UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE RESTASIS (CYCLOSPORINE OPHTHALMIC EMULSION) ANTITRUST LITIGATION	MDL No. 2819 18-MD-2819 (NG) (LB)
This Document Relates To: All End-Payor Class Actions	

END-PAYOR PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AND ORDER OF DISMISSAL WITH PREJUDICE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

Rules

I. INTRODUCTION

The End-Payor Plaintiffs ("EPPs"), on behalf of themselves and the members of the certified End-Payor Class, move the Court to grant final approval to EPPs' settlement agreement with Defendant Allergan, Inc. and the plan of allocation. The Court preliminarily approved the settlement on January 18, 2022, ECF No. 716, and notice was provided to End-Payor Class members according to the Court-approved notice program. *See* Declaration of Eric J. Miller ("Miller Decl."), ECF No. 725 (May 3, 2022).

The settlement provides for Allergan to pay one penny less than $30 million in cash. The End-Payor Class will obtain immediate relief and avoid the potential risks and delay of summary judgment, trial, and appeal. Under the proposed plan of allocation, settlement proceeds are divided into pools for the different types of Class members (cash-paying consumers, insured consumers, and TPPs), and funds are distributed within each pool *pro rata*. The settlement is fair, reasonable, and adequate, and merits this Court's final approval.

II. BACKGROUND

Because of the Court's thorough familiarity with the facts of this litigation and EPPs' recent recitation of them in support of preliminary approval, *see* ECF No. 708-1 (Oct. 8, 2021) and in the accompanying declaration of Co-Lead Counsel, EPPs here provide only a short summary, and incorporate their prior briefing and the Court's order by reference. EPPs allege that Allergan violated antitrust laws by engaging in a scheme to impede and delay market entry of AB-rated, more affordable, generic versions of Allergan's brand-name prescription drug, Restasis.

Following transfer of all pending Restasis antitrust actions to the Eastern District of New York, the Court consolidated the end-payor actions. On September 18, 2018, the Court denied Allergan's motion to dismiss, and on November 13, 2018, the Court largely denied Allergan's

challenges to EPPs' state law causes of action. ECF Nos. 146, 176. On December 20, 2018, EPPs filed a Corrected First Amended Consolidated Class Action Complaint. ECF No. 210.

Fact and expert discovery proceeded. Allergan produced 690,000 documents, totaling over 7 million pages. Non-parties produced more than 10,000 additional documents, totaling over 130,000 pages. Plaintiffs (including the now-settled retailer and direct purchaser Plaintiffs) deposed 33 fact witnesses, including current and former Allergan employees and non-parties. Plaintiffs (including the other plaintiff groups) and Allergan exchanged twenty-nine merits expert reports, and Plaintiffs deposed seven of Allergan's experts. Allergan later submitted five additional merits expert reports. EPPs submitted four additional merits expert reports in rebuttal and deposed two of Allergan's additional merits experts.

On May 5, 2020, the Court certified the End-Payor Class after holding a two-day evidentiary hearing and receiving expert testimony, hearing oral argument, requesting additional briefing, and resolving multiple *Daubert* challenges. ECF Nos. 501, 502. Allergan sought interlocutory review, which, after briefing, the Second Circuit denied. ECF 540. The parties fully briefed three motions and one cross-motion for summary judgment, and ten *Daubert* motions before the parties reached a settlement. ECF Nos. 582, 586, 588, 589, 590, 591, 637 (summary judgment); ECF Nos. 596, 598, 599, 605, 607, 609, 612, 613, 614, 615, 616, 626, 627, 628, 629, 630, 631, 632, 634 (*Daubert*).

EPPs and Allergan conducted three mediations before reaching agreement: on September 23, 2019, before Magistrate Judge Lois Bloom; and on March 25, 2020, and April 26, 2021, before Judge Edward Infante (ret.). Following the last mediation, EPPs and Allergan continued to negotiate and eventually reached agreement, about which EPPs notified the Court on May 28, 2021. ECF No. 695. The Court, on January 18, 2022, preliminary approved the

settlement and directed EPPs to send notice to the members of the End-Payor Class. ECF No. 716.

