

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 20 Civ. 2340 (EGS)

**DEFENDANTS’ COUNTER-STATEMENT OF DISPUTED FACTS**

Pursuant to Local Rule 7(h)(1) and Rule 13 of the Standing Order Governing Civil Cases before Judge Emmet G. Sullivan (ECF No. 9), Defendants respectfully submit the following response to Plaintiffs’ statement of material facts as to which there is no genuine issue.

<b>I. Plaintiffs depend on the U.S. mail, especially during the ongoing pandemic.</b>	
<p>1. On January 30, 2020, the World Health Organization designated the coronavirus disease 2019 (“COVID-19”) outbreak as a Public Health Emergency of International Concern; and on March 11, the WHO declared COVID-19 a global pandemic. <i>See</i> World Health Org., <i>WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19</i> (Mar. 11, 2020), <a href="https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020">https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020</a>.</p>	<p>Admit.</p>
<p>2. On March 13, 2020, the President declared a national emergency as a result of the outbreak. Proclamation 9994 of Mar. 13, 2020, <i>Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak</i>, 85 Fed. Reg. 15,337 (Mar. 18, 2020).</p>	<p>Admit.</p>

<p>3. The pandemic has since swept across the country, causing an unprecedented crisis with devastating economic and public health consequences. As of October 19, 2020, over eight million individuals nationwide have confirmed cases of COVID-19 and over 218,000 people have died. Centers for Disease Control &amp; Prevention, <i>Coronavirus Disease 2019 (COVID-19): United States COVID-19 Cases and Deaths by State</i>, <a href="https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html">https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html</a> (last updated Oct. 19, 2020).</p>	Admit.
<p>4. COVID-19 is a contagious, potentially fatal respiratory disease primarily spread by person-to-person contact. Ku<sup>1</sup> Decl. ¶ 13 (Ex. 14).<sup>2</sup></p>	Admit.
<p>5. COVID-19 is the most serious epidemic in over 100 years. Ku Decl. ¶ 8 (Ex. 14).</p>	Admit.
<p>6. To prevent further spread of COVID-19, the Centers for Disease Control and Prevention (“CDC”) has issued recommendations and guidelines on social distancing, wearing masks, and washing hands. Ku Decl. ¶¶ 14–15 (Ex. 14).</p>	Admit.
<p>7. The CDC has specifically warned against the risks of gatherings, explaining that the lowest risks occur with virtual gatherings where there is no physical presence and the highest risks occur with large indoor gatherings—particularly if some attending do not observe safety strategies like social distancing or mask wearing. Ku Decl. ¶ 14 (Ex. 14).</p>	Admit.

<sup>1</sup> Dr. Leighton Ku is a Professor of Health Policy and Management and Director of the Center for Health Policy Research at the Milken Institute School of Public Health, George Washington University.

<sup>2</sup> All references in this Statement of Facts to “Ex. \_\_\_” are to the exhibits to the accompanying Declaration of Daniela Nogueira dated October 19, 2020 (ECF No. 59). The depositions cited in this Statement of Facts were conducted within the last thirty days, and deponents who requested an opportunity to review and sign the transcript have not had the full period allowed by the rules to do so. Fed. R. Civ. P. 30(e). To the extent necessary, Plaintiffs will supplement the exhibits cited in this filing with any errata sheets the deponents submit.

8. Because COVID-19 is primarily spread through person-to-person contact with high risks for indoor gatherings, Plaintiffs have undertaken serious efforts to minimize in-person gatherings. N.Y. Exec. Order No. 202.8; Hawaii Sixth Supplementary Proclamation Relating to COVID-19; N.J. Exec. Order No. 107; San Francisco Third Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency dated Feb. 25, 2020; N.Y. City Emergency Executive Order No. 100.	Admit.
9. Plaintiffs have also expended time, money, and resources to educate the public and facilitate social distancing. <i>See</i> Adinaro Decl. ¶ 8 (Ex. 1); Kellner <sup>3</sup> Decl. ¶ 27 (Ex. 13).	Admit.
10. Plaintiffs have also increased reliance on U.S. mail to continue to meet their legal obligations to their residents and to administer public benefits programs. <i>See</i> Banks <sup>4</sup> Decl. ¶¶ 4–7, 11, 14 (Ex. 2); Betts <sup>5</sup> Decl. ¶ 8 (Ex. 3); Newton <sup>6</sup> Decl. ¶ 9 (Ex. 16).	Admit.

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<sup>3</sup> Douglas Kellner is a Co-Chair and Commissioner of the New York State Board of Elections.

<sup>4</sup> Steven Banks is the Commissioner of the New York City Department of Social Services.

<sup>5</sup> Catherine Betts is the Director of the Hawaii Department of Human Services.

<sup>6</sup> Jack Newton is the Director of the Public Benefits Unit at Bronx Legal Services.

11. Plaintiffs provide various services and benefits to their residents that rely on U.S. mail, including public assistance to low-income families, healthcare benefits, child support enforcement, and drivers' licenses. Banks Decl. ¶¶ 3–7 (Ex. 2), 14; Betts Decl. ¶ 3 (Ex. 3); DiGiovanni-Abatto <sup>7</sup> Decl. ¶ 3 (Ex. 5); Hein <sup>8</sup> Decl. ¶¶ 2–3 (Ex. 8); Jacobs <sup>9</sup> Decl. ¶¶ 4–10 (Ex. 11); Lau <sup>10</sup> Decl. ¶ 3 (Ex. 15); Poole <sup>11</sup> Decl. ¶ 2 (Ex. 17).	Admit.
12. These services depend upon the timely delivery and receipt of U.S. mail. Banks Decl. ¶¶ 4–7, 11, 14 (Ex. 2); Betts Decl. ¶ 6 (Ex. 3); DiGiovanni-Abatto Decl. ¶¶ 3–5 (Ex. 5); Hein Decl. ¶¶ 4–5 (Ex. 8); Jacobs Decl. ¶¶ 5–10 (Ex. 11); Lau Decl. ¶ 5 (Ex. 15); Poole Decl. ¶¶ 3–11 (Ex. 17);.	Admit.
<b>II. The U.S. Postal Service upended its past policies and practices by implementing abrupt changes in June and July 2020 that have had a nationwide impact.</b>	
13. For decades, the U.S. Postal Service has employed an “every piece, every day” ethos to mail delivery. Second Cintron <sup>12</sup> Dep. Tr. 118; Goldway <sup>13</sup> Decl. ¶ 28 (Ex. 6); Coradi <sup>14</sup> Decl. ¶ 11 (Ex. 4).	Admit.

<sup>7</sup> Kimberly DiGiovanni-Abatto is the Deputy Administrator of Agency Operations for the New Jersey Motor Vehicle Commission.

<sup>8</sup> Michael Hein is the Commissioner of the New York State Office of Temporary and Disability Assistance.

<sup>9</sup> Jennifer Langer Jacobs is the Assistant Commissioner of the New Jersey Department of Human Services.

<sup>10</sup> Lynette Lau is the Administrator of the Child Support Enforcement Agency for the State of Hawaii.

<sup>11</sup> Sheila Poole is the Commissioner of the New York State Office of Children and Family Services.

<sup>12</sup> Robert Cintron is the Vice President for Logistics for the U.S. Postal Service.

<sup>13</sup> Ruth Goldway is the former Chairwoman of the U.S. Postal Regulatory Commission.

<sup>14</sup> Peter Coradi is a National Business Agent for the American Postal Workers Union.

<p>14. In the past, postal workers have been fired for delaying just one or two pieces of mail. Coradi Decl. ¶ 11 (Ex. 4).</p>	<p>Deny to the extent that the cited exhibit does not provide a basis to admit the asserted fact. For example, “In the past”, “postal worker” and “delaying” are not defined terms. Ex. 4, ¶ 11. It is unclear which level of employee or which bargaining unit is being referred to. Moreover, decisions regarding employee discipline of any Postal Service employee are highly fact specific inquiries. Curtis Decl. (DEx. 7)<sup>15</sup> ¶¶ 10-11x.</p> <p>Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247–48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”). Otherwise, admit.</p>
<p>15. At times, local postmasters have personally delivered pieces of mail to ensure that they do not remain in a delivery unit overnight. Goldway Decl. ¶ 29 (Ex. 6).</p>	<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>16. Traditionally, the U.S. Postal Service has had a certain amount of operational flexibility to ensure that mail is delivered in accordance with its service standards. Goldway Decl. ¶ 29 (Ex. 6); Coradi Decl. ¶¶ 13–14 (Ex. 4).</p>	<p>Admit.</p>

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<sup>15</sup> All references to “DEx. \_\_\_” are to the exhibits accompanying Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment and in Support of Defendants’ Cross-Motion for Summary Judgment.

<p>17. In June and July 2020, the U.S. Postal Service began overhauling how the agency collects, processes, and delivers mail throughout the country. Curtis<sup>16</sup> Dep. Tr. 137–38 (Ex. 26); Exs. 37, 39–41, 43, 46–48, 50.</p>	<p>Deny. The cited deposition testimony does not characterize the Postal Service’s actions as an “overhaul.” Curtis Dep. Tr. (DEx. 10) (DEx. 7)137-38.</p> <p>Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
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<sup>16</sup> Angela Curtis is the Vice President of Retail and Post Office Operations at the U.S. Postal Service.

<p>18. Specifically, the U.S. Postal Service made five operational changes challenged in this case: (1) increased reduction of high-speed sorting machines without local input; (2) a new effort to reduce work hours, especially overtime; (3) the first-ever organization-wide policy to eliminate late and extra trips; (4) a new initiative altering letter carrier workflows; and (5) the decision not to treat all election mail mailed as Marketing Mail on an expedited First Class basis. Exs. 37, 39–41, 43–50.</p>	<p>Deny. The Postal Service did not “increase[] reduction of high-speed sorting machines without local input.” DeChambeau Decl. (DEx. 2) ¶¶ 7, 14. Further, the cited exhibits do not support Plaintiffs’ characterization of these various actions as either “changes” or as “new” or “first-ever.” Rather, efforts to improve efficiency and control expenses are part of the Postal Services’ long-standing practice. First Cintron Decl. (DEx. 4) ¶¶ 19; Curtis Dep. Tr. (DEx. 10) (DEx. 7) 76-77, 155. Finally, the Postal Service is continuing its practice to ensure that “Election Mail entered as Marketing Mail should be . . . processed expeditiously to the extent feasible so that it is generally delivered in line with the First-Class Mail delivery standards.” See Clarifying Operational Instructions (DEx. 12) at 4.</p> <p>Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the “operational changes” described are not current Postal Service policy or practice. See Clarifying Operational Instructions (DEx. 12). See <i>Anderson</i>, 477 U.S. at 247–48.</p>
<p>Policy Change 1: Reduced sorting machines.</p>	
<p>19. For FY 2020, the agency reduced 711 high-speed sorting machines by mid-August 2020. DeChambeau<sup>17</sup> Decl. ¶ 21 (ECF No. 30-2); Ex. 37.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. See <i>Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<sup>17</sup> Jason DeChambeau is Headquarters Director of Processing Operations for the U.S. Postal Service.

