarette Packages should be directed to such personnel's respective supervisor and/or the appropriate contact person(s) at the USPS.

(5) The USPS will take reasonable steps to develop a Cigarette Package profile based on information and intelligence about Cigarette Packages. The USPS shall take reasonable steps to educate and train relevant employees regarding Cigarette Package profiles and handling of known or suspected Cigarette Packages and provide such education and training to all USPS employees or contractors that handle or process packages.

(6) Within 180 days after the Effective Date, the USPS shall issue a communication to all USPS employees and relevant contractors describing (a) the USPS's commitment to fulfill its obligations under the PACT Act, (b) the USPS's new policies and processes regarding suspected or confirmed Cigarette Packages, and (c) the appropriate contact person(s) at the USPS for USPS employees seeking further information.

(7) Not less frequently than once each fiscal year, following the initial instructions and training described in paragraphs 1-3, the USPS will ensure that relevant personnel receive refresher training on visual screening.

(8) On the basis of information available to the USPS, including recommendations from Plaintiffs, the USPS may, from time to time, update the instructions and related training materials. At a minimum, the USPS shall annually review and update, as necessary, its policies, procedures, practices, internal guidance and training materials. The USPS will consider Plaintiffs' recommendations when developing any updates and will promptly provide a copy of any issued updates to Plaintiffs.

(9) Upon Plaintiffs' reasonable request, the USPS will explain any decision not to adopt a recommendation by Plaintiffs.

(10) The USPS will ensure that all Cigarette Packages identified by visual inspection are routed for appropriate review and response pursuant to section III.D.1.

(11) For purposes of this Section, "relevant personnel" means any employee or contractor whose duties and responsibilities may include detecting or interdicting Cigarette Packages, or who performs other functions relevant to the Settlement Agreement.

2. *Limitations on USPS screening; Good faith collaboration regarding undetected or erroneously delivered packages.* The USPS will perform electronic AED screening and manual screening as described in section III.C.1. If any Plaintiff believes that any deliveries of one or more Cigarette Packages may be a result of a breach of the USPS's commitments under the Settlement Agreement, that Plaintiff will bring the matter to the USPS's attention in the manner specified in the dispute resolution process under section VI. Despite the USPS's best efforts, no AED system or manual detection system is perfect, and there may be instances in which they fail to fulfill their purpose (e.g., some Cigarettes may not be detected and diverted), and those occasional instances shall not be violative of this Settlement Agreement.

D. The USPS's Handling of Cigarette Packages

1. For each package that the USPS identifies as a suspected Cigarette Package, the USPS will detain the package pursuant to Administrative Support Manual ("ASM") §§ 274.31d and .32 (or any successor regulations), whereupon the USPS will engage in one of the following response measures:

a) *CBP.* The USPS may, in its discretion, offer the package to CBP to determine whether CBP has an interest in assuming custody of the package. To the extent that CBP subsequently returns the package to USPS custody, the USPS will engage in a response measure described in paragraphs (b) or (c) or collaborate with CBP on an alternative disposition that does not involve return of the package to the foreign country of origin (or foreign postal operator) or delivery to the Addressee (unless otherwise mandated or authorized as described in section III.E).

b) *Law enforcement investigation.* The USPS may, in its discretion, retain the package for investigative purposes.

c) *Vestiture and destruction.* If the USPS determines not to employ either of the measures described in paragraphs (a) and (b) above, the

USPS will apply measures aimed at vesting the USPS with legal authority to dispose of any nonmailable matter contained in the package. Such measures include the USPS's established procedures and practices pursuant to Postal Operations Manual ("POM") § 691.584 (or any successor regulations) intended to determine that nonmailable matter has been abandoned, or such alternative measures that the USPS determines to be appropriate and consistent with relevant laws. Any measure aimed at vestiture of title may include procedures and practices to provide due process to Senders, Addressees, or other parties with putative possessory interests in a package, including administrative appeal rights under 39 C.F.R. Part 953. Upon vestiture of title in the USPS, the USPS will provide for one of the following dispositions of any nonmailable Cigarettes found in the package:

- (1) Retention as evidence;
- (2) Transfer to another governmental entity for investigative or evidentiary purposes; or
- (3) Prompt destruction through any method of destruction that the USPS determines to be appropriate.

