

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice, including the Civil Division, Consumer Protection Branch and the United States Attorney’s Offices for the District of Vermont and the Middle District of Tennessee, and on behalf of the Drug Enforcement Administration (“DEA”) (collectively, “the United States”), and eBay Inc., its subsidiaries, affiliates, agents, and joint ventures (the “Company” or “eBay”). The United States and the Company shall together be referred to herein as the “Parties.”

RECITALS

A. eBay is a global e-commerce corporation that was originally incorporated in the state of California in 1996 and was re-incorporated in the state of Delaware in 1998. According to eBay, it operates online marketplaces that facilitate global commerce by connecting millions of buyers and sellers in the United States and around the world. eBay operates marketplaces that are accessible online in countries worldwide.

B. eBay’s online marketplaces enable third parties to post listings of goods for sale, and eBay aids in the successful completion of purchases by third-party buyers on its online marketplaces by providing a variety of services and support to its users. eBay’s revenue derives primarily from collecting a percentage of the final sales price of each transaction successfully completed on its website.

C. The United States contends it has certain civil claims against eBay for violations of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* (“CSA”), arising from transactions involving products regulated by the CSA, including tableting machines (“pill presses”) and encapsulating machines (collectively, “pill-making machines”) that occurred on the eBay online

marketplace.

D. Specifically, the United States contends that eBay violated the CSA, 21 U.S.C. § 842(a)(5), (9) and (10) by failing to comply with requirements set forth in 21 U.S.C. § 830 (the “reporting and recordkeeping obligations”) in connection with transactions involving pill-making machines from at least October 25, 2015, through the present (the “Relevant Time Period”). The United States’ claims are based on the following allegations under the CSA (collectively, the “Covered Conduct”):

1. During the Relevant Time Period, transactions involving pill-making machines occurred on eBay’s online marketplace, including sales of pill presses that were shipped to buyers in the United States.
2. During the Relevant Time Period, eBay did not comply with the CSA’s reporting and recordkeeping obligations in connection with any transactions of pill-making machines on the platform.
3. Thousands of the pill presses sold on eBay’s online marketplace to buyers in the United States were high-capacity pill presses capable of producing thousands of pills per hour. The vast majority of these commercial-grade machines were shipped to residential addresses.
4. Hundreds of buyers during the Relevant Period also purchased stamps used to mimic legitimate pharmaceutical manufacturer markings that are stamped onto pills (“counterfeit dies”). For example, multiple eBay buyers with residential shipping addresses purchased pill presses and counterfeit dies bearing the imprint “M30,” which is the marking associated with 30 mg oxycodone hydrochloride pills manufactured by a legitimate pharmaceutical company.
5. Numerous individuals who purchased pill presses on eBay were subsequently successfully prosecuted in connection with trafficking illegal drugs, often involving counterfeit pills.
6. eBay failed to maintain certain records for transactions involving pill-making equipment, as required by 21 U.S.C. § 830(a). Because eBay did not verify purchasers’ identifications, eBay did not record the type of identification information required by the CSA.
7. Despite the thousands of transactions that occurred on its online marketplaces, eBay did not report any transactions involving pill-making machines to the DEA, as required by the CSA, 21 U.S.C. § 830(b)(1)(D).

E. This Agreement is neither an admission of liability by the Company nor a concession by the United States that its claims are not well founded. eBay specifically denies the United States' contention that it is subject to the aforementioned provisions of the CSA and does not admit any liability arising out of or in connection with the United States' allegations.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. eBay shall pay the United States \$ 59,000,000 (the "Settlement Amount"), no later than February 13, 2024, in accordance with payment instructions provided by the United States.

2. The United States recognizes that eBay has made investments in its compliance systems and internal controls. This Settlement takes into account those compliance investments. The Company represents that it has implemented and will continue to implement a compliance program throughout its operations, including those of its subsidiaries, affiliates, agents, and joint ventures, and those of its contractors and subcontractors, including, but not limited to, the minimum elements set forth in Attachment A.

3. In order to enhance its internal controls, policies, and procedures, the Company represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal controls, policies, and procedures regarding the Covered Conduct, focusing on the sale of items using the Company's platform that are the subject of the Covered Conduct, including encapsulating machines, tableting machines, and counterfeit dies. Where necessary and appropriate, the Company agrees to modify its existing compliance program, including internal

controls, compliance policies, and procedures, in order to ensure that its compliance program is effective, including a system of internal controls, designed to effectively detect and deter violations related to the Covered Conduct. The compliance program, including the internal controls system will include, but not be limited to, the minimum elements set forth in Attachment A.

