



**U.S. Department of Justice**

*United States Attorney  
Northern District of California*

---

11th Floor, Federal Building  
450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495

(415) 436-7200  
FAX: (415) 436-7234

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.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

**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

  
\_\_\_\_\_  
EUGENE ILLOVSKY  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105  
(415) 268-7000



## **Attachment A**

### **AGREED STATEMENT OF FACTS**

1. United Parcel Service, Inc. ("UPS") is a corporation organized under the laws of Ohio and headquartered in Atlanta, Georgia. UPS operates as a common carrier.

2. The provision of UPS's services is governed by the UPS Tariff/Terms and Conditions of Service for Package Shipments in the United States which constitutes part of the shipping contract between UPS and shippers. In relevant part, the UPS Tariff/Terms and Conditions of Service currently states:

#### **3.14 Pharmaceuticals**

The shipper shall comply with and shall ensure that each shipment containing pharmaceutical products complies with all applicable federal, state, provincial, and local laws and regulations governing the shipment or tender of shipment of pharmaceutical products.

#### **3.3 Prohibited by Law**

No service shall be rendered by UPS in the transportation of any shipment that is prohibited by applicable law or regulation of any federal, state, provincial, or local government in the origin or destination country. It is the responsibility of the shipper to ensure that a shipment tendered to UPS, and any UPS Shipping System entry that the shipper prepares for that shipment, does not violate any federal, state, provincial, or local laws or regulations applicable to the shipment.

3. Beginning in approximately 1999, companies began offering consumers controlled substances and prescription drugs based on the provision of information over the Internet. These companies came to be known as Internet pharmacies. Some Internet pharmacies illegally distribute controlled substances and prescription drugs because customers are allowed to obtain these drugs without a valid prescription authorized by a licensed physician acting within the usual scope of professional medical practice who is providing the drugs for a valid medical purpose. UPS provided transportation and related services to some of those entities.

4. By approximately January 2004, UPS was on notice that many Internet pharmacies operated outside the law. Some of those illegally-operating Internet pharmacies were UPS customers.

5. On five occasions in January 2004 through May 2006, UPS's Corporate Security Manager and a UPS Public Affairs Vice President met with the DEA and other law enforcement agencies to discuss the parcel carrier industry's and UPS's role in assisting federal authorities in

curtailing illegal Internet pharmacies. In one such meeting on June 23, 2005, law enforcement discussed the problem of illicit pharmaceutical sales over the Internet and the traffickers' reliance on key business sectors, especially the express parcel carriers for delivery of packages to customers. The agents further discussed relevant laws controlling the legitimate sales of controlled substances in the United States and possible actions to prevent the illicit use of shipping services by Internet pharmacies.

6. On two occasions, UPS's Corporate Security Manager testified before Congress regarding the illegal sale of controlled substances over the Internet and UPS's efforts to ensure that UPS was not transporting illegally-sold controlled substances and prescription drugs. The first testimony occurred on July 22, 2004, before the Senate's Governmental Affairs Permanent Subcommittee on Investigations and the second on December 13, 2005, before the House of Representatives' Oversight and Investigations Committee on Energy and Commerce. During both sessions, the Corporate Security Manager testified: "It is the clear policy of UPS, as stated in our tariff, that illegal products of any type are prohibited from being transported through our system."

7. On December 13, 2005, the Corporate Security Manager testified before the House Subcommittee on Oversight and Investigations Committee on Energy and Commerce and stated, "We support legislation that would establish clear standards for internet pharmacies. In particular, we support requiring internet pharmacies to be licensed . . . . In addition, we support provisions that would prohibit Internet sales of pharmaceuticals to individuals without a prescription obtained from a practitioner with a qualifying medical relationship, which requires at least one in-person medical evaluation . . . . As a carrier, we can take actions such as those I have described in conjunction with law enforcement agencies, but we do not have the independent ability to judge the validity of a prescription or the legitimacy of a particular drug."

8. A group of five UPS marketing employees within the Southeast Region, one of eight UPS regions, began in approximately 2002 to research business opportunities within the healthcare industry. They identified five distinct sectors that included medical and hospital equipment, laboratories/research, healthcare providers, pharmaceuticals, and hospitals as opportunities for growth in the southeast part of the United States. In 2003, these marketing employees created a dedicated sales team of approximately twelve sales employees, and launched a Southeast Region healthcare marketing initiative to target and win this healthcare business. This team consisted of nine Account Executives and five National Account Executives (collectively "HCAEs"), as well as a marketing supervisor ("Marketing Supervisor"). This group identified Internet pharmacies as a sub-sector within the healthcare industry.