2. Subsequent to the vestiture of title pursuant to section III.D.1.c, the USPS shall issue letters (template attached as Appendix A) to the Addressees of Cigarette Packages informing such Addressees that Cigarettes are nonmailable and subject to seizure and forfeiture, and may subject customers to civil or criminal liability.

3. The USPS shall not return confirmed Cigarette Packages to a foreign postal operator absent a contrary directive by a Competent Authority as per section III.E. Inadvertence, mistake, or lack of knowledge of USPS employees that result in the return of confirmed Cigarette Packages to foreign postal operators shall not be considered a violation of this Settlement Agreement and may call for additional training and/or discipline and/or counseling of the offending employees to prevent recurrence of such events. The USPS shall be responsible for taking any action it determines appropriate in such circumstances. Notwithstanding section II.D, this term shall continue indefinitely.

4. For each Cigarette Package in which title has vested in the USPS pursuant to section III.D.1.c., the USPS shall provide Plaintiffs the following information, as derived after the process set forth in section III.D.1.c, about such Cigarette Package not less often than quarterly: the names and addresses of the Sender and the intended Addressee and the quantity of Cigarettes contained in the Cigarette Package, and other information the USPS has about the Cigarette Package reasonably requested by Plaintiffs (including, for example, tracking information and photographs) to the extent not restricted by law or regulation. Except for

information specifically obtained about the Cigarette Package in which title has vested in the USPS pursuant to section III.D.1.c., other information from USPIS databases or files need not be disclosed. The Chief Postal Inspector, in his sole discretion, shall determine when the sharing of particular information would not be appropriate (for example, and not limited to, where the Chief Postal Inspector determines that disclosure might involve ongoing law-enforcement activities or national security concerns). Such review will be on a case by case basis and the USPS shall notify Plaintiffs of the general category for the reason (e.g., National Security, Ongoing Criminal Investigation) why providing the particular information would not be appropriate. Individual determinations by the Chief Postal Inspector under this paragraph shall not be subject to section VI [Mandatory Dispute Resolution].

5. Other provisions

a) *Implementation Date.* The provisions of section III.D will take effect not later than 120 days after the Effective Date.

b) *General Exclusivity of Response Measures.* Subject to section III.D.3, the USPS will not transfer or deliver any package that it knows or has reasonable cause to believe to be a Cigarette Package, or any Cigarettes contained in such a Cigarette Package, to any party outside of the USPS, including, but not limited to, the Sender or Addressee of the package and foreign postal operators, except:

- (1) As consistent with any provision of section III.D.1;
- (2) Pursuant to section III.E. or
- (3) With respect to mailable contents as provided in POM § 691.584 (or any successor regulation).

c) *Internal Transfers.* The USPS may, in its discretion, transfer Cigarette Packages or their contents between facilities of the USPS and/or its agents and contractors in order to efficiently administer the measures described in section III.D.1.

d) *Recordkeeping*

(1) The USPS shall prepare and provide to Plaintiffs a quarterly report that includes monthly statistics for each ISC, including, to the extent it is available, for suspected Cigarette Packages sent to each ISC from other facilities:

- (a) The quantity of Cigarette Packages detected through manual screening;

(b) The quantity of Cigarette Packages detected through AED screening;

(c) The quantity of parcels the USPS suspected contained Cigarette Packages that the USPS transferred to CBP for inspection;

(d) The quantity of parcels the USPS suspected contained Cigarette Packages that CBP refused to accept for inspection, if any;

(e) The quantity of Cigarette Packages CBP returned to the USPS;

(f) The quantity of parcels transferred to CBP that were not returned to the USPS.