The settlement administrator, A.B. Data, conducted a thorough notice program that gave notice of the settlement in print (including *People* magazine and the AARP's official magazine *The Bulletin*), online (including "at least" 265 million banner and newsfeed ads on multiple social media sites), by newswire (via *PR Newswire*'s US1 Newsline distribution list), and by U.S. mail (including more than 42,000 postcard notices). *See* Miller Decl. ¶¶ 5–12. A.B. Data has also maintained an EPP-specific settlement website and a 24-hour toll-free automated helpline to answer Class members' questions. *See id.* ¶¶ 13–14. The settlement website is clear, approachable, and informative. *See* www.RestasisLitigation.com. To date (the final deadline is June 7, 2022, per the Court's scheduling order, ECF No. 718), there have been no objections to the settlement. As of the date of this filing (the final deadline for postmarking or emailing was May 3, 2022, also per the scheduling order), the settlement administrator has received five requests from class members to be excluded from the settlement, far below the amount where Allergan could terminate the settlement. *See* Joint Declaration of End-Payor Co-Lead Counsel ("Co-Lead Decl."), Ex. 1 (Declaration of Eric Miller), ¶ 4.

Under the terms of the settlement, Allergan will pay $29,999,999.99 to settle the claims of the End-Payor Class. Settlement Agreement, ECF No. 708-2, § 12. In exchange, Allergan will receive releases from the End-Payor Class members. The releases will cover claims that EPPs alleged or could have alleged in their complaints or that relate to the alleged delay of generic versions of Restasis, and the proposed class period for settlement purposes is May 1, 2015 through July 31, 2021. *Id.*, § 1(u), 7-9. The released claims include any and all claims or damages that arise out of or relate to Class Members' future purchases and which relate to the

subject matter of this litigation, but do not include any future claims or damages arising from conduct by Allergan after the date of the Settlement, and do not release personal injury claims. *Id.*

III. ARGUMENT

Approval of a class action settlement "typically occurs in two stages:" preliminary approval and "final approval—where 'notice of a hearing is given to the class members, [and] class members and settling parties are provided the opportunity to be heard on the question of final court approval.'" *In re Payment Card Interchange Fee & Merch.. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27 (E.D.N.Y. 2019) (Brodie, J.) [*Payment Card I*] (quoting *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-CV-5450, 2016 WL 7625708, at *2 (S.D.N.Y. Dec. 21, 2016)).

In determining whether a class action settlement merits final approval under Federal Rule of Civil Procedure 23, courts consider whether

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (listing factors), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

Final approval review begins from the strong judicial policy favoring settlement. *See Payment Card I*, 330 F.R.D. at 27 (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)); *see also, e.g.*, *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 310 (S.D.N.Y. 2020) ("The compromise of complex litigation is encouraged by the courts and favored by public policy.") (quoting *Wal-Mart*, 396 F.3d at 116-17). From that starting point, the Court looks to both the procedural and the substantive fairness of the proposed settlement. *See Babcock v. C. Tech Collections Inc.*, Nos. 1:14-CV-3124 (MDG), 2:14-CV-3576 (MDG), 2017 WL 1155767, at *4 (E.D.N.Y. Mar. 27, 2017) (Go, M.J.) (citing *Wal-Mart*, 396 F.3d at 116). Both considerations weigh in favor of final approval here.

A. <u>The Settlement Is Procedurally Fair, Reasonable, and Adequate.</u>

The first two factors in Rule 23(e)(2) concern the procedural fairness of the settlement. Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment; *Namenda*, 462 F. Supp. 3d at 311. "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel." *Puddu v. 6D Glob. Techs., Inc.*, No. 15- CV-8061 (AJN), 2021 WL 1910656, at *4 (S.D.N.Y. May 12, 2021) (quoting *Wal-Mart*, 396 F.3d at 116). There is also "a presumption of fairness when a settlement is reached with the assistance of a mediator." *Id.*

Here, the settlement enjoys a presumption of fairness because it is the product of over a year and a half of arm's-length negotiations, beginning in September 2019 and culminating in an agreement in May 2021, assisted by experienced and capable mediators in three mediation sessions and extensive negotiations between the sessions. *See* Co-Lead Decl., ¶ 55; *Puddu*, 2021

WL 1910656, at *4 ("Here, the parties reached negotiation only after three unsuccessful mediations. Furthermore, the long procedural history of this case evinces that the parties—far from colluding—aggressively litigated this case and reached this settlement only after years of litigation."); *see also* Order, ECF No. 716, at 3 (Jan. 18, 2022) (highlighting that the End-Payor Plaintiffs' "mediation under the auspices of the Honorable Edward A. Infante and arm's-length negotiations by experienced counsel after over three years of litigation" as supporting preliminary approval).