9. In a September 4, 2003 e-mail, a HCAE described opportunities in the Internet pharmaceutical sector, how Internet pharmacies operated, and the high shipping volume and revenue potential present with these accounts. The HCAE noted the importance of winning these accounts from the customer's current carrier.

10. In an email dated December 10, 2003, the Marketing Supervisor received from a Florida marketing and sales employee a copy of a December 4, 2003 Miami Herald news article describing the indictment of a South Florida owner of an Internet pharmacy that sold controlled substances “illegally by not requiring customers to be physically examined by doctors.” The employee advised the Marketing Supervisor that if online pharmacies were in violation of state or federal laws, UPS may want to discontinue pursuing the business.

11. On December 16, 2003, an Internet pharmacy owner informed a HCAE that its business was closing “due to the recent policies enacted by the Federal Government”, and that “this industry has been flooded with companies that offer easy access to narcotics and other dangerous medications.” In response to this email, a marketing manager in the Southeast Region (“Marketing Manager”) wrote to the Marketing Supervisor and a HCAE that “it appears that we are making the right decision to remove the on-line pharmacies from the Critical Customer targets.”

12. In a December 19, 2003 email, the Marketing Supervisor wrote to the Marketing Manager, “[t]his issue [about illegally operating Internet pharmacies] has also heated up in the press - I heard the end of a report on NPR this week - both UPS and FedEx were brought into question on this issue in the report.” The Marketing Supervisor further stated that the Southeast Region healthcare marketing initiative needed to make sure it was only targeting legitimate Internet pharmacies. The Marketing Supervisor also stated in the email that he had learned that the National Association of Boards of Pharmacies (“NABP”) had developed a Verified Internet Pharmacy Practice Sites (“VIPPS”) program, and that through this program, the NABP certified Internet pharmacies as legitimate, but that the process was new and only 14 Internet pharmacies had been certified. The Marketing Supervisor further stated that NABP also lists “rules of thumb” for identifying whether or not an internet pharmacy is legitimate. The Marketing Supervisor wrote that they would probably want to do their own research on their current customers, and ones UPS planned to target, to determine whether they seemed to be doing anything illicit.

13. In January of 2004, marketing employees in the Southeast Region involved in the healthcare marketing initiative developed a Southeast Region Healthcare Reference Guide (the “Guide”) that provided an overview of the healthcare industry based on publicly available information. The Guide stated that illegitimate Internet pharmacies were being shut down by the federal government where no doctor visit was required and/or the drugs were imported illegally.

14. In January of 2004, marketing employees in the Southeast Region provided training about the Southeast Region Healthcare Initiative to Southeast Region Area Sales Managers who supervised HCAEs. This training identified suspiciously-operated Internet pharmacies as those for which there was no valid doctor patient relationship and required only an online or phone consultation with a doctor, the sole means of communication with the consumer was by e-mail, the site did not provide toll-free numbers, the consumer could not contact the pharmacist with questions, and noted that many pharmacies that sold a limited number of

medications (particularly “lifestyle” drugs) were not legitimate. The talking points to the training materials stated that there must be a valid pre-existing doctor-patient relationship, that HCAEs should not target any Internet pharmacy that violated this rule, and that UPS did not want to be targeted as “an enabler of illegal activity.”

15. After the training, on January 9, 2004, the Marketing Supervisor forwarded a January 9, 2004 Wall Street Journal article to the HCAEs and their Area Sales Managers stating that, as discussed in the training, the Southeast Region Healthcare Initiative needed to make sure that it was not targeting any online pharmacies that did not require a prescription resulting from a valid doctor-patient examination. The email stated that online pharmacies that fulfilled prescriptions based on a questionnaire only, or a questionnaire and phone consultation with an online pharmacy supplied doctor were not considered legal. This email was forwarded to a UPS Vice President of Sales and several Southeast Region district sales directors.

16. In February of 2004, the Marketing Supervisor requested help in quantifying the sales opportunity from online pharmacies in the Southeast Region, “both legit and not legit,” to find out how much revenue UPS would be walking away from if the company decided not to target these businesses. Notes from a March 19, 2004 Southeast Region Healthcare Initiative conference call indicated that the HCAEs were told that they could continue to sell UPS services to Internet pharmacies as long as they did not actively target these businesses. According to the notes of the call, the Southeast Region Healthcare Initiative did not want the HCAEs to target Internet pharmacies in part because they were being shut down by law enforcement and it would be a waste of time and resources to win a customer that would soon go out of business.