e) Access to Facilities

To permit the effective exercise of the work of the Joint Committee, the USPS shall provide Plaintiffs with reasonable access to USPS facilities, including for joint operations at ISCs, for the purposes of (1) reviewing the status of the USPS's implementation of its commitments under section III and (2) identifying and evaluating potential recommendations for improvements to USPS policies, processes, and practices for detecting and handling Cigarette Packages. Any facility access will be accompanied by at least one USPS employee or agent knowledgeable of relevant operations at the facility, as well as by USPS's counsel and/or Joint Committee representative(s). The USPS shall not unreasonably withhold consent, but the USPS may impose reasonable restrictions on access and information-gathering in light of applicable legal or operational considerations. A request for access may be considered unreasonable, and the USPS may reasonably withhold consent, where the Plaintiffs' cumulative requests to visit USPS facilities exceed one per quarter. Any request by Plaintiffs to enter USPS property (including portions of such property under the operational control of CBP or any other federal entity) for the purposes listed in this paragraph shall be made to the USPS's Joint Committee representative(s). Nothing in this Settlement Agreement shall affect Plaintiffs' existing access to USPS facilities, and the Parties' existing practices for purposes unrelated to the Settlement Agreement.

E. Use of Information. The information provided to Plaintiffs under this Settlement Agreement, including sender and recipient name and address information pursuant to sections III.C.1.d,f and III.D.4, shall only be used by Plaintiffs for the purpose of civil and/or criminal law enforcement.

F. Contrary Directive by Competent Authority. Nothing in the Settlement Agreement shall prevent the USPS from engaging in practices mandated by a Competent Authority that are contrary to the Settlement Agreement, including, but not limited to, circumstances in which (a) such practices are mandated by a determination of a Competent Authority that, in whole or in part, repeals, modifies, or interprets the USPS's obligations under 18 U.S.C. § 1716E with respect to Cigarette Packages; (b) Congress or a court makes all or some relevant segment of Cigarette Packages mailable; (c) the measures described in section III.D.1.c are determined by the Competent Authority to be unlawful; or (d) an alternative disposition of one or more Cigarette Packages is ordered by the Competent Authority. Before engaging in any practices contrary to the Settlement Agreement, the USPS will notify the other Parties of the relevant Competent Authority order or other determination. Plaintiffs reserve their rights to challenge any such directive by a Competent Authority. The USPS will not solicit or seek a contrary directive from a Competent Authority with respect to the former Return to Sender policy.

IV. **Joint Committee**

A. Composition

1. The Parties shall form a "Joint Committee," which shall consist of (1) at least one member of the USPIS Office of Counsel, (2) at least one other attorney representative of the USPS, (3) the Compliance Manager, and (4) at least one attorney representative of each Plaintiff (collectively, "representatives" or "Joint Committee members"). To the extent that they are not designated as representatives, counsel for the Parties in the instant litigation also reserve the right to be a part of the Joint Committee. Each Party will identify to the other Parties its designated representatives, including all relevant contact information, prior to establishment of the Joint Committee. In the Settlement Agreement, each Party will either identify its initial representative(s) or provide contact information where initial identifications may be sent until the Party has designated a representative.

2. The Committee shall be formed within thirty (30) days of the Effective Date of the Settlement Agreement.

3. Each Party may change its designated representatives at any time, upon prior written notice to the other Joint Committee members.

4. Each Joint Committee meeting shall be attended by all of the representatives for each Party, except that, for purposes of any meeting, any Party's representative may designate another representative of that Party (or, in

the case of Plaintiffs' representatives, of another Plaintiff) to serve as that representative's proxy for that meeting.

5. Each Party shall ensure that its representatives are reasonably knowledgeable about (1) the PACT Act (18 U.S.C. § 1716E), (2) laws and practices relevant to cigarette trafficking through the mails, and (3) the Settlement Agreement. At least one USPS representative shall be knowledgeable regarding USPS operations that are used to identify and exclude nonmailable packages from the mailstream and methods of making such operations more effective.

6. Each party shall bear its own costs, expenses and fees relating to the implementation of this Settlement Agreement, including but not limited to as part of their work on the Joint Committee.

B. Functions

1. The purpose of the Joint Committee shall be (1) to discuss and coordinate the implementation of and monitor compliance with the Settlement Agreement; (2) to explore further methods and opportunities for the USPS to enhance its ability to detect and exclude Cigarettes from the mails; and (3) to explore methods and opportunities for the Parties' mutual enhancement of and cooperation in PACT Act enforcement against Senders and/or Addressees of Cigarette Packages. The Parties will perform their commitments on the Joint Committee in as a collaborative manner as possible.