<p>20. This figure includes the reduction of 52 machines in New York State, 27 machines in New Jersey, 9 in San Francisco, and 4 machines in Hawaii. Ex. 37.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p> <p>Otherwise, admit.</p>
<p>21. All told, the reduction of these 711 machines constitutes an approximately 14.7 percent reduction in the number of machines across the country. DeChambeau Decl. (DEx. 2) ¶ 21 (ECF No. 30-2).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p> <p>Otherwise, admit.</p>
<p>22. Of the 711 sorting machines reductions, over 600 were abruptly announced on June 17, 2020 to start taking place “over the next several months.” Ex. 37.</p>	<p>Deny to the extent that the cited exhibit does not support that an announcement was made or that the letter providing notice to a union was “abrupt.” <i>See</i> Ex. 37.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p> <p>Otherwise, admit.</p>

<p>23. Prior to 2020, the U.S. Postal Service had been reducing sorting machines at significantly low rates since FY2016. DeChambeau Decl. (DEx. 2) ¶ 21 (ECF No. 30-2).</p>	<p>Deny to the extent that the cited exhibit does not support the characterization of the reduction as “significantly low rates.” DeChambeau Decl. (DEx. 2) ¶ 21.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p> <p>Otherwise, admit.</p>
<p>24. The agency reduced its fleet of sorting machines by about 3.3 percent in FY2020, 1.9 percent in FY2019, 6.5 percent in FY2018, 3.5 percent in FY2017, and 0 percent in FY2015. DeChambeau Decl. (DEx. 2) ¶ 21 (ECF No. 30-2). Only FY2016 had a reduction rate above 10 percent. DeChambeau Decl. (DEx. 2) ¶ 21 (ECF No. 30-2).</p>	<p>Deny, to the extent the exhibit cited shows reductions in the Postal Service’s inventory of all sorting machines (as opposed to letter and flat sorting machines) and to the extent the cited exhibit shows reductions of 3.3 percent in FY2020. DeChambeau Decl. (DEx. 2) ¶ 21.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p> <p>Otherwise, admit.</p>

<p>25. Even when mail volume was down prior to 2020, the U.S. Postal Service often did not reduce or remove machines in case other machines malfunctioned or—as is typical during election and holiday seasons—mail volume increased again. Coradi Decl. ¶ 15 (Ex. 4).</p>	<p>Deny. The Postal Service has a longstanding practice of removing unnecessary mail processing equipment based on monitoring of the volume of mail flow at facilities throughout the nation. DeChambeau Decl. (DEx. 2) ¶ 8. Since 2017, the Postal Service has determined the optimum number of machines by running computer models, which calculate the variation in volume by using the 95<sup>th</sup> percentile of heaviest daily mail excluding December, machine capacity, and processing windows. <i>Id.</i> ¶ 15.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>26. When the U.S. Postal Service did reduce sorting machines prior to 2020, managers at processing facilities typically negotiated if, when, and how a sorting machine would be reduced through an iterative process. Coradi Decl. ¶ 15 (Ex. 4).</p>	<p>Deny. The Postal Service has a longstanding practice of removing unnecessary mail processing equipment based on monitoring of the volume of mail flow at facilities throughout the nation. DeChambeau Decl. (DEx. 2) ¶ 8. Since 2017, the Postal Service has determined the optimum number of machines by running computer models, which calculate the variation in volume by using the 95<sup>th</sup> percentile of heaviest daily mail excluding December, machine capacity, and processing windows. <i>Id.</i> ¶ 15.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>27. Often, the U.S. Postal Service would first just turn off sorting machines on a trial basis to test whether the machine would still be necessary for operations going forward. Coradi Decl. ¶ 15 (Ex. 4).</p>	<p>Deny. The Postal Service has a longstanding practice of removing unnecessary mail processing equipment based on monitoring of the volume of mail flow at facilities throughout the nation. DeChambeau Decl. (DEx. 2) ¶ 8. Since 2017, the Postal Service has determined the optimum number of machines by running computer models, which calculate the variation in volume by using the 95<sup>th</sup> percentile of heaviest daily mail excluding December, machine capacity, and processing windows. <i>Id.</i> ¶ 15.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>28. Unlike prior years, facility managers were not given the opportunity to weigh in on if, when, or how to reduce sorting machines. Coradi Decl. ¶ 15 (Ex. 4); Ex. 37.</p>	<p>Deny. The Postal Service has a longstanding practice of removing unnecessary mail processing equipment based on monitoring of the volume of mail flow at facilities throughout the nation. DeChambeau Decl. (DEx. 2) ¶ 8. Since 2017, the Postal Service has determined the optimum number of machines by running computer models, which calculate the variation in volume by using the 95<sup>th</sup> percentile of heaviest daily mail excluding December, machine capacity, and processing windows. <i>Id.</i> ¶ 15.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. (DEx. 2) ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>Policy Change 2: Reduced unearned overtime.</p>	

<p>29. In June and July 2020, the U.S. Postal Service began new efforts to reduce unearned overtime. Exs. 39–40; Curtis Dep. Tr. (DEx. 10) 75–76 (Ex. 26).</p>	<p>Deny to the extent that the cited deposition testimony does not support the characterization of the “efforts to reduce unearned overtime” as “new.” To the contrary, the testimony states that these efforts “are not new. These are things that have been around for a long time. . .” Curtis Dep. Tr. (DEx. 10) 76–77.</p> <p>Deny to the extent that this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>30. Under collective bargaining agreements, U.S. Postal Service employees are expected to complete a certain number of tasks in order to “earn” time. Curtis Dep. Tr. (DEx. 10) 51–53 (Ex. 26).</p>	<p>Deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>31. For example, for every 18 letters that a city-based letter carrier puts into a case, they earn one minute. Curtis Dep. Tr. (DEx. 10) 52 (Ex. 26).</p>	<p>Deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>32. “Unearned” time is the “time that an employee takes to complete those duties over and above the earned time.” Curtis Dep. Tr. (DEx. 10) 53 (Ex. 26).</p>	<p>Deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>33. If the number of tasks completed earn time of eight hours and 15 minutes, but the carrier takes 8 hours and 45 minutes to complete those tasks, that would result in 30 minutes of “unearned overtime.” Curtis Dep. Tr. (DEx. 10) 54 (Ex. 26).</p>	<p>Deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson, 477 U.S. at 247–48.</i> Otherwise, admit.</p>
<p>34. “Unearned overtime” is sometimes necessary for the U.S. Postal Service to achieve its mission for a given day. Curtis Dep. Tr. (DEx. 10) 54 (Ex. 26).</p>	<p>Deny. The cited deposition testimony responded to a question regarding the purpose of “overtime” generally, not “unearned overtime” specifically. Curtis Dep. Tr. (DEx. 10) 54.</p> <p>Also deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson, 477 U.S. at 247–48.</i></p>
<p>35. On June 26, 2020, the U.S. Postal Service held a teleconference with Area Vice Presidents on strategies to reduce work hours, especially unearned overtime. Ex. 39.</p>	<p>Deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson, 477 U.S. at 247–48.</i> Otherwise, admit.</p>
<p>36. Participating Area Vice Presidents were asked to go “all in” on these strategies. Curtis Dep. Tr. (DEx. 10) 60–61 (Ex. 26); Ex. 39 (slide 6).</p>	<p>Deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson, 477 U.S. at 247–48.</i> Otherwise, admit.</p>