17. On June 11, 2004, the Marketing Supervisor conducted background research on two Internet pharmacies for a HCAE in connection with attempting to win their business. The Marketing Supervisor identified one as prescribing drugs based on a phone consultation with a doctor provided by the Internet pharmacy and stated “Our stance has been that if the online pharmacy does not require you to have seen the prescribing doctor in person, we will not support any special [discount] pricing to get the business. If you can win it through regular district pricing or POS, [Point of Sale] that is fine. But, Marketing will not support any pricing appeals.”

18. On that same date, a UPS marketing analyst sent an internal memorandum to the South Florida district sales director, an Area Sales Manager and a Southeast Region Marketing Director discussing the Internet pharmacy industry in South Florida and how UPS’s revenue had been impacted by law enforcement and competitive activity. According to the analyst, “Most accounts, if not all of the accounts we had have gone out of business due to illegal practice within the pharmaceutical industry.” The memorandum listed four Internet pharmacies that were closed due to illegal dispensing of prescription medication and concluded that South Florida’s business plan results for 2004 were impacted by these events. When a HCAE attempted to reestablish a shipping account for one of the illegal Internet pharmacies identified in this memorandum, a marketing specialist reminded the HCAE that he could attempt to win the business but could not provide discounted pricing.

19. In February 2005, marketing employees in the Southeast Region provided training to HCAEs. The training materials identified pharmacies that require face-to-face visits as a “best practice.” Nevertheless, accounts were established for Internet pharmacies that did not meet this best practice. The training materials instructed the HCAEs that they could expect minimal region and corporate pricing support for Internet pharmacies that did not require face-to-face visits.

20. On May 18, 2005, a marketing analyst sent an email to a HCAE and a marketing employee listing questions for the HCAE to ask a potential Internet pharmacy customer. The email stated that a Florida-based Internet pharmacy was required to have an Internet Pharmacy Permit from the Florida Board of Pharmacy, and that Florida, Kentucky and Nevada had laws specifically regulating internet pharmacies shipping or operating in their states. The email included a suggestion to call the Board of Pharmacy to verify a customer but that “this could however lead to us being a whistle blower on a customer.”

21. Appropriate due diligence was not conducted on all accounts UPS employees knew or should have known were being used to ship pharmaceuticals ordered online to determine whether the businesses were operating legally. For example, on August 18, 2005, a UPS sales employee received a sales lead regarding United Care Pharmacy (“UCP”), a customer that had requested a meeting with a UPS representative. Subsequently, the sales employee secured UCP’s business after meeting with the customer at the customer’s location, and receiving information from the customer about UCP’s business model. UCP was a fulfillment pharmacy that filled orders exclusively for Internet pharmacies. This account was established in late September 2005. Although the sales employee knew that UCP was shipping pharmaceuticals for Internet pharmacies, neither the sales employee nor others at UPS conducted research into UCP’s business practices. Had UPS employees conducted due diligence on UCP, they would have learned that UCP was not VIPPS certified, was not registered in all states to which it shipped controlled substances and prescription drugs, and would be filling orders for Internet pharmacies based solely upon those pharmacies’ customers’ completion of an online questionnaire.

22. On September 30, 2005, the Kentucky Bureau of Investigations Drug Unit sent to a UPS district security manager and others a list of illegal pharmacies that shipped to their state. An affiliate of UCP was one of the illegal Internet pharmacies included on this list. UPS shipped packages from this entity into Kentucky after September 30, 2005.

23. In November of 2005, a UPS sales employee for UCP and his immediate supervisor traveled with the owner of UCP to Costa Rica. This trip was approved and paid for by UPS. While in Costa Rica, the sales employee and his immediate supervisor learned about the business model used by Internet pharmacies, including those for which UCP shipped pharmaceuticals. This business model was based on the fulfillment of prescriptions based upon either an online questionnaire or a telephone call where no valid doctor-patient relationship existed. The sales employee and his immediate supervisor established subaccounts under UCP’s master account for Internet pharmacies that were located outside of the United States. At least

one of the Internet pharmacies established as a subaccount under UCP shipped from three different locations in the state of Florida.