4. For a period beginning on the Effective Date and ending thirty-six (36) months from that date (the “Term”), the Company agrees that it will report to the United States periodically regarding implementation of the compliance measures described in Attachment A. These reports will be prepared in accordance with Attachment A.

5. The Company agrees to continue to cooperate fully and truthfully with any investigation by the United States or the DEA of individuals and entities not released in this Agreement concerning the Covered Conduct.

6. If, during the Term, the Company (a) fails to complete the payment set forth in Paragraph 1; or (b) deliberately provides in connection with this Agreement false, incomplete, or misleading information, the Company agrees that the United States may: (i) retain any payment previously made; (ii) bring any civil and/or administrative claim, action, or proceeding against the Company for the claims that would otherwise be covered by the releases provided in Paragraph 11, with any recovery reduced by the amount of any payment previously made by the Company to the United States under this Agreement; (iii) take any action to enforce this Agreement; and/or (iv) exercise any other right granted by law or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of breach, including referral of this matter for private collection.

7. If, during the Term, the Company (a) fails to implement a compliance program as

set forth in Paragraphs 2 and 3 of this Agreement and Attachment A; (b) fails to make any reports as set forth in Paragraph 4 of this Agreement and Attachment A; or (c) fails to cooperate as set forth in Paragraph 5, the Company agrees that the United States may: (i) take any action to enforce this Agreement; and/or (ii) exercise any other right granted by law or under the terms of this Agreement, or recognizable at common law or in equity.

8. In the event the United States believes that the Company has breached this Agreement in a manner described in Paragraphs 6 and 7, the United States agrees to provide the Company with written notice of the claimed breach prior to instituting any action to address the claimed breach. Within thirty (30) calendar days of receipt of such notice, the Company shall have the opportunity to respond to the United States in writing to explain the nature and circumstances of the alleged breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the United States shall consider in determining whether to take any action as provided in Paragraphs 6 and 7.

9. In the event the United States brings an action under Paragraph 6, the Company waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (a) filed by the United States against the Company within 180 days of written notification to the Company that this Agreement has been breached, and (b) relate to the Covered Conduct or relate to conduct known to the United States prior to the Effective Date of this Agreement that is not time-barred by the applicable statute of limitations (as extended by the parties' tolling agreements) on the Effective Date of this Agreement. The Company agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this Paragraph and Paragraph 6 relating to the payment set forth in Paragraph 1, either administratively or in any state or federal

court, except on the grounds of actual payment to the United States.

10. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event that, during the Term, it undertakes any change in control transaction, including if it sells, merges, or transfers business operations that are material to the Company's core marketplace operations, including any such operations of any of its subsidiaries or affiliates involved in the alleged prior Covered Conduct, as they exist as of the Effective Date of this Agreement (such sold, merged, or transferred operations referred to as the "Transferred Operations"), whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate control, it shall include in any contract for sale, merger, transfer, or other change in corporate control a provision binding the entity that directly holds such Transferred Operations, and any successor in interest thereto, to the obligations described in this Agreement with respect to such Transferred Operations. Such holder or successor in interest must also agree in writing that the United States' ability to assert a breach under this Agreement is applicable in full force to that entity with respect to the Transferred Operations. The Company agrees that the failure to include these provisions in the transaction will make any such transaction null and void. Nothing herein shall restrict the Company from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the United States.

11. Subject to the breach provisions described in Paragraphs 6 and 7, the United States fully and finally releases the Company, its subsidiaries, its affiliates, its agents, and its joint ventures from any civil or administrative monetary claim (including attorney's fees, costs, and

expenses of every kind and however denominated) that the United States has based on the Covered Conduct under the Controlled Substances Act. For the avoidance of doubt, the United States' release extends to any such civil or administrative monetary claim from every component of the U.S. Department of Justice, including but not limited to the Civil Division, the Criminal Division, all U.S. Attorney's Offices, and the DEA.

12. The Company fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Company has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

13. Unless otherwise directed by the United States in writing, any notice to the United States under this Agreement shall be given by electronic mail to Consumer.Compliance@usdoj.gov and to any additional email addresses provided by the United States. The subject line of the email must begin with the Company's name. In the event that electronic mail is unavailable, the notice may be sent by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, to an address provided by the United States. Notice shall be effective upon actual receipt by the United States.

14. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Office of the General Counsel, eBay Inc., 2065 Hamilton Ave, San Jose, CA 95125 and to undersigned counsel of record by electronic mail addressed to edavis@kslaw.com, or to other counsel or individuals identified to the United States by the Company. Notice shall be effective upon actual receipt by the Company.

15. This Agreement is binding on the Company and the United States, as defined herein, but specifically does not bind any other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the United States will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Columbia. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Agreement, including its attachments, sets forth all the terms of the agreement between the Company and the United States. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the United States, the attorneys for the Company, and a duly authorized representative of the Company.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

22. This Agreement is binding on eBay's successors, transferees, heirs, and assigns.

23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

SIGNATURES TO FOLLOW ON NEXT PAGES

**THE UNITED STATES OF
AMERICA**


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Civil Division

ARUN G. RAO
Deputy Assistant Attorney General

AMANDA N. LISKAMM
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Date: 31 Jan 2024

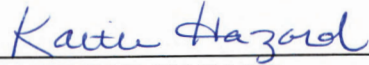
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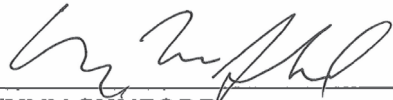
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By: 

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Assistant U.S. Attorney

EBAY INC.

Date: Jan 30, 2024

By: 

JAMIE IANNONE
eBay Inc.

Date: Jan 30, 2024

By: 

ETHAN P. DAVIS
King & Spalding LLP

ATTACHMENT A

CORPORATE COMPLIANCE PROGRAM AND REPORTING REQUIREMENTS

eBay Inc. (the “Company”), on behalf of itself and its subsidiaries and affiliates, is committed to its partnership with federal law enforcement as part of maintaining a safe marketplace. As part of that commitment, eBay agrees to continue to maintain and enhance its existing compliance program and conduct, in a manner consistent with all of its obligations under this Settlement Agreement (the “Agreement”), appropriate reviews of its existing compliance code, policies, procedures, controls, and systems. This includes the following elements to the extent they are not already part of the Company’s existing compliance policies, procedures, controls, and systems:

Commitment to Compliance and Safeguarding eBay’s Marketplace

1. The Company will ensure that its directors and senior management continue to provide strong, explicit, and visible support, resources, decision making ability and commitment to its Compliance program, and will also ensure that management, in turn, reinforces those standards and empowers employees to ensure that buyers and sellers abide by the rules on the platform.

eBay’s Written Standards and Implementing Procedures

2. eBay has implemented policies, procedures, controls, and systems, which together establish the framework governing the conduct of participants on the platform. eBay shall continue to make these policies (as they pertain to the Covered Conduct described in the Agreement) available in the major languages buyers and sellers use in listing items for sale on the platform. eBay shall periodically review the policies, procedures, controls, and systems, and shall facilitate any necessary revisions.

3. The Company will enhance its Prohibited and Restricted Items Policies, and other applicable policies, procedures, controls, and systems to reduce the potential for policy violations related to the products at issue in the Agreement (“Relevant Products”). The Company’s policies shall continue to be made available in the major languages that buyers and sellers use in listing items for sale on the platform. The Company shall ensure such policies and procedures related to the Relevant Products address:

- a. Continued prohibition of listings on the Company’s online marketplaces of any pill press, tableting machine, and encapsulating machine, as part of a new, standalone Pill Press, Die, and Mold Policy. In developing and updating the new policy, the Company may consult with the United States as provided in subparagraph (c).
- b. As part of the standalone policy, a prohibition of listings on the Company’s online marketplaces of any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance, as prohibited by 21 U.S.C. § 843(a)(5) (“counterfeit dies”).
- c. In the event the Company is uncertain about whether a particular item qualifies as a pill press, a tableting machine, an encapsulating machine, or a counterfeit die, the Company may contact the United States to request assistance in making the determination.

Periodic Risk-Based Review

4. The Company will develop the compliance policies and procedures set forth in Paragraph 3 for the Relevant Products on the basis of a periodic risk assessment addressing the

individual circumstances of the Company and its online marketplaces, including, but not limited to, the types of Relevant Products listed or attempted to be listed on its online marketplace, the geographical location of its eBay users, an analysis to identify high risk areas, and eBay user histories.

Proper Oversight and Independence

5. The Company will assign to one or more senior corporate executives of the Company responsibility for the implementation and oversight of the Company's policies, procedures, controls, and systems related to the Relevant Products. Such corporate official(s) shall have the authority to report as appropriate, directly to independent monitoring bodies, including internal audit, the Company's Board of Directors, or any appropriate committee of the Board of Directors, and shall have an adequate level of stature and autonomy from management.