2. Except as otherwise provided by law or regulation, any communication, notice, or reporting required or contemplated under the Settlement Agreement will be conveyed among representatives serving on the Joint Committee. Each Plaintiff shall refrain from contacting any officer, employee, or agent of USPS concerning matters subject to this Settlement Agreement other than through the USPS Joint Committee representatives or as authorized by a USPS Joint Committee representative(s), except that Parties will communicate with one another via litigation counsel (including the USPS's DOJ counsel) in the event of any legal action concerning the Settlement Agreement.

3. The Joint Committee shall meet at least once each calendar quarter to address issues regarding Cigarettes in the mail. The frequency of the Joint Committee meetings may be modified by agreement of the Parties.

4. Meetings shall be open to being conducted via video and/or via telephone, as agreed by the Joint Committee members prior to each meeting.

5. Meetings of the Joint Committee will be limited to members of the Joint Committee (or their designees, as discussed above), subject to modification based on the unanimous consent of all other members of the Joint Committee

C. Other Notifications

1. *Matters Relevant to USPS's Commitments.* The USPS will notify Plaintiffs and solicit their input for the USPS's consideration at least 30 days prior to issuing any of the following, unless good cause can be shown:

- a) Any notice of proposed rulemaking to modify the regulations governing the mailability of Cigarettes received from foreign postal operators;
- b) Any material change in internal regulations, policies, or standard operating procedures concerning detection of and/or response to Cigarette Packages; or
- c) Any deletion to any entry on the USPS Screening List, unless that entry has been redacted from copies of the USPS Screening List provided to Plaintiffs under section III.C.1.f.

2. *ISC Changes.* In the event of any change in the list of facilities that qualify as ISCs under section I.G, the USPS will provide Plaintiffs with notice of the change, including an explanation of how the USPS expects the change to affect performance of its obligations under the Settlement Agreement. Where possible, the USPS will endeavor to provide notice not less than 30 days before the change; where such advance notice is not possible, the USPS will provide notice to Plaintiffs as soon as practicable after the USPS's Joint Committee representative(s) become aware of the change and will include in the notice an explanation of the reasons for the lack of advance notice.

3. *Legal Actions.* In the event that any third party files a legal action against any Party (the "notifying Party") concerning acts or omissions of the USPS (1) in furtherance of the USPS's commitments under the Settlement Agreement or (2) relating to the USPS's compliance with or enforcement of the PACT Act in connection with Cigarette Packages, the notifying Party will notify the other Parties of the action not less than 15 days after the notifying Party's receipt of service of the complaint or other pleading that makes the notifying Party reasonably aware that the Settlement Agreement is implicated.

V. **No Waiver; Release**

A. Nothing in the Settlement Agreement shall constitute a waiver of, or otherwise prejudice, any position by any Party regarding (i) the interpretation of the PACT Act or any other law or precedent; (ii) any facts underlying or relevant to the Action; (iii) the application of the law to those facts; (iv) claims unrelated to the USPS's acceptance or transmission of Cigarette Packages in alleged violation of the PACT Act; or (v) any other matter. Nothing in the Settlement Agreement is intended to be, nor should anything

therein be construed as, an admission of liability or fault on the part of the USPS, its agents, servants, employees, or former employees, and the USPS denies that it is liable to Plaintiffs and denies it violated the PACT Act in any manner. The Settlement Agreement shall not constitute an admission or determination of liability.

B. The failure of any Party to enforce any provision of the Settlement Agreement with respect to any provision or deadline shall not be construed as a waiver of that Party's right to enforce provisions or deadlines of the Settlement Agreement.

C. Except pursuant to section VI, Plaintiffs waive and release any and all claims and rights to any form of judicial or administrative relief from the USPS for its alleged acceptance, disposition, or transmission of Cigarette Packages in violation of the PACT Act that were received prior to or during the term of the Settlement Agreement. This waiver and release will survive the expiration of the Settlement Agreement.