24. UCP was closed by state law enforcement in March 2006 for illegally distributing controlled substances for Internet pharmacies. UPS shipped packages for various offshore Internet pharmacies under UCP's master UPS shipping account after March 2006. UPS continued to ship packages under UCP's account until April 20, 2007, when a UPS District Controller for the North Carolina District advised the UPS sales employee and his immediate supervisor that UCP's leadership had been arrested and that the account needed to be suspended immediately.

25. On or about August 30, 2005, a UPS Southeast Region security manager received a fax from a group called the Southwest Drug Task Force in Big Stone Gap, Virginia. It stated in relevant part:

We the members of the Southwest Virginia Drug Task Force and other Wise County Virginia law enforcement officials feel a problem exist in our area and in other areas that your company has been made aware of the problem. Our area has been overwhelmed in the past year with pharmaceutical drugs being ordered over the Internet or by phone. Companies such as yours and other companies are in the delivery service business are delivering these drugs into our area.

One problem, which concerns us, is delivery drivers are delivering packages to the same person who is using several different names. Delivery drivers are allowing these packages to be picked up in parking lots, and beside the highway and not making deliveries to the address listed on the package.

We are concerned as to the health and safety of the citizens in this area. We are concerned that these drugs many of which are mind altering pain medication and nerve medication are being misused, and abused by citizens. These citizens then may drive vehicles, and cause accidents.

They may become so addicted these medications they commit property crimes such as larceny, burglary, and robbery to obtain money to pay for these drugs, which are delivered COD by delivery companies.

For that reason we respectfully request steps be taken by your company to help correct this problem. We request your company

suspend all shipments of drugs to subjects, or residences that are suspicious in nature. Your drivers and managers already know who these people and locations are. That drugs be shipped in separate and distinctive packaging. That your company requires proof of identity of any recipient of packages containing drugs. That packages containing drugs not be delivered to any location other than a residence or place of business.

Most of all we request officials of your company join local law enforcement in joint announcements in newspapers, radio and television making the public aware of the fact obtaining drugs over the internet or by phone is not legal. That local law enforcement and your company are joining forces to make sure the public safety is watched after. And anyone who is caught obtaining these drugs will be arrested and prosecuted to the fullest extent of the law. We hope your company will join us in this effort and we can have your company beside us, talking with us as a partner and not being identified as part of the problem.

This fax was circulated to, among others, UPS's Corporate Security Manager and a Vice President of Public Affairs. UPS delivered packages in Virginia shipped by Internet pharmacies after receiving this request from the Southwest Virginia Drug Task Force.

26. UPS offered certain Internet pharmacies C.O.D. Enhancement Services. Through these services, C.O.D. ("Collect On Delivery") payments for thousands of packages shipped to individual Internet pharmacy customers were consolidated and deposited into a UPS bank account and then available funds were electronically transferred to the bank accounts of the Internet pharmacy shippers. In a June 8, 2005 email, the Marketing Supervisor wrote to a Vice President of Sales, a Marketing Manager, and a Business Development Manager at UPS Capital, in relevant part:

UPS Capital did in fact withdraw COD Automatic from three online pharmacy accounts in SFL. They were concerned about the financial risk of serving these pharmacies due to the history of these types of businesses getting shut down by the government. When UPS Capital withdrew the COD Automatic, these accounts withdrew their small package business from UPS. These accounts were producing an average of \$3.5K - \$5K per day before their accounts were closed in May.

[Name Redacted] does not feel that UPS Capital is exposing themselves to a high degree of risk by serving online pharmacy accounts, and he is in favor of continuing to do business with them.

27. UPS, through some of its employees, was on notice that Internet pharmacies violated the law when distributing controlled substances and prescription drugs without a valid prescription. Despite being on notice that such Internet pharmacies were using its services, UPS did not implement procedures to close the accounts of those pharmacies, permitting them to ship controlled substances and prescription drugs from 2003 to 2010.



## **Attachment B**

### **UPS ONLINE PHARMACY COMPLIANCE PROGRAM**

The following United Parcel Service, Inc. ("UPS") Online Pharmacy Compliance Program (hereinafter "Compliance Program") has been prepared pursuant to a Non-Prosecution Agreement dated this same date between UPS (the "Company") and the United States Attorney's Office for the Northern District of California ("United States" or "the Government"). Compliance with all the terms and standards of the Compliance Program is a condition of the Non-Prosecution Agreement.