Furthermore, the class representatives and class counsel have adequately represented the class. EPPs worked in coordination with the other plaintiff groups to litigate common issues in this case, including defeating Allergan's motion to dismiss and engaging in extensive factual and the first phase of expert discovery. After other plaintiffs settled, EPPs obtained class certification, finished expert discovery, and briefed summary judgment and merits *Daubert* motions. EPPs have performed all the duties required of class representatives, including producing documents, sitting for depositions, and monitoring the progress of the litigation and settlement discussions. Thus, the class representatives and class counsel have continued to conduct the litigation in the manner that led the Court to conclude that they were adequate representatives at class certification. *See* ECF No. 501 at 11 ("I find that the named plaintiffs are adequate class representatives and that class counsel are qualified, experienced, and able to conduct this litigation. … Moreover, through my extensive observations of counsel, I am assured that they are well qualified to litigate this class action."), *reported at* 335 F.R.D. 1, 13 (2020).

B. <u>The Settlement Is Substantively Fair, Reasonable, and Adequate.</u>

The second two factors in Rule 23(e)(2) concern the substantive fairness and adequacy of the settlement. Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment. The primary pertinent factor is the relief to the class, taking into account "the costs, risks, and delay

of trial and appeal." Fed. R. Civ. P. 23(e)(2)(C)(i). "The adequacy of the amount achieved in settlement may not be judged in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 162 (S.D.N.Y. 2011) (internal quotation marks omitted). The Court should "examine whether the settlement amount lies within a range of reasonableness, which range reflects the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (internal quotation marks omitted).

Courts also analyze certain non-enumerated factors—the *Grinnell* factors—because the factors in Rule 23(e)(2) were not intended to "displace any factor" previously developed by courts to analyze class action settlements "but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment; *see Namenda*, 462 F. Supp. 3d at 311-15. Many of the *Grinnell* factors are substantially similar to those in Rule 23(e)(2) and may be considered together.[1] Both sets of factors "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Namenda*, 462 F. Supp. 3d at 311 (quoting *Christine Asia Co. v. Jack Yun Ma*, No. 1:15-md-02631 (CM) (SDA), 2019 WL 5257534, at *9 (S.D.N.Y. Oct. 16, 2019)).

[1] Specifically, the first, fourth, fifth, eighth, and ninth *Grinnell* factors are largely the same as the analysis under Rule 23(e)(2). These factors are, respectively: the complexity, expense, and likely duration of the litigation; the risk of establishing liability; the risk of establishing damages; the range of reasonableness of the settlement fund in light of the best possible recovery; and the range of reasonableness of the settlement fund in light of all the attendant risks of litigation. *See Namenda*, 462 F. Supp. 3d at 311-15.

Here, the settlement is substantively adequate. The immediate relief to the class is approximately $30 million, in comparison to the considerable costs, risks, and delay of continued litigation through trial and appeal. *See* Fed. R. Civ. P. 23(e)(2)(C)(i); *Namenda*, 462 F. Supp. 3d at 315 (noting courts "[t]ypically" evaluate together the eighth and ninth *Grinnell* factors: range of reasonableness of the settlement fund in light of the best possible recovery and range of reasonableness of the settlement fund in light of all the attendant risks of litigation). Before trial, the Court likely would hold hearings on the numerous and lengthy summary judgment and *Daubert* motions. After decisions on these motions, the parties would have to engage in several months of additional pretrial briefing and preparation. *See* ECF No. 509 at 2-3 (providing about five months of pretrial briefing and conferences after summary judgment). This work would include preparing EPPs' thirteen expert witnesses for trial, assuming they each survived Allergan's *Daubert* challenges, which would entail significant costs. Further, more than two years in, the COVID-19 pandemic continues to upend trial schedules across the country. *E.g.*, *City & County of San Francisco v. Purdue Pharma L.P.*, No. 3:18-cv-07591-CRB, ECF No. 1289 (N.D. Cal. Apr. 29, 2022) (transcript of Apr. 27, 2022, bellwether trial proceedings substantially modifying schedule in light of positive COVID diagnoses among counsel). Trial itself would take several weeks, and an appeal would add additional cost and time, likely over a year.[2] In short, continuing to litigate would considerably delay relief and impose substantial costs. This factor weighs in favor of approval. *See Namenda*, 462 F. Supp. 3d at 311-12 ("The

[2] Administrative Office of the Courts, *U.S. Court of Appeals – Judicial Caseload Profile* 8 (median time to disposition in the Second Circuit was 14.2 months for period ending Mar. 31, 2021), *available at* https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_appprofile0331.2021.pdf.

first *Grinnell* factor evaluates whether the continuation of the litigation would be complex, expensive, and lengthy. This case, had it not settled, would have been all three.").