<p>37. As part of its new efforts to reduce work hours, the U.S. Postal Service launched a “Caseless” pilot at 60 different sites to require letter carriers to case mail without any casing equipment. Ex. 39; Curtis Dep. Tr. (DEx. 10) 95 (Ex. 26).</p>	<p>Deny. The cited deposition testimony does not support the characterization of “new efforts to reduce work hours. To the contrary, the testimony states that these efforts “are not new. These are things that have been around for a long time. . .” Curtis Dep. Tr. (DEx. 10) 76-77. In addition, the deposition testimony does not support the statement that the pilot was “launched.” To the contrary, the testimony states that Caseless was a pilot program postal officials “were working with our union partners on,” one of two one of two new pilots that “we were going to launch,” and that the pilots “were . . . stopped.” Curtis Dep. Tr. (DEx. 10) 95-96, 161.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>38. “Casing” means sorting letter mail and flats into walk sequence or delivery point sequence, i.e. the sequence necessary for carriers to deliver mail door-to-door. Curtis Dep. Tr. (DEx. 10) 82 (Ex. 26).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted facts that is material to the outcome of this suit, <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>39. In the “Caseless” pilot, carriers must case letters and flats manually in the office or while out on their routes. Curtis Dep. Tr. (DEx. 10) 82 (Ex. 26).</p>	<p>Deny. The cited deposition testimony does not support the asserted fact. To the contrary, Mr. Curtis stated that the Caseless pilot would “allow carriers . . . to merge . . . raw volume [of mail] that came from the plant without all of that equipment to determine if that was more efficient in the office” and does not state that the pilot took place. Curtis Dep. Tr. (DEx. 10) 95.</p> <p>Also deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>40. On July 7, 2020, the U.S. Postal Service reiterated its efforts to reduce work hours in a teleconference. Ex. 40; Curtis Dep. Tr. (DEx. 10) 132–33 (Ex. 26).</p>	<p>Deny to the extent that the cited deposition testimony characterizes the July 7, 2020 teleconference as a “continuation of our prior meeting to continue talking about our end of the year projections, how we thought we would end and what we would do differently for the new year.” Curtis Dep. Tr. (DEx. 10) 132-133.</p> <p>Deny to the extent this paragraph does not set an forth uncontroverted facts that is material to the outcome of this suit, as the Postal Service has issued guidance reinforcing that overtime is not banned or otherwise restricted. Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>Policy Change 3: Reduced late trips and extra trips.</p>	
<p>41. In July 2020, the U.S. Postal Service established an organization-wide policy on the use of late and extra trips for the first time ever. Second Cintron Dep. Tr. (DEx. 11) 50 (Ex. 28).</p>	<p>Deny. The cited deposition testimony explains that prior to July 2020, there was no “formal written guidance,” but “over two years,” there was “plenty” of trainings and meetings “that were given to management about the need to adhere to transportation schedules,” and that national strategy had always been to adhere to the operating plan, i.e., truck schedules. Second Cintron Dep. Tr. (DEx. 11) 50-51. Curtis Dep. Tr. (DEx. 10) 25-28.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as USPS has issued updated guidance. <i>See</i> Second Declaration of Joshua Colin (“Second Colin Decl.”) (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>42. Late trips are trips that depart after their scheduled departure time. Curtis Dep. Tr. (DEx. 10) 31 (Ex. 26); Coradi Decl. ¶¶ 13–14 (Ex. 4).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>43. Extra trips are additional trips that were not originally scheduled to occur. Curtis Dep. Tr. (DEx. 10) 31 (Ex. 26); Coradi Decl. ¶¶ 13–14 (Ex. 4).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>44. For FY2019, 20 percent of total transportation trips were late. Ex. 54.</p>	<p>Deny to the extent that the cited exhibit does not support the asserted fact. <i>See</i> Ex. 55.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>45. Four percent of total transportation trips were considered “extra.” Ex. 54.</p>	<p>Deny to the extent that the cited exhibit does not support the asserted fact. <i>See</i> Ex. 55.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>46. Together, these late and extra trips cost the U.S. Postal Service about \$280 million out of \$80.1 billion in total expenses for the year—or about 0.35 percent. Exs. 43, 54–55.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>47. Prior to July 2020, U.S. Postal Service employees typically utilized late trips or extra trips when necessary to account for fluctuations in mail volume, machine malfunctions, truck breakdowns, inclement weather, health and safety concerns, or the like. Coradi Decl. ¶ 13 (Ex. 4); Curtis Dep. Tr. (DEx. 10) 41–43 (Ex. 26).</p>	<p>Deny to the extent this is not an exhaustive list for reasons employees utilized late or extra trips. For example, a common reason for utilizing late trips or extra trips not accounted for in this statement of fact is the contractor being late. Curtis Dep. Tr. (DEx. 10) at 43.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>48. Prior to July 2020, frontline supervisors and managers could authorize late or extra trips. Second Cintron Dep. Tr. (DEx. 11) 32, 34–35, 53 (Ex. 28).</p>	<p>Deny to the extent that the statement implies that this changed in July 2020. With respect to late and extra trips, managers are still authorized to “use their best business judgment to meet our service commitments.” <i>See</i> Clarifying Operational Instructions (DEx. 12).</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>49. Prior to July 2020, approval was not required from middle managers, plant managers, or Area Vice Presidents. Second Cintron Dep. Tr. (DEx. 11) 32 (Ex. 28).</p>	<p>Deny. The cited deposition testimony states that while given the size and scope of the Postal Service organization, it was “possible” for nonmanagerial employees to decide on their own that a late trip was necessary, it was required for nonmanagerial employees to seek approval before running a late trip. Second Cintron Dep. Tr. (DEx. 11) 32–34.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>50. Prior to July 2020, when Area Vice Presidents or U.S. Postal Service Headquarters identified a particular plant or route that appeared to be using higher than usual numbers of late or extra trips, they would work with that particular plant or postal office to determine the root cause and tailor an appropriate solution through an iterative process. Second Cintron Dep. Tr. (DEx. 11) 20–21 (Ex. 28); Curtis Dep. Tr. (DEx. 10) 29–31 (Ex. 26).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>51. Prior to July 2020, there was no organization-wide policy from U.S. Postal Service Headquarters dictating when late trips or extra trips were not acceptable. Second Cintron Dep. Tr. (DEx. 11) 50 (Ex. 28).</p>	<p>Deny. The cited deposition testimony states that prior to July 2020, there was no “formal written guidance.” However, the national strategy had always been to adhere to the operating plan, i.e. truck schedules. Second Cintron Dep. Tr. (DEx. 11) 50-51.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>52. Prior to July 2020, there was no organization-wide policy from U.S. Postal Service Headquarters requiring plant manager or Area Vice President approval for late or extra trips. Second Cintron Dep. Tr. (DEx. 11) 50 (Ex. 28).</p>	<p>Deny. While given the size and scope of the Postal Service organization, it was “possible” for nonmanagerial employees to decide on their own that a late or extra trip was necessary, it was “required” for nonmanagerial employees to seek approval before running a late or extra trip. Second Cintron Dep. Tr. (DEx. 11) 32-34.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>53. On July 10, 2020, U.S. Postal Service Chief Operating Officer Dave Williams held a teleconference with what were then known as Area Vice Presidents. Second Cintron Dep. Tr. (DEx. 11) 69–70 (Ex. 28); Cintron Suppl. Decl. (DEx. 15) ¶ 3 (ECF No. 39-1).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>54. During the July 10, 2020, teleconference, Mr. Williams gave a presentation on the elimination of late trips and extra trips. Second Cintron Dep. Tr. (DEx. 11) 70–71 (Ex. 28).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>55. Mr. Williams supported his July 10, 2020 presentation with slides, including a slide stating “NO EXTRA TRANSPORTATION” and “NO LATE TRANSPORTATION.” Ex. 41 (USPS_EDPA00000843, at slide 9).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>56. Another slide stated: “Effective July 13 all extra trips and Postal caused late trips are unauthorized contractual commitments.” Ex. 41 (USPS_EDPA00000843, at slide 10).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>57. A third slide further stated that “Management Instruction MI SP-G4-2006-2” should be followed for “unauthorized extra trips and late trips.” Ex. 41 (USPS_EDPA00000843, at slide 11). The slide further stated that the “Area Vice President is the ratifying official and must ratify and submit to COO” and the “Area Vice President will call COO daily if extra trips or late trips occur the prior day to discuss next steps.” Ex. 41 (USPS_EDPA00000843, at slide 11).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>58. Following the teleconference, Area Vice Presidents turned to implementing the new policy. Curtis Dep. Tr. (DEx. 10) 41 (Ex. 26).</p>	<p>Deny to the extent that the cited testimony does not refer to a “new policy,” but instead that “this was going to be an area of focus and energy for us in my perception.” Curtis Dep. Tr. (DEx. 10) 41. Further deny that this was a new policy, as the national strategy had always been to adhere to the operating plan, i.e. truck schedules. Second Cintron Dep. Tr. (DEx. 11) 50-51. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>59. Some U.S. Postal Service employees distributed instructions that same day. Ex. 42 (USPS_EDPA00003038) (“[T]here is no more waiting on mail and there is no coming back for parcels. The excuses of why people can’t get done with their routes is gone. We NEED to start capturing the downtime.”).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>60. One Area Vice President’s team prepared and distributed a “Mandatory Stand-Up Talk: All Employees,” with contents “draw[n] from” and “reflected” in the teleconference held that same day. Ex. 43 (the “July 10 Stand-Up Talk”); Cintron Suppl. Decl. (DEx. 15) ¶ 3 (ECF No. 39-1).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>61. At the U.S. Postal Service, a “Stand-Up Talk” is a document with talking points that local postal managers use to relay information to U.S. Postal Service employees. Curtis Dep. Tr. (DEx. 10) 176–77 (Ex. 26).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>62. The July 10 Stand-Up Talk stated: “Right now, we are at a critical juncture in our organization and must make immediate, lasting, and impactful changes in our operations and in our culture,” and asserted that “[t]his operational pivot is long overdue.” Ex. 43.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>63. The July 10 Stand-Up Talk document further stated: “The initial step in our pivot is targeted on transportation and the soaring costs we incur, due to late trips and extra trips, which costs the organization somewhere around \$200 million in added expenses.” Ex. 43.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>64. The July 10 Stand-Up Talk listed the following “examples of transportation changes being implemented immediately (today).”</p> <ul style="list-style-type: none"> <li>a. “All operations must meet our 24-hour clock commitment”</li> <li>b. “All trips will depart on time (Network, Plant and Delivery); late trips are no longer authorized or accepted”</li> <li>c. “Extra trips are no longer authorized or accepted”</li> <li>d. “There must be proper annotation in the scanner, if a Contractor Failure occurs”</li> <li>e. “All PVS/HCR drivers must be notified that trips depart on time.”</li> <li>f. “Function 4 must start on time and end on time and we must make scheduled DUTV Carriers must begin on time, leave for the street on time, and return on time”</li> <li>g. “Carriers must make the final dispatch of value; no additional transportation will be authorized to dispatch mail to the Plant after the intended dispatch”</li> <li>h. “The right mail must go on the right truck - every time”</li> <li>i. “ALL EMPLOYEES have an essential role with trips departing on time.”</li> </ul> <p>Ex. 43.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>65. The July 10 Stand-Up Talk acknowledged that the new policy could result in mail being left behind in postal facilities. The document states: “One aspect of these changes that may be difficult for employees is that—temporarily—we may see mail left behind or mail on the workroom floor or docks (in P&amp;DCs), which is not typical.” Ex. 43.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>66. Following the July 10, 2020 teleconference and the distribution of the July 10 Stand-Up Talk, some U.S. Postal Service managers contacted Vice President of Logistics Robert Cintron to get clarification regarding the new policy. Suppl. Cintron Decl. ¶ 3 (ECF No. 39-1); Second Cintron Dep. Tr. (DEx. 11) 46–47 (Ex. 28).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>67. On July 11, 2020, Vice President Cintron began drafting a document to explain the policy presented in the July 10, 2020 teleconference. Cintron Suppl. Decl. (DEx. 15) ¶ 4 (ECF No. 39-1); Second Cintron Dep. Tr. (DEx. 11) 65 (Ex. 28).</p>	<p>Deny to the extent the guidelines are characterized as a “document to explain the policy presented in the July 10, 2020 teleconference.” The cited paragraph explains that “clarifications” were made to make “clear that certain statements in the July 10, 2020 Stand-Up Talk [not the teleconference] were not accurate statements of USPS policy” and that the guidelines explained “when extra trips could be taken, clarifying that extra trips remained authorized under certain circumstances.” Cintron Suppl. Decl. (DEx. 15) ¶ 4.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>68. On July 14, 2020, Vice President Cintron finalized a document entitled “Keys to Success for Elimination of Extras and Lates.” Ex. 46 (the “Cintron Guidelines”); Cintron Suppl. Decl. (DEx. 15) ¶ 4 (ECF No. 39-1).</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>68. On July 14, 2020, Vice President Cintron distributed the “Keys to Success for Elimination of Extras and Lates” via email, stating that the “focus is to eliminate unplanned extra transportation,” “[d]eviations to the extent possible should be utilized to eliminate extras,” and “[t]rips must depart on time.” Ex. 45.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>69. The Cintron Guidelines listed when a late or extra trip was “Acceptable” or “Not Acceptable.” Ex. 46.</p>	<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>70. The Cintron Guidelines remain operative today. Second Cintron Dep. Tr. (DEx. 11) 76–77 (Ex. 28).</p>	<p>Deny. The Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>71. On October 14, 2020, Vice President Cintron testified that the Cintron Guidelines had never been rescinded. Second Cintron Dep. Tr. (DEx. 11) 91 (Ex. 28).</p>	<p>Deny to the extent that supplemental guidance has since been issued to Postal Service employees. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>
<p>72. In late September and into October, the U.S. Postal Service sent various guidance documents to either postal managers or all employees that explained late and extra trips were permitted, but did not explicitly rescind the Cintron Guidelines. Colin Decl. ¶ 17 &amp; Exs. 1–5 (Ex. 60).</p>	<p>Deny to the extent that supplemental guidance has since been issued to Postal Service employees. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>
<p>73. As a result of the new organization-wide policy announced in July 2020, the number of late and extra trips fell “significantly.” Second Cintron Dep. Tr. (DEx. 11) 123–24 (Ex. 28); Grimmer Decl. ¶ 19 (Ex. 7); Exs. 32–33, 53, 59.</p>	<p>Deny to the extent that the cited deposition testimony and Exhibits 32-33, 53, 59 do not support that there was a “new organization-wide policy” or attribute the decline in the number of late and extra trips solely to the renewed focus on adherence to transportation schedule. Second Cintron Dep. Tr. (DEx. 11) 123-24. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>74. While the number of late trips fluctuated between 2,500 and 6,413 from January 1, 2020 through July 10, 2020 on all but 16 days, late trips have remained below 1,600 on all but nine days since July 15, 2020 (clustered around the Labor Day and Columbus Day holidays). Ex. 32.</p>	<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, <i>see Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

75. While the number of extra trips fluctuated between 1,028 and 3,725 from January 1, 2020 through July 11, 2020, extra trips have remained below 800 on all but six days since July 15, 2020 (clustered around the Labor Day and Columbus Day holidays). Ex. 33.	Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, <i>see Anderson</i> , 477 U.S. at 247–48. Otherwise, admit.
Policy Change 4: Reduced morning sortation.	
76. As part of its efforts to reduce work hours, the U.S. Postal Service began an initiative in July 2020 entitled “Expedited to Street/Afternoon Sortation” (or “ESAS”) at 384 facilities. Exs. 39, 47.	Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson</i> , 477 U.S. at 247–48. Otherwise, admit.
77. The 384 facilities that are part of the ESAS initiative include those located in the jurisdictions of Plaintiffs here—New Jersey, New York State, New York City, and San Francisco. Ex. 48.	Deny to the extent that the statement is drafted in the present tense, despite the pilot not currently being in effect. Curtis Dep. Tr. (DEx. 10) 97. Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson</i> , 477 U.S. at 247–48. Otherwise, admit.
78. ESAS “reduces morning office time,” requiring “carriers to leave for the street earlier.” Ex. 47.	Deny to the extent that the statement is drafted in the present tense, despite the pilot not currently being in effect. Curtis Dep. Tr. (DEx. 10) 97. Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson</i> , 477 U.S. at 247–48. Otherwise, admit.