#### **I. Applicability and Purpose**

A. The Compliance Program applies to the Company's small package transportation service for packages containing prescription drugs shipped by or on behalf of online pharmacies to customers. The purpose of the Compliance Program is to ensure (1) that the Company does not intentionally or knowingly pursue the business of online pharmacies that are violating state and federal laws regarding the distribution of prescription pharmaceuticals and (2) that the Company has established processes for detecting, reporting to law enforcement, and closing the accounts of online pharmacies that it becomes aware are violating state and federal laws regarding the distribution of prescription pharmaceuticals. The terms "online pharmacy" and "OLP" are herein defined as: a) an internet website that permits a consumer to obtain prescription drugs without any written prescription, or b) a pharmacy that provides prescription drugs to consumers where the prescription was issued solely through the completion of an on-line questionnaire, without an in-person medical evaluation. The term does not include those persons or entities excluded from the on-line pharmacy definition pursuant to 21 C.F.R. § 1300.04(h).

B. The Compliance Program is not intended to replace any other United States statute or regulation.

C. This Compliance Program shall be incorporated into the Non-Prosecution Agreement by reference, and compliance with the terms of the Compliance Program will be a condition of the Non-Prosecution Agreement. Deliberate, intentional or knowing failure to comply with any part of this Compliance Program may be a basis on which the Government may seek to revoke or modify the Non-Prosecution Agreement.

D. Any documents required by this Compliance Program shall be provided to the designated signatory for the Government upon request. The Government agrees that such documents will be treated as proprietary records that may contain privileged and confidential commercial or financial information.

E. Any proposed modifications to this Compliance Program must be made in writing

and signed by the Company and the designated signatory for the Government.

F. The Government recognizes that the Company has a contract with the United States Postal Service (“USPS”) under which the Company provides domestic air transportation for USPS express shipments and does not pick up from the shipper or deliver to the recipient. The Government acknowledges that the Company has no responsibility for packages tendered to the USPS for which the Company is only providing air transportation services.

## **II. The Compliance Program**

As part of the Compliance Program, the Company shall implement the following requirements:

### **A. Online Pharmacy (OLP) Compliance Officer**

1. Within 60 days of signing the Non-Prosecution Agreement, the Company shall designate an OLP Compliance Officer. The OLP Compliance Officer shall communicate directly and make reports directly to the Chief Executive Officer and the Audit Committee of the Board of Directors on matters relating to this Compliance Program. The OLP Compliance Officer shall be tasked with responsibility for the Compliance Program.
2. The OLP Compliance Officer shall be responsible for coordinating with the Program Auditor, as more fully described below; developing and implementing all of the processes described herein, including those recommended or developed in consultation with the Program Auditor; designing and implementing training programs; ensuring that reports of potentially unlawful activity by OLP shippers are investigated; ensuring that audits and surveys are carried out as required; ensuring that all Company documents and records are properly maintained; and ensuring that all Company reports required under this Compliance Program are made on a timely basis.
3. The OLP Compliance Officer will cause a procedure to be established that requires all officers, managers, and employees of the Company involved in the transportation of prescription pharmaceuticals to notify the OLP Compliance Officer of any violations of applicable requirements of this Compliance Program, and to cooperate fully with the Program Auditor and the United States in carrying out their auditing and oversight functions required by applicable law and this Non-Prosecution Agreement. The Company agrees to not retaliate against any officer, manager or employee solely for making any such report.
4. The OLP Compliance Officer position must be filled by an individual who possesses the authority to ensure full implementation of this Compliance Program,

and who is thoroughly familiar with the requirements of this Compliance Program.

5. The OLP Compliance Officer shall be authorized to access all records, documents, and facilities throughout the Company's organization for the purpose of implementing this Compliance Program.
6. The OLP Compliance Officer shall take all reasonable steps to ensure the employee cooperation during all activities required by this Compliance Program. The Compliance Officer shall ensure that the Program Auditor and any other inspection, auditing or monitoring personnel involved in the auditing of the Company's operations under this Compliance Program has complete unrestricted access to all areas, documentation, personnel and material equipment necessary to perform its function under this Compliance Program. Private locations for one-on-one interviews between employees and various inspection, auditing or monitoring personnel shall be provided, as needed.
7. The OLP Compliance Officer may designate one or more individuals to assist in the execution of his/her responsibilities.
8. Any change in personnel designated as the OLP Compliance Officer must be reported within thirty (30) days to the designated signatory of the Government.