The remaining stages of litigation also would involve significant risk. Allergan filed summary judgment motions regarding patent fraud, sham petitioning, and causation, and moved to exclude key opinions of EPPs' experts (including experts Christians, Kessler, Clark, Frank, Williams, Craft, Roberts, and Calman). While EPPs filed oppositions and believe that Allergan's motions should be denied, the motions remain pending and pose risk that some or all of EPPs' claims or expert testimony might not survive to trial. These risks weigh in favor of approval. *See Namenda*, 462 F. Supp. 3d at 313 (fourth *Grinnell* factor is risk of establishing liability).

Trial would involve further risks. One of the key issues at trial would be whether Allergan's conduct caused a lack of generic competition at any time. There is always inherent risk in trying the issue of causation because it depends on predicting "the but-for world—a hypothetical world free of defendant's alleged anticompetitive actions." ECF No. 501 at 6. As the Court explained, "neither side will ever prove whether its predictions are correct. The but-for world is, by definition, hypothetical." *Id.* at 22.

The FDA recently approved the first generic version of Restasis.[3] EPPs continue to contend that Allergan's actions resulted in significantly delayed approval of generic Restasis. Given the abnormally long time it took for the FDA to approval generic Restasis—even after Allergan's alleged unlawful conduct ended—the jury could decide that the FDA, and not Allergan, is solely responsible for the delayed approval of generic Restasis, in which case EPPs might recover nothing. *E.g. In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34, 39 (1st

[3] *S*ee Press Release, U.S. FDA, FDA Approves First Generic of Restasis (Feb. 2, 2022), *available at* https://www.fda.gov/news-events/press-announcements/fda-approves-first-generic-restasis.

Cir. 2016) (affirming a jury verdict for the defendant due to lack of causation in a pharmaceutical antitrust case); *see Namenda*, 462 F. Supp. 3d at 313-14 (fifth *Grinnell* factor is risk of establishing damages). In light of the costs, risks, and delay of continuing to litigate, the approximately $30 million in immediate relief to the class is reasonable and adequate.

The reaction of the class—the second *Grinnell* factor—is an indicator of the settlement's fairness. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 (MKB) (JO), 2019 WL 6875472, at *16 (E.D.N.Y. Dec. 16, 2019) (Brodie, J.) [*Payment Card II*] ("It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy. In fact, the lack of objections may well evidence the fairness of the Settlement.") (quoting *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 333 (E.D.N.Y. 2010)). As described above, after notice was given to End-Payor Class members in print, online, by newswire, and by mail, and a dedicated toll-free number and website maintained for Class members' benefit, no objections have yet been received, and, as of the date of this filing, only five of the hundreds of thousands of class members opted out. Co-Lead Decl., Ex. 1, ¶ 5. These facts strongly weigh in favor of approval.

C. The Plan of Allocation Is Fair, Reasonable, and Adequate, and Satisfies the Requirements of Rule 23 and Due Process.

A plan of allocation must be fair and reasonable. *Becher v. Long Island Lighting Co.*, 64 F. Supp. 2d 174, 182 (E.D.N.Y. 1999). "The formula established for allocation need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel," and "courts look primarily to the opinion of counsel in determining the reasonableness and fairness of a plan of allocation." *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 414 (S.D.N.Y. 2018) (internal quotation marks omitted), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020). Typically, a *pro rata* allocation is appropriate

under Rule 23(e)(2)(D). *See Payment Card II*, 2019 WL 6875472, at *27 ("[T]he *pro rata* distribution scheme is sufficiently equitable.").