<p>79. Specifically, in facilities participating in ESAS, “[c]ity carriers will not sort any mail during the morning operation.” Ex. 47.</p>	<p>Deny to the extent that the statement is drafted in the present tense, despite the pilot not currently being in effect. Curtis Dep. Tr. (DEx. 10) 97. Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson, 477 U.S. at 247–48.</i> Otherwise, admit.</p>
<p>80. Instead, under ESAS, “[a]ny unsorted First Class flats will go directly to the street with the carrier and will be routed in delivery sequence while on the street.” Ex. 47.</p>	<p>Deny to the extent that the statement is drafted in the present tense, despite the pilot not currently being in effect. Curtis Dep. Tr. (DEx. 10) 97. Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson, 477 U.S. at 247–48.</i> Otherwise, admit.</p>
<p>81. After completing their routes, city carriers return to the office and “[s]tage [mail] for [d]elivery the [n]ext [s]cheduled [d]ay,” meaning that certain mail that had already been in the office that morning will necessarily go out on the next scheduled day instead of that day. Ex. 47.</p>	<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson, 477 U.S. at 247–48.</i> Otherwise, admit.</p>
<p>82. Consistent with the Cintron Guidelines, instructions on how ESAS works direct that “[a]ll [m]orning [t]rips [m]ust be on [t]ime” and “[n]o [e]xtras [a]fter [s]cheduled DOV [t]rip” are permitted. Ex. 47.</p>	<p>Deny to the extent that the statement is drafted in the present tense, despite the pilot not currently being in effect. Curtis Dep. Tr. (DEx. 10) 97. Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson, 477 U.S. at 247–48.</i> Otherwise, admit.</p>

<p>83. The expectation for ESAS was that it would “[r]educe [c]ity [c]arrier [o]vertime.” Ex. 22.</p>	<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the cited pilot is not currently in effect. Curtis Dep. Tr. (DEx. 10) 97. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>Policy Change 5: Reduced delivery speed for election mail.</p>	
<p>84. The U.S. Postal Service changed its prior practice of delivering election mail at First Class speeds regardless of the paid class of service. Glass Dep. Tr. 107 (Ex. 29); Exs. 35 (slide 8, “Election Mail sent as Marketing Mail is not upgraded to First Class service.”), 49, 56 (at 12).</p>	<p>Deny. The Postal Service did not previously have a policy “providing that Election Mail (including ballots) entered as Marketing Mail be automatically upgraded to First-Class Mail, even if the mail bears the official Election Mail logo. Glass Decl. (DEx. 18) ¶ 18. As such, the Postal Service did not “change its prior practice.” The Postal Service is continuing its longstanding practices of prioritizing the expeditious processing and delivery of Election Mail, including issuing the directive that “Election Mail entered as Marketing Mail should be . . . processed expeditiously to the extent feasible so that it is generally delivered in line with the First-Class Mail delivery standards.” <i>See Clarifying Operational Instructions</i> (DEx. 12) at 4. <i>See also</i> Glass Decl. (DEx. 18) ¶¶ 19-22 discussing past and ongoing practices regarding expedited and prioritized treatment of Election Mail.</p> <p>Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>85. Prior to 2020, the U.S. Postal Service also processed and delivered election mail at First Class rate speeds—or better—regardless of the actual postage class. Coradi Decl. ¶ 11 (Ex. 4); Ex. 56 (at 12).</p>	<p>Deny. The cited page of Exhibit 56 states that “[t]he Postal Service often prioritizes Election . . . Mail mailed as Marketing Mail and treats it as First-Class Mail,” but does not support the assertion that the Postal Service processed and delivered election mail at First Class rate speeds—or better. The Postal Service did not previously have a policy “providing that Election Mail (including ballots) entered as Marketing Mail would be automatically upgraded to First-Class Mail, even if the mail bears the official Election Mail logo. Glass Decl. (DEx. 18) ¶ 18. Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>86. For example, the U.S. Postal Service’s green tags to identify trays and sacks of ballot mail in order to improve visibility of ballots as they travel through the mail stream is an “important component” of processing election mail. Ex. 61; Coradi Decl. ¶ 17 (Ex. 4); Second Glass Dep. Tr. 57–58 (Ex. 30).</p>	<p>Admit.</p>
<p>87. On or around July 30, 2020, the U.S. Postal Service’s General Counsel informed 46 states—including Plaintiffs New York and New Jersey—and the District of Columbia that failure to pay the First Class rate would risk ballots not being delivered on time and, consequently, the disenfranchisement of large swaths of voters. Second Glass Dep. Tr. 64-65 (Ex. 30); Ex. 49.</p>	<p>Deny to the extent that the cited testimony and exhibit do not refer to “disenfranchisement of large swaths of voters.” Otherwise, admit.</p>
<p>88. Other U.S. Postal Service officials indicated that states should mail election mail as First Class Mail, not Marketing Mail. Ex. 38 (USPS_EDPA00000396 to USPS_EDPA00000398).</p>	<p>Admit.</p>
<p><b>III. The changes the U.S. Postal Service began to implement in June and July 2020 caused dramatic delays in mail delivery across the country.</b></p>	

<p>89. The U.S. Postal Service establishes formal “service standards” that set the delivery speed of each class of mail, which are codified in regulations. Ex. 36.</p>	<p>Admit that the USPS establishes formal “service standards” that set goals for delivery speed for each class of mail. Deny that these service standards reflect guaranteed delivery times. Goldway Decl. (Ex. 6) ¶ 12.</p>
<p>90. First Class Mail has delivery standards of one to five days, depending on the subclass. Ex. 36.</p>	<p>Deny to the extent the cited exhibit does not support the assertion that First-Class Mail service standards for delivery “depend[] on the subclass.” Otherwise, admit.</p>
<p>91. On its website, the U.S. Postal Service lists a service standard of one to three days for the delivery of First Class Mail. First-Class Mail, U.S. Postal Service, <a href="https://www.usps.com/ship/first-class-mail.htm">https://www.usps.com/ship/first-class-mail.htm</a> (last visited Oct. 19, 2020).</p>	<p>Admit.</p>
<p>92. The U.S. Postal Service has delivery standards of three to 10 days for Marketing Mail, which is a class available for bulk mailings sent by business or non-profit customers. Delayed mail and packages?, U.S. Postal Service, <a href="https://faq.usps.com/s/article/Delayed-Mail-and-Packages">https://faq.usps.com/s/article/Delayed-Mail-and-Packages</a> (last visited Oct. 19, 2020).</p>	<p>Deny to the extent the cited evidence does not support the assertions that USPS “has delivery standards of three to 10 days for Marketing Mail” or that Marketing Mail “is a class available for bulk mailing sent by business or non-profit customers.” Rather, USPS has a service standard of “3 to 10 <i>business days (not guaranteed)</i>” for Marketing Mail. Delayed mail and packages?, U.S. Postal Service, <a href="https://faq.usps.com/s/article/Delayed-Mail-and-Packages">https://faq.usps.com/s/article/Delayed-Mail-and-Packages</a> (emphasis added) (last visited Oct. 22, 2020). Marketing Mail is mail matter not required to be mailed as First-Class Mail or Periodicals. How can we help?, U.S. Postal Service, <a href="https://faq.usps.com/s/article/What-is-USPS-Marketing-Mail">https://faq.usps.com/s/article/What-is-USPS-Marketing-Mail</a> (last visited Oct. 22, 2020).</p>

93. Typically, the U.S. Postal Service sets targets for the on-time delivery of First Class and Marketing Mail. For FY2020, the U.S. Postal Service set targets between 95.25 and 96.8 on-time delivery for First Class Mail and a target of 91.80 <sup>18</sup> on-time delivery for Marketing Mail. Ex. 54 (at 20).	Admit.
94. Although the numbers vary year to year, the U.S. Postal Service targets for on-time delivery are usually around 95 percent. Goldway Decl. ¶ 14 (Ex. 6).	Admit.
95. The impacts of the U.S. Postal Service’s five operational policy changes in June and July 2020 on meeting service standards were immediately noticeable. Exs. 31, 34–35, 44, 56 (at 1).	Deny. The cited exhibits do not support the assertion that there were, in fact, “five operational policy changes in June and July 2020” or that the alleged “five operational policy changes” resulted in the metrics reflected in the cited evidence. DeChambeau Decl. (DEx. 2) ¶¶ 7, 14; First Cintron Decl. (DEx. 4) ¶¶ 19; Curtis Dep. Tr. (DEx. 10) 76-77, 155; Clarifying Operational Instructions (DEx. 12) at 4.
96. Nationally, on-time delivery for First Class Mail had fluctuated between 89.52 and 93.88 percent between the first week of 2020 and the week of July 4, 2020. Ex. 31.	Admit.
97. For the week of July 11, 2020, on-time delivery for First Class Mail dropped to 85.26 percent. Ex. 31.	Admit.
98. During the week of August 8, 2020, on-time delivery for First Class Mail dropped to a year-low of 81.47 percent. Ex. 31.	Admit.
99. The drop in on-time delivery during the week of August 8, 2020 meant that approximately 85 million more deliveries were late that week than they would have been prior to the challenged changes. Ex. 57 (at 3).	Admit.
100. Nationally, on-time delivery for Marketing Mail had fluctuated between 87.39 and 93.69 percent between the first week of 2020 and the week of July 4, 2020. Ex. 31.	Admit.
101. For the week of July 11, 2020, on-time delivery for Marketing Mail dropped to 82.94 percent. Ex. 31.	Admit.

<sup>18</sup> This is a composite target with both Marketing Mail and Periodicals.

102. The following week, that figure dropped to 79.76 percent. Ex. 31.	Admit.
103. Although every single one of the U.S. Postal Service’s 67 districts saw a decline in on-time delivery in mid-July, the on-time delivery rate was even lower in certain regions. Exs. 34–35, 57 (at 3).	Deny to the extent the cited exhibits do not support the assertion that “the on-time delivery rate was even lower in certain regions.” Otherwise, admit.
104. Although on-time delivery of First Class and flat mail in the agency’s Eastern service area had hovered between roughly 91 and 95 percent in the preceding five months, on-time delivery in that region dropped for three weeks straight in July—down to 79 percent the week of July 19. Exs. 34–35.	Admit.
105. From July 18th to October 3rd, the average on-time delivery service score for First Class Mail was 85.2%. This represents a 6.1 percentage point decrease as compared to the average score from January 4, 2020 to July 11, 2020. Grimmer Suppl. Decl. ¶ 7 (Ex. 23).	Admit.
106. The decline in Service Scores has persisted even after the Postal Service has suspended all other new initiatives other than the policy limiting the number of Extra or Late Trips. Therefore, the observed declines in Service Scores are not attributable to other initiatives at the Postal Service. Grimmer Suppl. Decl. 13 (Ex. 23).	Deny to the extent the statement suggests that a purported “policy limiting the number of Extra or Late Trips” caused “the observed declines in Service Scores.” Further deny to the extent that service performance scores improved in August while the use of late and extra trips declined. USPS Congressional Briefing: Transportation & Service Performance Updates (Aug. 31, 2020) (DEx. 27). There are a variety of issues – such as the COVID-19 pandemic, holiday backlogs, natural disasters, and inclement weather – which have contributed to the declines in service scores and are outside of USPS’s control. <i>See</i> Press Release, The U.S. Postal Service Issues New Performance Report for the Week of September 12th Consistent with Performance Metrics Following a Federal Holiday (Sept. 24, 2020) (DEx. 29); Dearing Decl. (DEx. 31) ¶¶ 5-8.

<p>107. The policy limiting the number of Extra and Late trips continued to delay mail as recently as October 3rd. Changes in staffing levels due to COVID-19 cannot explain the decrease in Service Scores that correspond with the policy change. Grimmer Suppl. Decl. ¶¶ 17 (Ex. 23).</p>	<p>Deny. The cited declaration asserts a correlation between limiting the number of extra and late trips and a decrease in Service Scores, but does not establish a causal link between the two. The relative decrease in Service Scores throughout 2020 began with the onset of the COVID-19 pandemic in March and continues through the present. <i>See</i> FY20 Q2-FY21 Q1 Weekly Service Performance of Market Dominant Products through Week of Oct. 10, 2020 (DEx. 28) (DEx. 28). Further deny to the extent that service performance scores improved in August while the use of late and extra trips declined. USPS Congressional Briefing: Transportation &amp; Service Performance Updates (Aug. 31, 2020) (DEx. 27). There are a variety of issues – such as the COVID-19 pandemic, holiday backlogs, natural disasters, and inclement weather – which have contributed to the service delays and are outside of USPS’s control. <i>See</i> Press Release, The U.S. Postal Service Issues New Performance Report for the Week of September 12th Consistent with Performance Metrics Following a Federal Holiday (Sept. 24, 2020) (DEx. 29); Dearing Decl. (DEx. 31) ¶¶ 5-8.</p>
<p>108. In mid-July 2020, processing performance also dropped. Ex. 51.</p>	<p>Admit.</p>
<p>109. In mid-July 2020, the U.S. Postal Service’s overall processing performance score for First Class Mail dropped 8.1 percent below baseline. Ex. 51.</p>	<p>Admit.</p>
<p>110. In mid-July 2020, the U.S. Postal Service’s overall processing performance score for Marketing Mail dropped 8.42 percent below baseline. Ex. 51.</p>	<p>Admit.</p>