**B. OLP Compliance Officer Responsibilities**

The OLP Compliance Officer is required to cause the following to occur:

1. Develop and provide training regarding OLPs oriented for all employees and managers engaged in the pick-up and delivery of prescription pharmaceutical packages, and relevant sales, security, revenue operations, and any other groups identified by the Company;
2. Develop and provide training regarding OLPs to be included as part of new hire training given to all employees and managers engaged in the pick-up and delivery of prescription pharmaceutical packages and relevant sales, security, revenue operations, and any other groups identified by the Company;
3. Monitor and validate that the training is being given;
4. Develop and implement channels whereby employees can report instances of potentially unlawful activity by prescription pharmaceutical shippers;
5. Develop and implement a process for the investigation of reports of potentially

unlawful activity by prescription pharmaceutical shippers, including anonymous reporting;

6. Review reports of investigation, and where warranted, ensure that appropriate action has been taken and that referrals have been made to law enforcement;
7. Oversee the implementation and operation of the Compliance Program;
8. Act as a principal point of contact for law enforcement and regulatory officials relating to OLP matters.

**C. OLP Compliance Officer Reporting Responsibilities**

1. The OLP Compliance Officer shall make quarterly reports to the Company's Chief Executive Officer concerning compliance with this Compliance Program. Annually, the OLP Compliance Officer shall provide a summary of these reports to the Audit Committee of the Company's Board of Directors. All issues of non-compliance will be communicated, along with any corrective action taken. Copies of these reports will be provided to the designated signatory of the Government. The Government agrees that such reports will be treated as proprietary records that may contain privileged and confidential commercial or financial information.
2. The OLP Compliance Officer shall ensure immediate notification to the designated signatory of the Government of any circumstances whereby the Company fails to provide resources necessary to support this Compliance Program.

**D. Program Auditor**

1. Within thirty (30) days following the signing of the Non-Prosecution Agreement, the Company shall nominate a Compliance Program Auditor ("Program Auditor") who meets the qualifications below to conduct the activities described in this Compliance Program. The nomination shall be made in writing to the signatories below. The Government will notify the Company in writing of its approval or disapproval within thirty (30) days, unless additional time for evaluation is requested in writing. The nominee shall be approved if the Government fails to provide notice within the period. The Government's approval shall not be unreasonably withheld.
2. Qualified candidates for the position must have expertise and competence in the regulatory programs under federal and state laws relating to the distribution and shipment of prescription pharmaceuticals. The Program Auditor shall also have

sufficient expertise and competence to assess whether the Company has adequate systems in place to assess Company compliance with the Compliance Program, correct non-compliance and prevent future non-compliance. The Company and the Government acknowledge that the functions of the Program Auditor may, by mutual agreement, be fulfilled by one or more individuals.

3. The Program Auditor must exercise independent judgment. The Company and the Program Auditor shall disclose to the Government any past, existing or planned future contractual relationships between the Program Auditor and the Company or the Company's parent company, subsidiaries, or affiliated business entities (other than the relationship contemplated by this Compliance Program).
4. If the Government determines that the proposed Program Auditor does not meet the qualifications set forth in the previous paragraphs, or that past, existing or planned future relationships with the Program Auditor would affect the Program Auditor's ability to exercise the independent judgment and discipline required to conduct the Compliance Program review and evaluation, such Program Auditor shall be disapproved and another Program Auditor shall be proposed by the Company within thirty (30) days of the Company's receipt of the disapproval.
5. Within one hundred and eighty (180) days of the signing of the Non-Prosecution Agreement, the Company shall implement all training and reporting processes and procedures discussed in Sections II.E-G, inclusive. One hundred eighty (180) days following the signing of the Non-Prosecution Agreement, the Company shall submit to the Government a written Compliance Program Implementation Certification that describes the steps the Company has undertaken to meet the requirements of this Compliance Agreement.
6. Upon submission of the Compliance Program Implementation Certification, the Program Auditor shall review the Company's implementation of the processes and procedures set forth in Sections II.E-G and the Company's attainment of the goals set forth in Paragraph I.A of this Compliance Program. No later than ninety (90) days following the commencement of such review, the Program Auditor shall generate a Compliance Confirmation Report ("Report") addressing the results of the review. The Report shall be submitted to the Company upon its completion. The Report shall be submitted to the Government fourteen (14) days after submission to the Company.
7. The Report shall present the following information:
  - a. Review scope, including the time period covered by the review;
  - b. The date(s) the on-site portion of the review was conducted;