VI. Mandatory Dispute Resolution

A. The procedures and remedies provided in this section are the exclusive procedures and remedies for alleged violations of this Settlement Agreement or, pursuant to section VI.B, for alleged violations of the PACT Act in connection with Cigarette Packages. Any party to the Settlement Agreement may invoke this section and seek redress for alleged violations of the terms of the Settlement Agreement.

B. Notwithstanding section V.C., Plaintiffs may invoke the dispute resolution procedures specified in section V.I. in connection with an alleged future material failure by the USPS to satisfy the PACT Act's nonmailability provision with respect to Cigarette Packages allegedly accepted, transmitted, and/or disposed of by the USPS during the term of the Settlement Agreement. This paragraph shall not be interpreted to allow any party to seek the modification of the Settlement Agreement in any manner, including through mandatory dispute resolution or through judicial imposition of commitments not specified in the Settlement Agreement. Any modification to the Settlement Agreement, to include any alteration of party obligations pursuant to the Settlement Agreement, is limited to the provisions set forth in section II.C.

C. Any dispute regarding an alleged violation of the Settlement Agreement or, in accordance with section VI.B, an alleged violation of the PACT Act, must first be the subject of informal negotiations and the mandatory resolution process established herein. The Party raising an issue of compliance with the Settlement Agreement (the "Complaining Party") shall submit the concerns in writing to the Party that is the subject of the concern (the "Subject Party"). The Complaining Party shall provide all information upon which the Complaining Party bases its allegations of a violation, along with any other information available to the Complaining Party that may help the Subject Party to assess the Complaining Party's allegations.

D. The Subject Party shall promptly employ reasonable efforts to investigate the alleged violation and inform the Complaining Party of its position not later than 20 days

after the initial notice, unless that period is extended by mutual agreement. The Subject Party's notification will include any available information regarding the issue, an assessment of the issue's cause, and any remedial action that the Subject Party intends to take.

E. If, within 40 days after the initial notice (or any extension of that time agreed to unanimously by the Joint Committee), the Parties are unable to achieve a mutually agreeable solution upon reasonable, good-faith efforts at informal resolution at the Joint Committee level, the designated representative for Complaining Party may submit a full statement of its position to the designated representative of the Subject Party, in a further effort to seek informal resolution. The designated representative of the Subject Party must respond within 14 days after receiving the statement. The settlement agreement will identify the designated representative for each Party.

F. If the designated representative of the Subject Party does not respond within 14 days, or if the Parties are unable to achieve a mutually agreeable solution within 14 days after that official's response to the Complaining Party's statement, the Complaining Party may file a letter brief with the Court, which shall (a) certify that the relevant Parties were unable to resolve the alleged violation and (b) briefly identify the nature of the alleged violation. The Subject Party shall have 15 business days to file a response to the letter brief. After the filing of a letter brief and the response, the Parties agree to request that the Court re-open the dismissed Action for the sole purpose of resolving the alleged breach of the relevant commitment(s) under this Settlement Agreement.

G. The Parties agree that the Court may decide any dispute raised in the letter briefs filed under section VI.F.

H. In any action brought under section VI.F, the Complaining Party's initial request for relief shall be limited to specific performance of the term(s) of the Settlement Agreement alleged to have been violated sufficient to remedy the alleged violation, and shall not include contempt of court, sanctions, or relief of a punitive or monetary nature. Should the Court enter an order compelling specific performance by the Subject Party as to that issue, and the Subject Party fails to comply with the Court's order, the Complaining Party may make further requests for relief (without proceeding through the notice and informal resolution process specified in section VI.A-F) sufficient to compel compliance with the Court's order, including, but not limited to, a finding of contempt, civil penalties and damages arising from (and limited to) the failure to comply with the Court's order of specific performance.

I. Nothing in this section shall be construed as a waiver of any legal and equitable defenses available to any Subject Party.

VII. Mutual Duty of Good Faith.

Each Party will perform its commitments under the Settlement Agreement in good faith.

VIII. Confidentiality of Information

- A. The Parties have entered into a suitable agreement to ensure that confidential information shared under the Settlement Agreement is provided appropriate protection under appropriate laws and regulations (“NDA”). Notwithstanding any other provision of the Settlement Agreement, no confidential information shall be shared until such an agreement is in place. See attached NDA as Appendix B.
- B. The provisions of the NDA will survive the Settlement Agreement.