6. eBay shall continue to maintain a Prohibited, Restricted, and Counterfeit Items ("PRCi") Committee (or a substantially equivalent committee), which shall include, at a minimum, the Chief Compliance Officer and other senior executives of relevant departments to implement the Company's Pill Press, Die, and Mold Policy. The PRCi Committee shall continue to oversee the effectiveness of the Pill Press, Die, and Mold Policy and related procedures and controls and shall make periodic (at least annual) reports regarding PRCi matters directly to the Board of Directors of eBay or the relevant committee(s) and shall be authorized to report on such matters to the Board of Directors at any time.

Training and Guidance

7. eBay will maintain an annual, mandatory training for all applicable employees on the Company's Prohibited and Restricted Items policy. The training shall address how to identify prohibited or restricted items and what actions to take when such items are discovered.

8. Within sixty (60) calendar days of the Effective Date, eBay will deploy an enhanced, one-time training to all relevant employees on its Prohibited and Restricted Items policy. As part of that training, relevant employees will receive a copy of this Attachment and will be required to attest to their familiarity with it.

Monitoring, Testing, and Remediation

9. The Company will conduct periodic reviews and testing of its policies, procedures, controls, and systems related to the Relevant Products that are designed to evaluate and improve their effectiveness in preventing and detecting listings that violate the Company's compliance policies, and procedures. The Company will use results of the compliance control testing to enhance its policies, procedures, controls, and systems for the Relevant Products.

Reporting

10. eBay will report to the United States periodically as described below. The Company shall transmit copies of all reports and other notices to the United States as required herein and described below and in accordance with the requirements for all notices as described in Paragraph 13 of the Settlement Agreement, and shall provide copies of all such reports to the Drug Enforcement Administration ("DEA") as required herein by electronic mail to email addresses provided by DEA pursuant to the notice procedure set forth in the Agreement. Where necessary and appropriate, the United States, DEA, and the Company will communicate via secure means of transmission to protect personally identifying information.

- a. Within 90 days of the Effective Date of the Agreement, eBay shall provide to the United States and DEA the following information to the extent reasonably available: seller identification, buyer identification, listing information, and transaction information associated with any listings with sales that have been

removed or any purchased items identified as violating eBay's new Pill Press, Die, and Mold Policy within the prior year.

- b. Throughout the Term of the Agreement, eBay shall on a quarterly basis provide to the United States and DEA, the following information:
 - i. seller user IDs, e-mail addresses, relevant data fields associated with the seller's eBay account, listing information, and any transaction records associated with (a) listings with completed sales that are identified during the prior quarter that violate eBay's new Pill Press, Die, and Mold Policy and (b) sellers whose accounts eBay suspends for violations of eBay's new Pill Press, Die, and Mold policy during the prior quarter.
 - ii. buyer user IDs, e-mail addresses, relevant data fields associated with the buyer's eBay account, and transaction history for any users who purchased items from listings identified pursuant to subsection (i)(a) of this Paragraph during the last quarter.

11. If the United States or DEA believe that the any of the reports provided under paragraph 10 are incomplete in any material respect, the United States or DEA shall notify the Company, bring to the Company's attention the allegedly overlooked violative item, and provide a reasonable opportunity for the Company to submit an amended submission.

12. The written reports described in Paragraph 10 shall be submitted to the United States and DEA no later than thirty (30) business days after the end of each calendar quarter, excepting any calendar quarter that ends within thirty (30) calendar days of the end of the Term.

13. The United States will not pursue any civil and/or administrative investigation under the CSA or its implementing regulations related to the information reported by eBay

pursuant to this Agreement during the three-year reporting period, so long as eBay acts with reasonable care related to the listings of pill presses, encapsulating machines or dies on the platform.

Confidentiality

14. Submissions by the Company, including the reports, will likely include proprietary, financial, confidential, personal, and competitive business information. Moreover, public disclosure of the submissions could discourage cooperation, impede pending or potential government investigations, and thus undermine the objectives of the reporting requirement. For these reasons, among others, the parties agree that they will keep the submissions and the contents thereof confidential, except as required by law, court order, or lawful process. The Company's submissions and reports are entitled to confidential treatment under the Freedom of Information Act ("FOIA"), to the extent they qualify for exemptions under 5 U.S.C. § 552(b)(4) ("trade secrets and commercial or financial information"), § 552(b)(7) ("records or information compiled for law enforcement purposes"), or any other exemption.