- c. Identification of the review team members;
  - d. Identification of the company representatives and regulatory personnel observing the review;
  - e. The distribution list for the Report;
  - f. A summary of the review process, including any obstacles encountered;
  - g. Findings, including whether the Company has implemented the processes and procedures set forth in Sections II.E-G and attained the goals set forth in Section I.A of this Compliance Program;
  - h. Recommendations, if any, for measures to improve the processes and procedures undertaken by the Company pursuant to Sections II.E-G and to assist the Company in achieving the goals set forth in Section I.A; and
  - i. Certification by the Program Auditor that the review was conducted in accordance with this document.
8. The Government acknowledges that any processes and procedures recommended by the Program Auditor:
- a. Must be consistent with the Health Insurance Portability and Accountability Act of 1996 (P.L.104-191) ("HIPAA");
  - b. Should not place an unreasonable burden on the ability to ship validly obtained pharmaceuticals to consumers;
  - c. Should not place an unreasonable burden on the ability to ship other goods to consumers; and
  - d. Must be consistent with federal laws applicable to carriers.
9. If recommendations are made in the Report pursuant to section II.D.7.h, the Company will implement such recommendations and notify the Government of implementation; provided, however, if the Company disagrees with a recommendation, it will notify the Government of its disagreement and non-implementation within thirty (30) days of receipt of the Report. The Government will review the recommendation, in consultation with the Company and Program Auditor, and after such consultation, may relieve the Company from implementation. If the Government does not relieve the Company from

implementation, the Company may file a miscellaneous case in the U.S. District Court from the Northern District of California, to seek a determination as to whether the Company must implement the recommendation. The parties consent to proceed before a United State Magistrate Judge in such case, and agree that the Magistrate Judge's decision shall be final and binding upon the parties.

**E. Training**

The Company will conduct OLP training for employees, as determined by the OLP Compliance Officer.

1. The training should be offered to employees and managers engaged in pick-up and delivery of prescription pharmaceutical packages and relevant sales, security, revenue operations, and other groups identified by the Company, through channels used to communicate significant matters related to policies, procedures and practices.
2. As part of new hire training, new employees and managers engaged in the pick-up and delivery of prescription pharmaceutical packages and relevant sales, security and revenue operations, and any other organizations identified by the Company, will be given OLP training.
3. Training will be targeted to reflect how different employees may encounter potentially unlawful OLPs.
4. All training shall include, at a minimum, the following elements:
  - a. An overview of OLPs;
  - b. A discussion of "red flags" appropriate to the audience being trained that may be indicative of potentially unlawful OLPs;
  - c. Information on how to report a potentially unlawful OLP to the OLP Compliance Officer;
  - d. A statement consistent with II.A.3 above, that there will be no retaliation solely for making a report of a potentially unlawful OLP.
  - e. Information concerning the existence of the Non-Prosecution Agreement and the general terms of the Compliance Program.
5. Various training methods and materials may be used, such as group presentations; videos; online interactive training modules and internal website publications.

6. Records must be kept of all training, including the dates, locations, names and positions of the participants and attendees, and the substance of the training, including any training materials.

**F. Reports of Potentially Unlawful Activity by OLPs**

1. All reports of potentially unlawful activity by prescription pharmaceutical shippers reported to the OLP Compliance Officer shall be investigated by the Company. Investigations should typically be completed within 30 days of receipt.
2. In addition, any issues regarding prescription pharmaceutical shippers that are reported through existing Company reporting channels, such as the Company's Help Line, shall be forwarded to the OLP Compliance Officer for investigation.
3. Investigations may include one or more of the following elements:
  - a. Internet or other research on the shipper;
  - b. Review of the account's shipment history, volume, credit history, related accounts and other relevant Company information;
  - c. Interviews with Company personnel familiar with the shipper and/or shipments;
  - d. Consultation with federal, state or local law enforcement;
  - e. Site visits to the shipping location;
  - f. Requests for licensure information from the shipper.
4. If, as a result of the Company's investigation, the Company concludes that the shipper is in violation of the UPS Tariff/Terms and Conditions of Service governing the shipment of pharmaceuticals, the Company will forward the information to local DEA and close the shipper's account.
5. At the conclusion of an investigation, the OLP Compliance Officer shall ensure that a Summary of Investigation has been prepared. The Summary of Investigation shall include:
  - a. the identity of the person making the report (unless reported anonymously);
  - b. the date the report was made;



- c. a synopsis of the investigation;
  - d. action taken, and, if no action taken, the rationale;
  - e. a statement of whether the matter was reported to law enforcement;
  - f. remedial actions taken to minimize recurrence.
6. Any materials collected or created as part of the investigation shall be maintained with the summary.