IX. Miscellaneous

- A. Nothing in this Settlement Agreement changes any obligation of the USPS under the PACT Act’s nonmailability provision with respect to Cigarette Packages.
- B. Unless otherwise specified in this Settlement Agreement, all notifications, submissions, or communications to a Party required by this Settlement Agreement shall be provided by email, unless otherwise agreed, to the signatories below and their counsel, or their successors.
- C. Each undersigned representative certifies that they are fully authorized to enter into the terms and conditions of this Settlement Agreement.
- D. This Settlement Agreement is final and binding upon the Parties, by and through their officials, agents, employees, and successors.
- E. No portion of this Settlement Agreement shall provide any rights to, or be enforceable by, any person that is not a Party to the Settlement Agreement. No person or entity may assert any claim or right as a third-party beneficiary under this Settlement Agreement.
- F. This Settlement Agreement may be executed in multiple counterparts, and faxed and/or emailed signatures will be valid and enforceable, each of which shall be deemed an original, and all of which shall constitute one and the same document.
- G. If any provision of the Settlement Agreement is held by a court of competent jurisdiction to be unlawful or invalid, that provision will be treated as severable, and the remaining provisions of the Settlement Agreement will continue in effect except as modified, amended, or terminated by agreement of the Parties under Sections II.C and II.D.
- H. This Settlement Agreement (together with any agreements expressly contemplated herein) embodies the entire agreement and understanding between the

Parties relating to the subject matter hereof and supersedes (1) all prior agreements and understandings relating to such subject matter, whether written or oral, and (2) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.

Dated: *07/25/2022*

FOR PLAINTIFFS:

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APPENDIX A

[DATE]

[CUSTOMER NAME]

[ADDRESSEE ADDRESS]

[CITY], [STATE] [ZIP CODE]

Subject: Illegal Mailing of Tobacco Products

Dear Postal Customer,

On June 29, 2010, the Prevent All Cigarette Trafficking Act (the “PACT Act”) became law. The PACT Act made it illegal, through Title 18 United States Code § 1716E, to use the U.S. Mail to ship cigarettes and most other tobacco products (“tobacco products”). In addition to Federal law, several states and localities also have specific laws prohibiting the purchase and interstate shipment of tobacco products.

A package containing contraband tobacco products bearing your name and address was intercepted. This agency has determined you ordered and sought to receive these contraband tobacco products from international sources that ship their products through the U.S. Mail. These items are nonmailable and subject to seizure and forfeiture.

Please be aware mailings in violation of the PACT Act may subject you to both Federal and State criminal and civil liability, including fines, penalties, and imprisonment.

Sincerely,

[SIGNATOR NAME]

APPENDIX B

MUTUAL NON-DISCLOSURE AGREEMENT

This mutual non-disclosure agreement (as it may be amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) is entered into by and between the United States Postal Service, an independent establishment of the Executive Branch of the United States Government, (the “Postal Service”) and the States of California, Connecticut, Illinois, the Commonwealth of Pennsylvania, and the City of New York (the “Plaintiffs”). The Postal Service and the Plaintiffs may be referred to individually as a “Party” and together as the “Parties.”

RECITALS

WHEREAS, all Parties for their mutual benefit desire to share information as provided under the settlement agreement between the Parties resolving United States District Court for the Eastern District of New York, Case No. 19-cv-05934-BMC (the “Settlement Agreement”); and

WHEREAS, the Parties desire that certain identified information as a result of the exchange of information (including discussions and correspondence), including but not limited to reports, analyses, studies, personal information of Postal Service customers, law enforcement information, financial information, ideas, strategies, business relationships and information, formulas, technical data and the like, which may be revealed during the course of the exchange of information remain confidential (hereinafter the “Confidential Information”).