<p>111. Due to these delays, mail began to pile up in postal facilities. Coradi Decl. ¶ 9 (Ex. 4)</p>	<p>Deny. The cited evidence does not establish the cause of mail “pil[ing] up.” Deny to the extent that delayed mail existed in facilities prior to July due to backlog caused by COVID-19. <i>See</i> Office of Inspector General (OIG) Report No. 20-292-R21, “Operational Changes to Mail Delivery” (Oct. 19, 2020) (DEx. 23). Further deny to the extent that any increase in delayed mail in July leveled off by the end of August. USPS Congressional Briefing: Transportation &amp; Service Performance Updates (Aug. 31, 2020) (DEx. 27).</p>
<p>112. In some facilities, mail and packages were delayed for days and weeks. Coradi Decl. ¶ 9 (Ex. 4).</p>	<p>Admit.</p>
<p>113. Delayed mail continues to exist at certain facilities. Coradi Suppl. Decl. ¶¶ 5, 10–11(Ex. 22).</p>	<p>Deny to the extent that the Statement of Fact suggests or implies that alleged policy changes (<i>see</i> paragraph 18) caused the subject mail delays. Delayed mail existed in facilities prior to July due to backlog caused by COVID-19. <i>See</i> Office of Inspector General (OIG) Report No. 20-292-R21, “Operational Changes to Mail Delivery” (Oct. 19, 2020) (DEx. 23). Further deny to the extent that any increase in delayed mail in July leveled off by the end of August. USPS Congressional Briefing: Transportation &amp; Service Performance Updates (Aug. 31, 2020) (DEx. 27). Otherwise, admit.</p>
<p>114. By early October, on-time delivery for First Class Mail had still not rebounded to pre-July 2020 levels. Ex. 31; Second Cintron Dep. Tr. (DEx. 11) 167 (Ex. 28).</p>	<p>Deny to the extent that service performance scores improved for a number of weeks in August and September and fluctuated since. Ex. 31. Otherwise, admit.</p>
<p>115. By early October, late trips and extra trips were still running at significantly reduced levels. Ex. 32–33, 59; Second Cintron Dep. Tr. (DEx. 11) 122 (Ex. 28).</p>	<p>Deny to the extent the cited evidence does not support the assertion that the reduction in late and extra trips in early October were “significant.” Otherwise, admit.</p>

<b>IV. The U.S. Postal Service failed to consider or account for the negative impact that the June and July 2020 changes would have on important letter mail, even after delays became apparent.</b>	
116. The U.S. Postal Service did not seek advice or guidance from the Postal Regulatory Commission prior to implementing any of the five operational changes. Ex. 58.	Admit.
117. Typically, the U.S. Postal Service conducts written analysis before implementing or adopting nationwide policies. Goldway Decl. ¶¶ 17–25 (Ex. 6).	Deny in part. Defendants dispute the statement’s characterization of the “written analysis” conducted to the extent the statement conveys or implies that USPS engages in any particular analysis before implementing or adopting policies of nationwide scope, which is not supported by the cited exhibit. Admit that, pursuant to 39 U.S.C. § 3661(b), USPS submits a written proposal to the Postal Regulatory Commission when it seeks to implement “a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.”
118. Prior to implementation, U.S. Postal Service Headquarters did not consider the impact that its new organization-wide policy on late trips and extra trips would have on the timely and efficient delivery of mail. First Cintron Dep. Tr. 53–58 (Ex. 27).	Deny. The cited exhibit does not support the statement’s characterization of Mr. Cintron’s deposition testimony. Prior to issuance of the USPS guidelines for authorization of late and extra trips issued in July 2020, USPS took into consideration that providing clarity on the appropriate use of late and extra trips would result in maintaining service standards and “directly . . . improve service.” First Cintron Dep. Tr. (DEx. 11) 56:12-57:5; 57:13-23. Further deny to the extent this statement does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 & Exs. 1, 2. <i>See Anderson</i> , 477 U.S. at 247–48.

<p>119. Prior to drafting the Cintron Guidelines, Vice President Cintron did not conduct any written analysis. First Cintron Dep. Tr. 53–54 (Ex. 27); Second Cintron Dep. Tr. 59–61, 63 (Ex. 28).</p>	<p>Deny. The exhibits cited do not establish the asserted statement of fact. Mr. Cintron testified that he studied the issue for two years. Second Cintron Dep. Tr. (DEx. 11) 22:9-23:5. Further deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>120. Prior to drafting the Cintron Guidelines, the modeling and analytics team that Vice President Cintron oversees did not “ma[k]e any analytics around this” or prepare any report. First Cintron Dep. Tr. 54 (Ex. 27).</p>	<p>Deny to the extent the statement suggests or implies that USPS does not routinely review and analyze trip data, which it does. Second Cintron Dep. Tr. (DEx. 11) 25:10-27:4. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>121. Prior to drafting the Cintron Guidelines, neither Vice President Cintron nor anyone on his team estimated whether the Cintron Guidelines would result in any cost savings. First Cintron Dep. Tr. 54 (Ex. 27).</p>	<p>Deny. Mr. Cintron prepared the guidelines to support adherence to the USPS operating plan by counseling managers on how to best utilize extra and late trips. First Cintron Dep. Tr. 50:5-51:3, 55:10-22. Cintron took into account the fact that failure to adhere to the operating plan results in unnecessary extra service trips, which have negative cost impacts on the organization. Second Cintron Dep. Tr. (DEx. 11) 49:13-50:5. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247-48.</p>
<p>122. Prior to drafting the Cintron Guidelines, Vice President Cintron did not conduct any analysis or have any conversations with other U.S. Postal Service Headquarters officials about the Cintron Guidelines' potential impact on election mail. First Cintron Dep. Tr. 61 (Ex. 27).</p>	<p>Deny. The exhibit cited does not support the asserted statement of fact. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 &amp; Exs. 1, 2. <i>See Anderson</i>, 477 U.S. at 247-48.</p>

123. Prior to drafting the Cintron Guidelines, Vice President Cintron did not conduct any analysis or have any conversations with other U.S. Postal Service Headquarters officials about how the Cintron Guidelines would be implemented in light of the COVID-19 pandemic. First Cintron Dep. Tr. 62 (Ex. 27).

Deny. The exhibit cited does not support the statement's characterization of Mr. Cintron's deposition testimony. In preparing the "Cintron Guidelines," Mr. Cintron considered how better adherence to the USPS transportation schedule would help maintain service, particularly in areas under-staffed as a result of the COVID-10 pandemic. First Cintron Dep. Tr. (DEx. 11) 61:1-62:1. Indeed, delayed service due to unnecessary late and extra trips would compound service delays attributable to COVID-19-related staffing issues. First Cintron Dep. Tr. (DEx. 11) 61:22-62:1.

Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 & Exs. 1, 2. *See Anderson*, 477 U.S. at 247-48.

124. Prior to drafting the Cintron Guidelines, Vice President Cintron did not consider the potential impact the Cintron Guidelines might have on meeting the U.S. Postal Service's service standards. First Cintron Dep. Tr. 58 (Ex. 27).

Deny. The exhibit cited does not support the statement's characterization of Mr. Cintron's deposition testimony. In preparing the "Cintron Guidelines," Mr. Cintron considered how better adherence to the USPS transportation schedule would help maintain service, particularly in areas under-staffed as a result of the COVID-10 pandemic. First Cintron Dep. Tr. (DEx. 11) 61:1-62:1. Indeed, delayed service due to unnecessary late and extra trips would compound service delays attributable to COVID-19-related staffing issues. First Cintron Dep. Tr. (DEx. 11) 61:22-62:1. Mr. Cintron also took into consideration that providing clarity on the appropriate use of late and extra trips would result in maintaining service standards and "directly . . . improve service." First Cintron Dep. Tr. (DEx. 11) 56:12-57:5; 57:13-23. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as the Postal Service has issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Second Colin Decl. (DEx. 16) ¶ 17 & Exs. 1, 2. *See Anderson*, 477 U.S. at 247-48.

125. Even without any analysis, the negative impact of the new initiatives on reducing sorting machines, reducing work hours, and eliminating late and extra trips on service performance was predictable. Goldway Decl. ¶ 31 (Ex. 6); Coradi Decl. ¶ 16 (Ex. 4).

Deny. The purported “new initiatives” referenced in this statement concern efforts to improve efficiency and control expenses are part of the Postal Services’ long-standing practice and are not “new.” First Cintron Decl. (DEx. 4) ¶¶ 19; Curtis Dep. Tr. (DEx. 10) 76-77, 155; DeChambeau Decl. (DEx. 2) ¶¶ 7, 14. Further, there was no negative impact on service performance due to any of the listed factors, except for a short, temporary time after mid-July regarding miscommunication about late and extra trips. *See* USPS Congressional Briefing: Transportation & Service Performance Updates (Aug. 31, 2020) (DEx. 27). Other factors, chiefly COVID-19, caused the negative impact on service performance. *See* Press Release, The U.S. Postal Service Issues New Performance Report for the Week of September 12th Consistent with Performance Metrics Following a Federal Holiday (DEx. 29); Dearing Decl. (DEx. 31) ¶¶ 5-8. Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the “new initiatives” described are not current Postal Service policy or practice. *See* Clarifying Operational Instructions (DEx. 12). *See Anderson*, 477 U.S. at 247–48.

<p>126. With fewer sorting machines for letter and flat mail, postal employees must adapt the remaining machines to accommodate more volume or sort letter and flat mail manually. Coradi Decl. ¶ 16 (Ex. 4).</p>	<p>Deny. Postal employees do not need to adapt based on the number of remaining machines. Maintenance staff sometimes uses parts of reduced machines to enhance the processing capacity of remaining machines, but the removal of machines does not require further adjustments because remaining machines have ample capacity to process the volume of flat and letter mail. DeChambeau Decl. (DEx. 2) ¶¶ 13, 15; Barber Decl. (DEx. 5) ¶ 11; Couch Decl. (DEx. 3) ¶ 4.</p> <p>Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>127. These efforts take resources away from sorting other mail, such as packages. Coradi Decl. ¶ 16 (Ex. 4).</p>	<p>Deny. Any additions of parts of removed machines to remaining machines does not involve using the time of clerks, the employees who sort mail. <i>See</i> DeChambeau Decl. (DEx. 2) ¶¶ 13, 15; Barber Decl. (DEx. 5) ¶ 11; Couch Decl. (DEx. 3) ¶ 4.</p> <p>Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the Postal Service has suspended all removals of equipment until after the November election. DeChambeau Decl. ¶ 22. <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>128. If postal drivers are no longer allowed to make adjustments for processing delays and must leave at their prescribed time, then mail that would otherwise have been sorted gets left behind at the processing facility. Coradi Decl. ¶ 16 (Ex. 4).</p>	<p>Deny to the extent the statement suggests or implies that late or extra trips to facilitate the timely delivery of mail is, or was, prohibited or unnecessarily restricted. Late and extra trips were not prohibited. Transcript of House Oversight and Reform Committee on Postal Service Operational Changes Hearing (Aug. 24, 2020) (DEx. 9); Second Cintron Decl. (DEx. 15) ¶¶ 3-4; Clarifying Operational Instructions (DEx. 12). Further, Postal truck drivers do not make adjustments for processing delays and departure times – their supervisors and managers do, using their best business judgment. Clarifying Operational Instructions (DEx. 12). Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, prohibition or unnecessary limitations on extra or late trips are not current Postal Service policy or practice. <i>See</i> Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
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<p>129. If postal employees are also prevented from making extra trips throughout the day, then postal employees cannot begin to reduce the backlog. Coradi Decl. ¶ 16 (Ex. 4).</p>	<p>Deny. The Postal Service does not prevent employees from making necessary extra trips. Transcript of House Oversight and Reform Committee on Postal Service Operational Changes Hearing (Aug. 24, 2020) (DEx. 9); Second Cintron Decl. (DEx. 15) ¶¶ 3-4; Clarifying Operational Instructions (DEx. 12). Postal truck drivers do not make adjustments for processing delays and departure times – their supervisors and managers do, using their best business judgment. Clarifying Operational Instructions (DEx. 12). Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, prohibition or unnecessary limitations on extra or late trips are not current Postal Service policy or practice. <i>See</i> Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>130. The Postmaster General recognized the new June and July 2020 policies as part of an effort “to transform,” which would require “a number of significant changes.” Ex. 52.</p>	<p>Deny. The cited exhibit does not support the statement’s characterization of Postmaster General DeJoy’s August 13, 2020 statement. Postmaster General DeJoy’s statement does not refer to “the new June and July 2020 policies.” Ex. 52. Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the purported “new June and July 2020 policies,” which presumably refers to the “five operational changes challenged in this case” (<i>see</i> paragraph 18), are not current Postal Service policy or practice. <i>See</i> Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48.</p>