Here, after several revisions in response to the Court's concerns, *see* ECF No. 716 at 2, EPPs propose splitting the settlement fund, after any award of attorney fees, costs, and service awards, into three pools: 83.4% for a TPP Pool, 14.4% for an Insured Consumer Pool (for consumers who purchased Restasis with insurance), and 2.2% for a Cash Consumer Pool (for consumers who purchased Restasis without insurance). Letter Regarding End-Payor Plaintiffs' Unopposed Motion for Preliminary Approval (Dec. 12, 2021), Ex. 6, Revised Plan of Allocation, ECF No. 715-6, ¶ 1; Declaration of Richard G. Frank ("Frank Decl."), ECF No. 708-4, ¶ 2. Claimants will be paid their *pro rata* share of their respective pools. Revised Plan of Allocation, ¶¶ 19-26. Within each pool, claimants will be limited to their "full" damages, that is, the number of prescription or packages claimed by the class members multiplied by the per-prescription or per- package overcharge. *Id.*[4] If the "full" damages owed to class members in a single pool is less than the amount allocated for that pool, the remainder will be allocated *pro rata* among the other pools. *Id.*

D. The Requested Expenses, Fees, and Service Awards Are Fair, Reasonable, and Adequate with Respect to the Class.

On May 17, 2022, together with this motion for final approval, class counsel have filed a motion for reimbursement of expenses, award of attorneys' fees, and service awards. For the reasons given in that motion and its supporting papers, EPPs' and Class counsel's requests satisfy Rule 23(e)(2)(C)(iii). Accordingly, the Court should find that the requested expenses,

[4] The per-prescription and per-package overcharges were calculated by EPPs' economic expert, Dr. Richard Frank. *See* Frank Decl., ¶ 3.

fees, and service awards are fair, reasonable, and adequate with respect to End-Payor Class members, and that this factor weighs in favor of final approval.

E. The Other *Grinnell* Factors Weigh in Favor of Approval or Are Neutral.

The third *Grinnell* factor is the stage of the proceedings and the amount of discovery completed, with a focus on whether the case was sufficiently advanced that the parties were sufficiently informed regarding the strengths and weaknesses of the case. *See In re Forest Labs. Inc. Sec. Litig.*, No. 05 CIV. 2827 (RMB), 2009 WL 10738220, at *4 (S.D.N.Y. May 15, 2009). Here, millions of pages of documents, depositions of dozens of fact and expert witnesses, and fully briefing summary judgment informed the parties as thoroughly as possible, short of actually trying the case to judgment, of each side's strengths and weaknesses. This factor weighs in favor of approval. *See id.*

The other *Grinnell* factors are neutral. The sixth factor is the risk of maintaining the class action through trial, which is neutral because the Court certified the class and the Second Circuit denied Allergan's Rule 23(f) petition. *See Namenda*, 462 F. Supp. 3d at 314. The seventh factor—whether the defendant is able to withstand a greater judgment—"is typically relevant only when a settlement is less than what it might otherwise be but for the fact that the defendant's financial circumstances do not permit a greater settlement." *Id.* As Allergan's financial circumstances are not a limitation on the settlement here, this factor is likewise neutral.

IV. CONCLUSION

After four years of hard-fought litigation, the End-Payor Class members are able to receive compensation for the economic harm the named plaintiffs alleged. While Plaintiffs are confident in their claims, trial outcomes are never certain. The settlement achieved is in the best interest of the Class members. For the reasons stated above, and as set forth in the proposed

order submitted herewith, EPPs ask the Court to enter an order granting final approval of the End-Payor Class settlement and to enter final judgment.

Dated: May 17, 2022

Respectfully submitted,

/s/ Dena C. Sharp

Dena C. Sharp
Scott Grzenczyk
Tom Watts
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
dsharp@girardsharp.com
scottg@girardsharp.com
tomw@girardsharp.com

/s/ David T. Rudolph

Eric B. Fastiff
Dan Drachler
David T. Rudolph
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008
efastiff@lchb.com
ddrachler@lchb.com
drudolph@lchb.com

/s/ Joseph R. Saveri

Joseph R. Saveri
JOSEPH SAVERI LAW FIRM, INC.
601 California Street, Suite 1000
an Francisco, CA 94108
Tel: (415) 500-6800
Fax: (415) 395-9940
jsaveri@saverilawfirm.com

End-Payor Co-Lead Counsel

/s/ *Robert S. Schachter*

Robert S. Schachter (RS 7243)
ZWERLING, SCHACHTER
& ZWERLING, LLP
41 Madison Avenue, 32nd Floor
New York, NY 10010
Tel: (212) 223-3900
Fax: (212) 371-5969
rschachter@zsz.com

End-Payor Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2021, I served the foregoing document via electronic mail in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules, and/or Item 3.C of your Honor's Individual Motion Practices.

/s/ Dena C. Sharp
Dena C. Sharp