AGREEMENT

NOW, THEREFORE, in order to protect the confidentiality of the Confidential Information during the exchange of information, the Parties hereby agree as follows:

1. Identification of Confidential Information Subject to This Agreement. The Party providing Confidential Information (the “Disclosing Party”) shall identify to the other Party (the “Receiving Party”) the information to which this Agreement applies and no obligations shall arise with respect to information not in writing and appropriately marked as “Confidential,” “Confidential Information,” or “Sensitive Information,” or with a similar identifier. This Agreement shall apply to oral disclosures of Confidential Information, provided that the Confidential Information is reduced to writing and appropriately identified within ten (10) calendar days after disclosure.
2. Term. This Agreement shall continue indefinitely, unless it is terminated by a mutual written agreement signed by all Parties. The Parties agree that any Confidential Information exchanged during the term of the Settlement Agreement, shall continue to be held in confidence in accordance with the terms of this Agreement following the date of termination. To the extent the settlement agreement resolving United States Eastern District of New York, Case No. 19-cv-05934-BMC (“Settlement Agreement”), or any portion thereof is terminated, this Agreement shall survive the term of the Settlement Agreement.

3. Confidentiality. The Receiving Party shall hold all Confidential Information of the Disclosing Party in confidence and shall not release it to third parties or use it for any purpose outside of the purposes authorized by the Settlement Agreement, except to the extent paragraphs 5, 6, or 7 of this Agreement are applicable, unless such disclosure is authorized in advance in writing by an authorized representative of the Disclosing Party. The Receiving Party shall take reasonable efforts to ensure that its respective employees, contractors and agents provide the same care to avoid disclosure or unauthorized use of the Disclosing Party's Confidential Information as it would provide to maintain the confidentiality of its own information, but in no event less than reasonable care. Without the prior written consent of the Disclosing Party, the Confidential Information of the Disclosing Party shall not be reproduced or used in any form by the Receiving Party except as permitted in this Agreement. Each Party shall retain all such Confidential Information in a secure place with access limited only to such of its employees, agents, and consultants who need to know such information for purposes of this Agreement and/or the implementation of the Settlement Agreement.

4. Ownership. Except as may be otherwise agreed to by the Parties in a separate written agreement, the Confidential Information shall be deemed the property of the Disclosing Party and, upon demand by the Disclosing Party, the Receiving Party shall promptly return or provide evidence of destruction of all of the Disclosing Party's Confidential Information and copies thereof, including, without limitation, any material that contains, reflects, or is derived or generated from any such Confidential Information. One copy may be retained for record purposes. Moreover, the Receiving Party may retain Confidential Information of the Disclosing Party to the extent required by law or by the Receiving Party's records retention policy which incorporates such legal requirements.

5. Exceptions for Publicly Available Information. Notwithstanding anything to the contrary set forth herein, the Receiving Party shall be under no obligation to hold in confidence or destroy at the Disclosing Party's request any Confidential Information which:

- a. is or becomes public through no fault of the Receiving Party;
- b. was known to the Receiving Party prior to the time of the disclosure by the Disclosing Party;
- c. is properly received by the Receiving Party on a non-confidential basis from any third party who is lawfully entitled to make such disclosure;
- d. is independently developed by the Receiving Party without breach of this Agreement; or
- e. is provided to the public or other parties pursuant to section 6.

6. Legal Exceptions. Notwithstanding anything to the contrary set forth herein, the Receiving Party may release or use the Disclosing Party's Confidential Information as requested by or to assist any federal, state, or local governmental body for the purpose of civil and/or criminal law enforcement or as required to be disclosed by law.

7. FOIA Exceptions. Notwithstanding anything to the contrary set forth herein, the Parties may release Confidential Information if such release is required by local, state or federal Freedom of Information laws, including the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), subject to the exemptions set forth in such local, state, or federal laws and regulations as applicable, including 5 U.S.C. § 552(b) and in Postal Service regulations at 39 C.F.R. § 265.14 (“Rules concerning specific categories of records”) and in accordance with Postal Service regulations regarding disclosures of business information set forth in 39 C.F.R. § 265.7 (“Confidential commercial information obtained from submitters”), or a successor provision dealing with similar matters or if such release is required in the reasonable judgment of the Postal Service under Title 39, U.S. Code.