<p>131. On August 13, 2020, Postmaster General DeJoy acknowledged sent out a message to employees acknowledging that the agency’s “transformative initiative has had unintended consequences that impacted our overall service levels,” but still did not reverse any of the changes. Ex. 52.</p>	<p>Admit.</p>
<p>132. On August 18, 2020, Postmaster General DeJoy issued a statement that the U.S. Postal Service would be “suspending” certain of the changes. Ex. 53.</p>	<p>Deny to the extent the cited exhibit does not support the statement of fact’s characterization of Postmaster General DeJoy’s August 18, 2020 statement as suspending “changes.” Admit that, on August 18, 2020, Postmaster General DeJoy issued a statement noting that there were “longstanding operational initiatives—efforts that predate [his] arrival at the Postal Service—that have been raised as areas of concern as the nation prepares to hold an election in the midst of a devastating pandemic.” Statement from the Postmaster General (Aug. 18, 2020) at 1 (DEx. 6). Admit further that, in order “[t]o avoid even the appearance of any impact on election mail,” Postmaster General DeJoy “suspend[ed] these initiatives until after the election is concluded.” <i>Id.</i></p>
<p>133. In his August 18, 2020 statement, DeJoy stated that “[m]ail processing equipment and blue collection boxes will remain where they are” and that overtime would be approved “as needed.” Ex. 53.</p>	<p>Admit.</p>

<p>134. The August 18, 2020 statement from DeJoy did not address whether he would be returning the over 600 reduced sorting machines to service or suspend the new organization-wide policy on late and extra trips. Ex. 53.</p>	<p>Deny to the extent the cited exhibit does not support the statement of fact's characterization of Postmaster General DeJoy's August 18, 2020 statement as suspending "the new organization-wide policy on late and extra trips." On August 18, 2020, Postmaster General DeJoy issued a statement noting that there were "longstanding operational initiatives—efforts that predate [his] arrival at the Postal Service—that have been raised as areas of concern as the nation prepares to hold an election in the midst of a devastating pandemic." Statement from the Postmaster General (Aug. 18, 2020) at 1 (DEx. 6). In order "[t]o avoid even the appearance of any impact on election mail," Postmaster General DeJoy "suspend[ed] these initiatives until after the election is concluded," specifically staying removal of mail processing equipment. <i>Id.</i> Otherwise, admit.</p>
<p>135. Three days later, on August 21, 2020, Postmaster General DeJoy testified before the Senate Homeland Security and Governmental Affairs Committee. <i>Senate Hearing on U.S. Postal Service</i>, C-SPAN (Aug. 21, 2020), <a href="https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service">https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service</a> (video).</p>	<p>Admit.</p>

<p>136. In his testimony, DeJoy provided testimony acknowledging the delays caused by the operational changes. He testified that “[w]e all feel, you know, bad about, you know, what the dip in our service level has been.” <i>Senate Hearing on U.S. Postal Service</i>, C-SPAN (Aug. 21, 2020), <a href="https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service">https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service</a> (video).</p>	<p>Deny to the extent the cited evidence does not support the statement of fact’s characterization of Postmaster General DeJoy’s August 21, 2020 testimony as “acknowledging the delays caused by the operational changes.” Transcript of Senate Homeland Security and Governmental Affairs Committee Hearing (Aug. 21, 2020) (DEx. 13) at 21-22 . Further deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the purported “operational changes,” which presumably refers to the “five operational changes challenged in this case” (<i>see</i> paragraph 18), are not current Postal Service policy or practice. <i>See</i> Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
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137. DeJoy testified that the changes did not “align” the separate systems for sorting, transporting, and delivering mail. *Senate Hearing on U.S. Postal Service*, C-SPAN (Aug. 21, 2020), <https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service> (video).

Deny. Deny to the extent the cited evidence does not support the statement of fact’s characterization of Postmaster General DeJoy’s August 21, 2020 testimony. Postmaster General DeJoy’s only testimony using the word “align” concerned restructuring of the management team: “And one of the first things--the first big change I embarked upon is how do I get the organization, the management team, the structure, to align with what we . . . —I felt there were—that we had 600,000 people reporting to one person and other executives doing assessorial types of--important, but not integrated into the operational activity. *See* Transcript of Senate Homeland Security and Governmental Affairs Committee Hearing (Aug. 21, 2020) (DEx. 13) at 10. Further deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the purported “changes,” which presumably refers to the “five operational changes challenged in this case” (*see* paragraph 18), are not current Postal Service policy or practice. *See* Clarifying Operational Instructions (DEx. 12). *See Anderson*, 477 U.S. at 247–48.

<p>138. DeJoy testified that he would not reinstall the hundreds of reduced sorting machines to postal facilities or reverse his policy eliminating extra trips. <i>Senate Hearing on U.S. Postal Service</i>, C-SPAN (Aug. 21, 2020), <a href="https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service">https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service</a> (video).</p>	<p>Deny to the extent the cited evidence does not support the statement’s characterization of Postmaster DeJoy’s testimony. Postmaster General DeJoy testified that, as of the date of his testimony, there was no intention to “bring[] back” mail sorting machines that had been removed since he took office, as the machines were “not needed.” Transcript of Senate Homeland Security and Governmental Affairs Committee Hearing (Aug. 21, 2020) (DEx. 13) at 15. Postmaster General DeJoy also answered “yes” when asked whether “local managers [will] be authorized to make decisions and have postal employees make extra trips or late trips . . . to ensure that plants and post offices don’t fall behind in processing election mail.” <i>Id.</i> at 60. Otherwise, admit.</p>
<p>139. DeJoy committed to delivering election mail at the First Class rate speed, but did not address how this commitment would play out in practical terms given that he was not rescinding the challenged policies. <i>Senate Hearing on U.S. Postal Service</i>, C-SPAN (Aug. 21, 2020), <a href="https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service">https://www.c-span.org/video/?474940-1/senate-hearing-us-postal-service</a> (video).</p>	<p>Deny to the extent the cited evidence does not support the statement’s characterization of Postmaster DeJoy’s testimony. Postmaster General DeJoy answered “yes” when asked whether he would “commit to the goal of delivering at least 95% of election mail within one to three days this year . . . the same as the Postal Service did in 2018.” Transcript of Senate Homeland Security and Governmental Affairs Committee Hearing (Aug. 21, 2020) (DEx. 13) at 34. Postmaster General DeJoy was not asked to detail how the foregoing would be achieved. <i>Id.</i> There is no reference in the relevant testimony referring to “rescinding the challenged policies” or the like. <i>See id.</i> Otherwise, admit.</p>

<p>140. On August 24, 2020, DeJoy testified before the House of Representatives Committee on Oversight and Reform that he would not replace sorting machines unless Congress provided \$1 billion in funding, which he stated Congress had “no way” of doing. <i>Postmaster General Louis DeJoy Testifies on Postal Service Operations &amp; Mail-In Voting</i>, C- SPAN (Aug. 24, 2020), <a href="https://www.c-span.org/video/?474917-1/postmaster-general-louis-dejoy-testifies-postal-service-operations-mail-voting">https://www.c-span.org/video/?474917-1/postmaster-general-louis-dejoy-testifies-postal-service-operations-mail-voting</a> (video).</p>	<p>Deny to the extent the statement mischaracterizes Postmaster General DeJoy’s August 24, 2020 testimony. Admit that Postmaster General DeJoy was presented with a hypothetical question concerning whether he would replace sorting machines, if Congress were to provide \$1 billion in funding to compensate USPS for the operational cost of doing so. Transcript of House Oversight and Reform Committee Hearing (Aug. 24, 2020) (DEx. 9) at 101-103. Further admit that, in response, Postmaster General DeJoy testified that he would replace the machines, if Congress were to provide the funding. <i>Id.</i></p>
<p>141. DeJoy again testified that he would not lift the prohibition on late trips or extra trips. <i>Postmaster General Louis DeJoy Testifies on Postal Service Operations &amp; Mail-In Voting</i>, C- SPAN (Aug. 24, 2020), <a href="https://www.c-span.org/video/?474917-1/postmaster-general-louis-dejoy-testifies-postal-service-operations-mail-voting">https://www.c-span.org/video/?474917-1/postmaster-general-louis-dejoy-testifies-postal-service-operations-mail-voting</a> (video).</p>	<p>Deny. The cited evidence does not support the statement’s characterization of Postmaster General DeJoy’s testimony. Postmaster General DeJoy testified that late and extra trips were not prohibited. Transcript of House Oversight and Reform Committee Hearing (Aug. 24, 2020) (DEx. 9) at 30-31, 5. Indeed, there are still a “significant amount of trucks that run delayed and a significant amount of extra trips.” Rather, Postmaster General DeJoy asked his team “to run the trucks, transportation on time and mitigate extra trips,” based on a review of an OIG audit concluding that an “astonishing” amount of money was spent on late and extra trips and the desire to support timely delivery of mail. <i>Id.</i> at 139. Postmaster General DeJoy’s testimony acknowledged the “fundamental, basic principles” of timely transportation for mail network and the difficulty in reversing these principles. <i>Id.</i></p>

<p>142. On election mail, DeJoy testified that the U.S. Postal Service would act “in a manner consistent with the proven processes and procedures that we have relied upon for years,” while maintaining that “it would be best if the State election boards follow the recommendations” from the U.S. Postal Service’s general counsel. <i>Postmaster General Louis DeJoy Testifies on Postal Service Operations &amp; Mail-In Voting</i>, C-SPAN (Aug. 24, 2020), <a href="https://www.c-span.org/video/?474917-1/postmaster-general-louis-dejoy-testifies-postal-service-operations-mail-voting">https://www.c-span.org/video/?474917-1/postmaster-general-louis-dejoy-testifies-postal-service-operations-mail-voting</a> (video).</p>	<p>Deny to the extent the statement suggests or implies that Postmaster General DeJoy’s testimony regarding USPS recommendations to state election boards contradicts USPS’s commitment to act “in a manner consistent with the proven processes and procedures that [it] has relied upon for years.” In response to a question regarding whether Pennsylvania should adjust its application deadline for mail and absentee ballots to ensure voters can timely receive, complete, and return ballots, Postmaster General DeJoy testified that “it would be best” if state election boards “followed the recommendation” from the USPS general counsel to reduce unnecessary risk in the system, and reiterated that USPS is “still going to do everything that [it] need[s] to do.” Transcript of House Oversight and Reform Committee Hearing (Aug. 24, 2020) (DEx. 9) at 141-42.</p>
<p><b>V. The June and July 2020 changes’ impact on mail delivery injures Plaintiffs.</b></p>	
<p>143. Mail delays have increased and risk further increasing in-person governmental interactions so residents can access these services and programs, which has frustrated Plaintiffs’ ability to mitigate the spread of COVID-19—a disease that is spread through person-to-person contact. Banks Decl. ¶¶ 7–9 (Ex. 2); Newton Decl. ¶¶ 13–16 (Ex. 16); Roye<sup>19</sup> Decl. ¶¶ 11–12 (Ex. 18); Roye Suppl. Decl. ¶ 13 (Ex. 24); Ku Decl. ¶ 13 (Ex. 14).</p>	<p>Deny to the extent the statement of fact suggests or implies that service performance have been consistently declining this year. The relative increase in delays throughout 2020 began with the onset of the COVID-19 pandemic in March and continues through the present. <i>See</i> FY20 Q2-FY21 Q1 Weekly Service Performance of Market Dominant Products through Week of Oct. 10, 2020 (DEx. 28). Service performance experienced marked improvements for a period of time in August. USPS Congressional Briefing: Transportation &amp; Service Performance Updates (Aug. 31, 2020) (DEx. 27). Otherwise, admit.</p>

<sup>19</sup> Karen Roye is the Executive Director of the Department of Child Support Services for the City and County of San Francisco.