**G. Reporting by the Company to Federal Authorities**

The Company will report to local DEA any shipper that the Company believes is delivering controlled substances in violation of the Controlled Substances Act, 21 U.S.C. § 801, et seq., or other laws governing the shipment of pharmaceuticals.

**III. Non-compliance**

This Compliance Program does not in any way release the Company from complying with any applicable state or federal statutes and/or regulations, and does not limit imposition of any sanctions, penalties, or any other actions, available under those state or federal statutes and regulations. The Compliance Program shall be part of the Non-Prosecution Agreement and adherence to it will be an enforceable condition. Deliberate, intentional or knowing failure to comply with any part of this Compliance Program (including but not limited to refusal to pay valid charges for the Program Auditor and failure to provide the Program Auditor access to facilities, personnel or documents as provided in this Compliance Program) may be a violation of the Non-Prosecution Agreement and may be grounds for the revocation or modification of the Non-Prosecution Agreement. Should the Government seek to revoke or modify the Non-Prosecution Agreement based on the Company's refusal to pay valid charges for the Program Auditor and/or its failure to provide the Program Auditor access to facilities, personnel, or documents, and/or as a result of any disagreement regarding any of the provisions of this Compliance Program, the Company shall have the right to contest the reasonableness of such revocation or modification.

**IV. Documentation Available for Inspection**

The OLP Compliance Officer shall ensure that all documentation required by this Compliance Program is maintained and available for inspection by the Program Auditor and a designated representative of the Government.

## **V. Term**

This Compliance Program shall be in effect for the term of the Non-Prosecution Agreement.

## **VI. Self-enforcement**

The Company further agrees that it will undertake and implement the necessary procedures to ensure that this Compliance Program is diligently complied with by all employees, managers, and other employees during the term of the Non-Prosecution Agreement.

## **VII. Revisions/modifications**

The requirements of this Compliance Program, including the dates and time periods mentioned herein, shall be strictly complied with. Should the Company be unable to comply with any of the deadlines, the Company shall immediately notify the designated representative of the Government in writing of the reasons for non-compliance.

## **VIII. Reports**

All reports, documents and correspondence required under this Compliance Program to be sent to the Government shall be sent to the following offices:

1. U.S. Attorney's Office  
Northern District of California  
ATTN: Kirstin Ault  
450 Golden Gate Avenue, 11<sup>th</sup> Floor  
San Francisco, CA 94102
2. Drug Enforcement Administration  
ATTN: Deputy Assistant Administrator Office of Diversion Control  
8701 Morrisette Drive  
Springfield, VA 22152
3. Food and Drug Administration – Office of Criminal Investigations  
Special Agent in Charge  
Investigative Operations Division Headquarters  
7500 Standish Place, Suite 250N  
Rockville, MD 20855  
(240) 276-9500

All reports, documents, notices and correspondence from the Government to the Company concerning this Compliance Program shall be sent to the following office:

Eugene Illovsky  
Morrison Foerster  
425 Market Street  
San Francisco, CA 94105

IX. Certifications

The Company has read this Compliance Program carefully and understands it thoroughly. The Company enters into this Compliance Program knowingly and voluntarily, and therefore agree to abide by its terms. By her signature below, the corporate representative agrees that she is duly authorized by the Company's Board of Directors to enter into and comply with all of the provisions of this Non-Prosecution Agreement.

DATED: 3/29/13

UNITED PARCEL SERVICE, INC.

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

As counsel for UNITED PARCEL SERVICE, INC., I have discussed with my corporate client and its duly authorized representative the terms of this Compliance Program and have fully explained its requirements. I have no reason to doubt that my client is knowingly and voluntarily entering into this Compliance Program.

DATED: 3/29/13

  
EUGENE ILLOVSKY  
Counsel for United Parcel Service, Inc.

On behalf of the United States, the following agree to the terms of the Compliance Program:

MELINDA HAAG  
United States Attorney

DATED: 3/29/13

  
KIRSTIN M. AULT  
Assistant United States Attorney