8. Notice.

- a. If Confidential Information is subject to a subpoena in another arbitration, judicial, legislative or administrative proceeding, or subject to a public records request, the Party from whom the Confidential Information is sought shall notify the Disclosing Party of the pendency of the subpoena or request in writing within three (3) business days of receipt of the subpoena or request. If by the due date for compliance or the expiration of 30 days, whichever occurs first, the Disclosing Party seeks from the appropriate court an order blocking disclosure of the Confidential Information, the Party from whom the Confidential Information is sought shall not voluntarily produce the Confidential Information pending final resolution of the request for an order blocking disclosure. If by the due date for compliance or the expiration of 30 days, whichever occurs first, the Disclosing Party does not seek from the appropriate court an order blocking disclosure of the Confidential Information, the Party from whom the Confidential Information is sought may produce the Confidential Information. Nothing in this paragraph shall prevent the Party from whom the Confidential Information is sought from responding to the subpoena or public request and objecting to production on the ground that the Confidential Information is subject to the terms of this Agreement.
- b. If either Party is to disclose Confidential Information pursuant to paragraphs 6 or 7 above, it must, to the extent permitted by any applicable law or court order, provide reasonable advance notice to the other Party. Notices to be provided by one Party to the other Party hereunder shall be delivered by email to the address(es) set forth on the below signature page and to that Party’s representative on the joint committee formed under the Settlement Agreement.

9. Contracts and Subcontracts. The Receiving Party shall include the terms of this Agreement or comparable terms in each contract or subcontract when there is any possibility that the Disclosing Party’s Confidential Information will be disclosed to such contractor or subcontractor.

10. No Compensation, Warranties. The Receiving Party shall not be obligated to compensate the Disclosing Party for Confidential Information and the Receiving Party acknowledges and understands that no representations or warranties of any kind,

including, without limitation, fitness for a particular purpose, merchantability, and non-infringement, are given by the Disclosing Party with respect to the Confidential Information.

11. No Additional Obligation. Nothing in this Agreement shall be deemed to create any obligation for a Party to share information. Any obligations to provide information arise solely from the Settlement Agreement.

12. Applicable Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be construed under Federal law and governed by the Federal or applicable state or local laws of the United States. Any disputes under this Agreement are governed by the dispute resolution procedure contained in the Settlement Agreement. Only upon satisfaction of this dispute resolution procedure contained in the Settlement Agreement may any Party raise any dispute before any judicial body. Jurisdiction over any disputes brought under that provision lie solely in the United States District Court for the Eastern District of New York. The Parties irrevocably submit to the jurisdiction of that court. Each Party expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under this Agreement or the exchange of information contemplated hereby whether now existing or hereafter arising, and whether founded in contract, tort or otherwise.

13. Limitation of Liability. In no event shall any Party be liable to the other under this Agreement under any theory of tort, contract, strict liability or other legal or equitable theory for any exemplary, punitive, special, incidental, indirect, moral, or consequential damages, including, asserted on behalf of any person whether or not a party to this Agreement.

14. Severability. If any provision of this Agreement is determined to be contrary to the Federal laws of the United States or any other applicable law, then such provision shall be void and the other provisions of this Agreement shall remain in full force and effect.

15. Integration; Amendments; Counterparts. Unless otherwise provided in another agreement between the Parties, this Agreement expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof. This Agreement shall not be modified or changed in any manner except in a written instrument signed by both Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by facsimile or other electronic communication of an executed counterpart of a signature page to this Agreement shall be as effective as delivery of an original executed counterpart of this Agreement.

16. Execution; Effective Date. Each Party represents that it has caused this Agreement to be executed on its behalf as of the date written below by a representative empowered to bind that Party with respect to the undertakings and obligations contained herein. The effective date of this Agreement is the latest execution date shown below (the "Effective Date").

In WITNESS WHEREOF, the Postal Service and the Plaintiffs have executed this Agreement effective as of the date in paragraph 16 above.

CITY OF NEW YORK

Eric Proshansky
Hope Y. Lu

Signature

Eric Proshansky
Hope Y. Lu

Name

Assistant Corporation Counsel

Title

07/21/2022

Date

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**UNITED STATES POSTAL
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**UNITED STATES POSTAL
INSPECTION SERVICE**

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STATE OF CALIFORNIA

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