144. State and local agencies in Plaintiffs' jurisdictions have implemented changes to their practices to accommodate mail delays.	Deny. Plaintiffs fail to cite any evidentiary support for this Statement of Material Fact. Thus, it should be disregarded.
145. New York City's Department of Social Services has seen its rent payments to landlords delayed in the mail, which has forced shelter residents to spend additional days or weeks in City-operated shelters. Banks Decl. ¶ 14 (Ex. 2).	Admit.
146. Child Support Services for the City and County of San Francisco has expended resources and time setting up telephone lines, reassigning staff, and answering client questions about child support payments delayed in the mail. Roye Decl. ¶¶ 5, 12–13 (Ex. 18); Roye Suppl. Decl. ¶¶ 18–20 (Ex. 24).	Admit.
147. The San Francisco Treasurer's Office expects to lose operational funds from delayed or missed tax payments and interest the Treasurer's Office would have earned by earlier investment of those funds. Shah <sup>20</sup> Decl. ¶¶ 3, 6, 8 (Ex. 19); Shah Suppl. Decl. ¶¶ 8–10, 15 (Ex. 25).	Admit.
148. Mail delays have impaired Plaintiffs' ability to perform legally mandated tasks, including provide health coverage and prescription medications, ensure that children and families receive court-ordered financial and medical support, and send applications for SNAP and other benefits to eligible residents. Adinaro Decl. ¶ 12 (Ex. 1); Banks Decl. ¶¶ 3–5, 10–12 (Ex. 2); Betts Decl. ¶¶ 7–15 (Ex. 3); DiGiovanni-Abatto Decl. ¶¶ 3–5 (Ex. 5); Hein Decl. ¶¶ 2–3, 8, 13, 15 (Ex. 8); Jacobs Decl. ¶¶ 4–10 (Ex. 11); Lau Decl. ¶¶ 3, 5–9 (Ex. 15); Poole Decl. ¶¶ 2, 6–11 (Ex. 17); Roye Decl. ¶ 4 (Ex. 18).	Admit.
149. Plaintiffs have expended resources in an effort to address these disruptions. Banks Decl. ¶ 8 (Ex. 2); Roye Decl. ¶¶ 5, 12–13 (Ex. 18); Roye Suppl. Decl. ¶¶ 18–20 (Ex. 24); Shah Decl. ¶¶ 3, 5–6, 10 (Ex. 19).	Admit.

<sup>20</sup> Tajel Shah is the Chief Assistant Treasurer of the Office of the Treasurer and Tax Collector for the City and County of San Francisco.

<b>VI. The Postal Policy Changes, and President Trump’s statements and conduct, severely undermine Plaintiffs’ electoral schemes, which rely substantially on mail-in voting.</b>	
150. Due to the COVID-19 pandemic, Plaintiffs have devoted resources to overhauling their election processes to expand absentee and mail voting and otherwise to minimize in-person voting. Adinaro Decl. ¶ 9 (Ex. 1); Kellner Decl. ¶¶ 11, 16–17, 19 (Ex. 13); Ku Decl. ¶¶ 8–10 (Ex. 14).	Admit.
151. Other Plaintiffs already had mail-based election systems, which they seek to preserve during the pandemic. <i>See</i> Henricks <sup>21</sup> Decl. ¶ 3 (Ex. 9); Kaohu <sup>22</sup> Decl. ¶ 3 (Ex. 12); Takahashi <sup>23</sup> Decl. ¶ 3 (Ex. 20); Haw. Rev. Stat. § 11-101; P.L. 2020, ch.72 (N.J. Aug. 28, 2020).	Admit.
152. Approximately 150 million ballots are expected to be cast in the November 2020 election. Hersh <sup>24</sup> Decl. ¶ 10 (Ex. 10).	Admit.
153. Because of COVID-19, which has both resulted in new state laws that make mail balloting easier and has increased voters’ preference to avoid in-person interactions, a conservative estimate of 53 percent of all voters in the November 2020 election may cast mail-in ballots—amounting to approximately 80 million mail-in ballots nationwide. Hersh Decl. ¶¶ 11–14 (Ex. 10).	Admit.
154. An estimated 9 percent of Americans who will cast mail-in ballots in 2020—approximately 7 million voters—are expected to submit those ballots on the Saturday right before Election Day. Hersh Decl. ¶¶ 1, 24 (Ex. 10).	Admit.

<sup>21</sup> Jon Henricks is the County Clerk for the County of Hawaii.

<sup>22</sup> Kathy Kaohu is the County Clerk for the County of Maui.

<sup>23</sup> Glen Takahashi is the City Clerk for the City and County of Honolulu.

<sup>24</sup> Dr. Eitan Hersh is an associate professor of political science at Tufts University.

<p>155. Before the Postal Service’s policy changes, ballots mailed on the Saturday before Election Day would be received by election offices on time, but delays caused by the policy changes put a significant number of ballots at risk of not being counted. Hersh Decl. ¶ 24 (Ex. 10).</p>	<p>Deny. Further deny because, as held by the Postal Regulatory Commission (PRC), delivery service standards do not provide any guarantee of service and are not, therefore, legally enforceable requirements. Order Granting Motion for Reconsideration and Granting Motion to Dismiss, No. C2013-10, (Postal Regulatory Comm’n May 27, 2015) (DEx. 30) at 10. Also deny to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the purported “policy changes,” which presumably refers to “the five operational changes challenged in this case” (<i>see</i> paragraph 18), are not current Postal Service policy or practice. <i>See</i> Clarifying Operational Instructions (DEx. 12). <i>See Anderson</i>, 477 U.S. at 247–48.</p>
<p>156. Mail delays threaten timely delivery of ballots, which in turn encourages or forces voters to travel to in-person polling stations when they would not otherwise have need to do so. Kellner Decl. ¶¶ 13–14, 27–28 (Ex. 13); Ku Decl. ¶¶ 17–18, 21 (Ex. 14).</p>	<p>Deny to the extent that USPS has counseled local election officials with recommendations on how to use available tools and best practices to facilitate mail-in voting, assuming conservative delivery times to ensure secure, efficient, and effective participation by mail. Glass Decl. (DEx. 18) ¶¶ 5-9, 11-14, 18, 32. USPS has also consistently urged voters to return their completed ballots early. <i>Id.</i> at ¶ 42; Ex. 1 at 2. Otherwise, admit.</p>
<p>157. Plaintiffs have committed resources to public education campaigns and installing additional ballot drop-boxes in response to mail delays. Henricks Decl. ¶¶ 13–14 (Ex. 9); Kaohu Decl. ¶ 10 (Ex. 12); Takahashi Decl. ¶¶ 13–14 (Ex. 20).</p>	<p>Admit.</p>
<p>158. Evidence, theory, and public health principles indicate that greater use of in-person voting could lead to higher COVID-19 infections. Ku Decl. ¶¶ 16–21 (Ex. 14); Adinaro Suppl. Decl. ¶ 7 (Ex. 21).</p>	<p>Admit.</p>

<p>159. States, including Plaintiffs, have adopted or maintained electoral schemes to provide increased access to mail-in ballots. On April 9, 2020, Governor Cuomo issued an Executive Order to provide for expanded absentee ballot access for New York voters, by permitting voters to cite the risk of COVID-19 as a basis to apply for an absentee ballot. N.Y. Exec. Order No. 202.15 (Apr. 9, 2020), <a href="https://www.governor.ny.gov/news/no-20215-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-20215-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a>.</p>	<p>This statement constitutes a conclusion of law, not a statement of fact.</p>
<p>160. Nearly 40% of ballots cast in New York’s June 2020 primary election were absentee, a number that is expected to rise to half of all votes in New York for the November general election. Kellner Decl. ¶¶ 11, 19 (Ex. 13).</p>	<p>Admit.</p>
<p>161. During the New York June 2020 primary, State election officials were informed of complaints by voters who had not received their absentee ballots by Election Day, and who would have missed the opportunity to vote early because they were waiting for their absentee ballot in the mail. Kellner Decl. ¶ 13 (Ex. 13).</p>	<p>Deny to the extent the Statement of Fact suggests or implies that delays were caused by USPS. New York election officials mailed thousands of ballots to voters less than a week before the primary election. <i>See</i> Glass Decl. (DEx. 18) ¶ 25. Also deny to the extent this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the past primary election is irrelevant to Plaintiffs’ claims which challenge purported operational changes that took place after the New York primary in June 2020. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>162. The only way for such New York primary voters to vote would have been to cast their ballot in person, adding to significant crowds and delays at certain poll sites. Kellner Decl. ¶¶ 13–15 (Ex. 13).</p>	<p>Deny to the extent the Statement of Fact suggests or implies that such voters could only vote in-person due to delays caused by USPS. New York election officials mailed thousands of ballots to voters less than a week before the primary election. <i>See</i> Glass Decl. (DEx. 18) ¶ 25. Also deny to the extent this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit, as the past primary election is irrelevant to Plaintiffs’ claims which challenge purported operational changes that took place after the New York primary in June 2020. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>
<p>163. New York enacted legislation providing for similar expanded absentee access for the November 2020 general election. N.Y. Elec. Law § 8-400 (McKinney 2020).</p>	<p>This statement constitutes a conclusion of law, not a statement of fact.</p>
<p>164. In New York, voters are entitled under State law to request an absentee ballot up to seven days before Election Day. N.Y. Elec. Law § 8-400(2)(c) (McKinney 2020).</p>	<p>This statement constitutes a conclusion of law, not a statement of fact.</p>
<p>165. An absentee ballot either must be postmarked by Election Day and received within seven days after Election Day to be counted, or, if it lacks a postmark, be received by the day after Election Day. N.Y. Elec. Law § 8-412 (McKinney 2020).</p>	<p>This statement constitutes a conclusion of law, not a statement of fact.</p>
<p>166. On July 1, 2019, Act 136 went into effect for the State of Hawaii. <i>See</i> 2019 Haw. Sess. Laws Act 136, §§ 2 &amp; 63 at 475-79, 499 (codified at Haw. Rev. Stat. Chapter 11, Part VIIA). Act 136 adopted a system of virtually universal voting by mail for Hawaii, starting with the 2020 Primary Election. Haw. Rev. Stat. § 11-101.</p>	<p>This statement constitutes a conclusion of law, not a statement of fact.</p>
<p>167. Act 136 provides that Hawaii voters who do not receive a mail ballot within five days of the election still have a right to request a ballot electronically and return it by mail. Haw. Rev. Stat. § 11-107.</p>	<p>This statement constitutes a conclusion of law, not a statement of fact.</p>

168. Under Hawaii law, if someone does not receive a mail ballot five days before the election (or otherwise needs a replacement ballot within five days of the election), Act 136 authorizes voters to request that a replacement ballot be sent to them electronically. Haw. Rev. Stat. § 11-107.	This statement constitutes a conclusion of law, not a statement of fact.
169. Hawaii law also provides that those ballots, when completed, may be returned by mail (in addition to three other methods). Haw. Rev. Stat. § 11-107(b)(2).	This statement constitutes a conclusion of law, not a statement of fact.
170. Mail in ballots were utilized by 99% of Hawaii voters in the 2020 primary election. Dan Nakaso, <i>Record primary election sees 99% of votes cast by mail-in ballots</i> , Honolulu Star-Advertiser (Aug. 11, 2020), <a href="https://www.staradvertiser.com/2020/08/11/hawaii-news/record-primary-election-sees-99-of-votes-cast-by-mail-in-ballots">https://www.staradvertiser.com/2020/08/11/hawaii-news/record-primary-election-sees-99-of-votes-cast-by-mail-in-ballots</a> .	Deny to the extent that the asserted fact relies on inadmissible hearsay. Otherwise, admit.
171. Hawaii’s State Office of Elections previously recommended that for the November general election, voters mail ballots three to five days before Election Day. Compl. ¶ 128.	Admit.
172. In a July 29, 2020 letter, the U.S. Postal Services informed Hawaii that its voters must mail their ballots a full week before the election. Ex. 49.	Deny. The cited evidence does not support the asserted statement of fact. On July 31, 2020, USPS sent a letter to Hon. Scott Nago, Chief Election Officer, Office of Elections in Hawaii. Ex. 49 at 10. The letter provided a <i>recommended</i> “timeline for domestic voters to account for [USPS] delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), including the following recommendation: “To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state’s due date.” <i>Id.</i>
173. Election officials in Hawaii have expended resources educating voters on returning their ballots earlier than previously advised, including through print and radio media campaigns. Henricks Decl. ¶ 13 (Ex. 9).	Admit.

174. Hawaii officials have designed and implemented alternative means for voters to return mail ballots, including through installation of drop boxes. Henricks Decl. ¶ 14 (Ex. 9); Takahashi Decl. ¶ 13 (Ex. 20).	Admit.
175. Although such efforts are coordinated at the local level, local officials have, or intend to, receive funds from the state of Hawaii for these purposes. Henricks Decl. ¶¶ 13–14 (Ex. 9); Takahashi Decl. ¶¶ 13–14 (Ex. 20).	Admit.
176. On May 15, 2020, New Jersey Governor Murphy issued NJ EO 144, which provided that the New Jersey 2020 primary election be conducted primarily via vote-by-mail to reduce overcrowding at polling locations and minimize the risk of community spread of COVID-19. Exec. Order No. 144, 52 N.J.R. § 1238(a) (2020).	This statement constitutes a conclusion of law, not a statement of fact.
177. On August 14, 2020, Governor Murphy issued a similar Executive Order, NJ EO 177, which provides that “in light of the dangers posed by Coronavirus disease 2019,” New Jersey’s 2020 general election will be conducted primarily via vote-by-mail to reduce overcrowding at polling locations and minimize the risk of community spread of COVID-19. Exec. Order No. 177, 52 N.J.R. § 1701(b) (2020).	This statement constitutes a conclusion of law, not a statement of fact.

<p>178. Pursuant to NJ EO 177, all active registered voters were automatically sent a mail-in ballot for the election, without the need to apply for one, at least 29 days before the election and in a manner to ensure the ballot's timely receipt and return; whenever a county clerk forwards a mail-in ballot by mail to a voter between the 29th day and the 13th day before the election, it shall be transmitted within three business days of receipt of the application and in a manner to ensure the ballot's timely receipt and return; all vote-by-mail return envelopes will have prepaid First-Class postage; the deadline to apply for a mail-in ballot by mail will be October 23, 2020; the deadline for returning a vote-by-mail application in person is suspended; and each county, to the extent possible, will have at least ten secure ballot drop boxes placed in locations readily accessible to the registered voters within the county. Exec. Order No. 177, 52 N.J.R. § 1701(b) (2020).</p>	<p>This statement constitutes a conclusion of law, not a statement of fact.</p>
<p>179. President Trump has made a number of public comments disparaging vote-by-mail regimes. On March 30, 2020, President Trump disparaged a congressional proposal in coronavirus relief legislation, arguing that “[t]he things they had in there were crazy. They had things—levels of voting that, if you ever agreed to it, you’d never have a Republican elected in this country again.” Aaron Blake, <i>Trump just comes out and says it: The GOP is hurt when it’s easier to vote</i>, Wash. Post (Mar. 30, 2020), <a href="https://washingtonpost.com/politics/2020/03/30/trump-voting-republicans/">https://washingtonpost.com/politics/2020/03/30/trump-voting-republicans/</a>.</p>	<p>Deny to the extent the statement mischaracterizes President Trump’s public comments and that the asserted fact relies on inadmissible hearsay. Otherwise, admit.</p>
<p>180. On April 8, 2020, President Trump tweeted that “Republicans should fight very hard when it comes to state wide mail-in voting,” noting that, “for whatever reason, [mail-in voting] doesn’t work out well for Republicans.” Donald J. Trump (@realDonaldTrump), Twitter (Apr. 8, 2020, 8:20 a.m.), <a href="https://twitter.com/realDonaldTrump/status/1247861952736526336">https://twitter.com/realDonaldTrump/status/1247861952736526336</a>.</p>	<p>Admit.</p>

<p>181. On May 28, 2020, President Trump tweeted that mail-in voting would “LEAD TO THE END OF OUR GREAT REPUBLICAN PARTY.” Donald J. Trump (@realDonaldTrump), Twitter (May 28, 2020, 9:00 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1266172570983940101">https://twitter.com/realDonaldTrump/status/1266172570983940101</a>.</p>	<p>Admit.</p>
<p>182. On July 2, 2020, President Trump tweeted about mail-in voting, urging that “Republicans, in particular, cannot let this happen!” Donald J. Trump (@realDonaldTrump), Twitter (July 2, 2020, 7:41 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1278836342609379328">https://twitter.com/realDonaldTrump/status/1278836342609379328</a>.</p>	<p>Admit.</p>
<p>183. On August 3, 2020, President Trump tweeted in response to expanded mail-in voting in Nevada: “In an illegal late night coup, Nevada’s clubhouse Governor made it impossible for Republicans to win the state.” Donald J. Trump (@realDonaldTrump), Twitter (Aug. 3, 2020, 7:37 a.m.), <a href="https://twitter.com/realDonaldTrump/status/1290250416278532096">https://twitter.com/realDonaldTrump/status/1290250416278532096</a>.</p>	<p>Admit.</p>
<p>184. President Trump has criticized specific states for increasing access to mail-in voting—including Plaintiffs New York and New Jersey. Donald J. Trump (@realDonaldTrump), Twitter (July 29, 2020, 6:28 p.m.) (“New York Mail-In voting is in a disastrous state of condition. . . . Rigged Election.”), <a href="https://twitter.com/realDonaldTrump/status/1288602262567153664">https://twitter.com/realDonaldTrump/status/1288602262567153664</a>; Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2020, 4:51 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1287490820669616128">https://twitter.com/realDonaldTrump/status/1287490820669616128</a>; Donald J. Trump (@realDonaldTrump), Twitter (July 2, 2020, 7:41 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1278836342609379328">https://twitter.com/realDonaldTrump/status/1278836342609379328</a>.</p>	<p>Admit.</p>

<p>185. President Trump has supported mail-in voting in certain other states. On August 4, 2020, the President tweeted: “Whether you call it Vote by Mail or Absentee Voting, in Florida the election system is Safe and Secure, Tried and True. Florida’s Voting system has been cleaned up (we defeated Democrats attempts at change), so in Florida I encourage all to request a Ballot &amp; Vote by Mail! #MAGA.” Donald J. Trump (@realDonaldTrump), Twitter (Aug. 4, 2020, 12:55 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1290692768675901440">https://twitter.com/realDonaldTrump/status/1290692768675901440</a>.</p>	<p>Deny to the extent the cited evidence does not support the assertion that President Trump has supported mail-in voting in certain other states. Otherwise, admit.</p>
<p>186. On August 5, 2020, the President again differentiated between states, tweeting: “Nevada has ZERO infrastructure for Mail-In Voting. It will be a corrupt disaster if not ended by the Courts. It will take months, or years, to figure out. Florida has built a great infrastructure, over years, with two great Republican Governors. Florida, send in your Ballots!” Donald J. Trump (@realDonaldTrump), Twitter (Aug. 5, 2020, 7:08 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1290967953542909952">https://twitter.com/realDonaldTrump/status/1290967953542909952</a>.</p>	<p>Deny to the extent the cited evidence does not support the assertion that President Trump has differentiated between states. Otherwise, admit.</p>
<p>187. On August 17, 2020, President Trump tweeted: “Some states use ‘drop boxes’ for the collection of Universal Mail-In Ballots. So who is going to ‘collect’ the Ballots, and what might be done to them prior to tabulation? A Rigged Election? So bad for our Country. Only Absentee Ballots acceptable!” Donald J. Trump (@realDonaldTrump), Twitter (Aug. 17, 2020, 11:40 a.m.), <a href="https://twitter.com/realDonaldTrump/status/1295385113862090753">https://twitter.com/realDonaldTrump/status/1295385113862090753</a>.</p>	<p>Admit.</p>
<p>188. Consistent with President Trump’s position, his campaign has sued Nevada, New Jersey, Pennsylvania, and “two Democratic-leaning Iowa counties” over their mail-in ballot policies. Ryan J. Foley, <i>Trump campaign sues key Iowa counties over absentee mailings</i> (Aug. 13, 2020), <a href="https://apnews.com/22e6d33f1a2eeadde8e193a9330cde16">https://apnews.com/22e6d33f1a2eeadde8e193a9330cde16</a>.</p>	<p>Deny to the extent that the asserted fact relies on inadmissible hearsay. Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. <i>See Anderson</i>, 477 U.S. at 247–48. Otherwise, admit.</p>

<p>189. In New Jersey and Nevada, President Trump’s campaign has opposed plans to mail ballots to voters. <i>See</i> Complaint, <i>Donald J. Trump for President, Inc. v. Murphy</i>, No. 320-CV-10753 (D.N.J. filed Aug. 18, 2020); Complaint, <i>Donald J. Trump for President, Inc. v. Cegavske</i>, No. 20-CV-1445, 2020 WL 5626974 (D. Nev. filed Aug. 4, 2020).</p>	<p>Admit.</p>
<p>190. In Pennsylvania, President Trump’s campaign sued to challenge the state’s use of drop-off boxes for ballots. <i>See</i> Complaint, <i>Trump for President, Inc. v. Boockvar</i>, No. 20-CV-966 (W.D. Pa. filed June 29, 2020).</p>	<p>Admit.</p>
<p>191. President Trump has opposed emergency funds and supplemental election-related funds for the U.S. Postal Service, citing his opposition to expanded mail-in voting. <i>Remarks by President Trump in Press Briefing</i>, The White House (Aug. 13, 2020), <a href="https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing-august-13-2020">https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing-august-13-2020</a>.</p>	<p>Admit.</p>
<p>192. On August 13, 2020, President Trump stated in a Fox Business interview that “[i]f we don’t make a deal [on U.S. Postal Service funding], that means they don’t get the money. That means they can’t have universal mail-in voting. They just can’t have it.” Megan Henney, <i>Trump rips Dems for holding up coronavirus stimulus deal with demand for post office aid</i>, Fox Bus. (Aug. 13, 2020), <a href="https://www.foxbusiness.com/politics/trump-rips-dems-for-holding-up-coronavirus-stimulus-deal-with-demand-for-post-office-aid">https://www.foxbusiness.com/politics/trump-rips-dems-for-holding-up-coronavirus-stimulus-deal-with-demand-for-post-office-aid</a>.</p>	<p>Admit.</p>

<p>193. On August 22, 2020, President Trump tweeted that “[r]epresentatives of the Post Office have repeatedly stated that they DO NOT NEED MONEY,” claiming that recent pushes for funding are “all another HOAX by the Democrats to give 25 Billion unneeded dollars for political purposes, without talking about the Universal Mail-In Ballot Scam.” Donald J. Trump (@realDonaldTrump), Twitter (Aug. 22, 2020, 4:51 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1297275235432005632">https://twitter.com/realDonaldTrump/status/1297275235432005632</a>.</p>	<p>Admit.</p>
<p>194. On August 22, 2020, the President encouraged his readers to “fight the [ ]51 million unasked for Ballots.” Donald J. Trump (@realDonaldTrump), Twitter (Aug. 22, 2020, 4:51 p.m.), <a href="https://twitter.com/realDonaldTrump/status/1297275241203458048">https://twitter.com/realDonaldTrump/status/1297275241203458048</a>.</p>	<p>Admit.</p>

In the above responses, Defendants identified several of Plaintiffs’ statements of fact that are in dispute. However, as reflected in Defendants’ responses, in the vast majority of instances, Defendants do not concede that such disputes are material to the outcome of the case. *See Anderson*, 477 U.S. at 247–48. Defendants otherwise dispute Plaintiffs’ statement of facts in ¶¶ 95, 107, 112, 141, and 172.

Dated: October 26, 2020

Respectfully submitted,

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