

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, CENTER FOR BIOLOGICAL
DIVERSITY, CONSUMER FEDERATION OF
AMERICA, MASSACHUSETTS UNION OF
PUBLIC HOUSING TENANTS, PUBLIC
CITIZEN, and SIERRA CLUB,

Plaintiffs,

and

ASSOCIATION OF HOME APPLIANCE
MANUFACTURERS, and AIR-
CONDITIONING, HEATING &
REFRIGERATION INSTITUTE,

Plaintiff-Intervenors,

v.

JENNIFER M. GRANHOLM, as Secretary Of
The United States Department Of Energy, and
UNITED STATES DEPARTMENT OF
ENERGY,

Defendants.

No.: 20-cv-9127 (JMF)

STATES OF NEW YORK, CALIFORNIA,
COLORADO, CONNECTICUT, ILLINOIS,
MAINE, MARYLAND, MINNESOTA, NEW
JERSEY, OREGON, VERMONT, AND
WASHINGTON, COMMONWEALTH OF
MASSACHUSETTS, PEOPLE OF THE STATE
OF MICHIGAN, DISTRICT OF COLUMBIA,
CITY OF NEW YORK, COMMONWEALTH
OF PENNSYLVANIA, AND STATES OF
NEVADA AND NEW MEXICO,

Plaintiffs,

and

ASSOCIATION OF HOME APPLIANCE

No.: 20-cv-9362 (JMF)

MANUFACTURERS, and AIR-
CONDITIONING, HEATING &
REFRIGERATION INSTITUTE,

Plaintiff-Intervenors,

v.

JENNIFER M. GRANHOLM, as Secretary Of
The United States Department Of Energy, and
UNITED STATES DEPARTMENT OF
ENERGY,

Defendants.

CONSENT DECREE

WHEREAS, on October 30, 2020, Plaintiffs Natural Resources Defense Council, Center for Biological Diversity, Consumer Federation of America, Massachusetts Union of Public Housing Tenants, Public Citizen, and Sierra Club (collectively “Public Interest Plaintiffs”) filed a complaint in the United States District Court for the Southern District of New York (“Court”) against Defendants Jennifer Granholm,¹ in her official capacity as United States Secretary of Energy, and the United States Department of Energy (collectively “DOE”);

WHEREAS, on November 9, 2020, Plaintiffs States of New York, California, Colorado, Connecticut, Illinois, Maine, Maryland, Minnesota, New Jersey, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, the People of the State of Michigan, the District of Columbia, and the City of New York (collectively “State Plaintiffs”) filed a complaint in the Court against DOE;

WHEREAS on January 29, 2021, State Plaintiffs filed an amended complaint to include as additional state plaintiffs the Commonwealth of Pennsylvania and the States of New Mexico and Nevada;

¹ Secretary Granholm is automatically substituted as a defendant for former Secretary Dan Brouillette pursuant to Federal Rule of Civil Procedure 25(d).

WHEREAS, on March 23, 2021, the Court entered a Stipulation and Order (the “Intervention Stipulation”) permitting the Association of Home Appliance Manufacturers and Air-Conditioning, Heating & Refrigeration Institute (collectively, “Plaintiff-Intervenors”) to participate, with specified conditions, as Plaintiff-Intervenors in these two civil actions, Dkt. No. 34, 20 Civ. 9127, Dkt. No. 53, 20 Civ. 9326;

WHEREAS, Plaintiff-Intervenors filed a Complaint in Intervention in each of these actions on March 26, 2021 Dkt. No. 35, 20 Civ. 9127, Dkt. No. 55, 20 Civ. 9326;

WHEREAS, the Public Interest Plaintiffs, State Plaintiffs, and Plaintiff-Intervenors (collectively, the “Plaintiffs”) have alleged that DOE has failed to publish final rules concerning energy conservation standards for 25 categories of consumer products and industrial equipment by the respective deadlines specified by the Energy Policy and Conservation Act, as amended (“EPCA”), 42 U.S.C. §§ 6291–6317;

WHEREAS, DOE signed a final rule concerning energy conservation standards for one of these categories, fluorescent lamp ballasts, on December 4, 2020, which was published in the Federal Register at 85 Fed. Reg. 81,558 (Dec. 16, 2020);

WHEREAS, DOE signed a final rule concerning energy conservation standards for a second of these categories, small electric motors, on January 6, 2021, which was published in the Federal Register at 86 Fed. Reg. 4885 (Jan. 19, 2021);

WHEREAS, DOE signed a final rule concerning energy conservation standards for a third of these categories, evaporatively-cooled commercial package air conditioners and water-cooled commercial package air conditioners, on July 8, 2021, which was published in the Federal Register at 86 Fed. Reg. 37,001 (July 14, 2021);

WHEREAS, DOE signed a final rule concerning energy conservation standards for a fourth of these categories, metal halide lamp fixtures, on October 20, 2021, which was published

in the Federal Register at 86 Fed. Reg. 58,763 (Oct. 25, 2021);

WHEREAS, DOE signed a final rule concerning energy conservation standards for a fifth of these categories, direct heating equipment, on November 23, 2021, which was published in the Federal Register at 86 Fed. Reg. 66,403 (Nov. 23, 2021);

WHEREAS, with respect to the remaining 20 categories of consumer products and industrial equipment that are the subject of the Public Interest Plaintiffs' complaint and the State Plaintiffs' amended complaint, EPCA prescribes deadlines and other requirements for final rules concerning energy efficiency standards; and

WHEREAS, the Public Interest Plaintiffs, the State Plaintiffs, the Plaintiff-Intervenors, and DOE (each a "Party" and collectively the "Parties") agree that it is in the public interest, and the interest of judicial economy, to resolve claims without further litigation, as provided herein, and that this Consent Decree is a fair, just, sufficient, and equitable resolution of the claims asserted by the Plaintiffs;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Court has jurisdiction over the claims set forth in the Public Interest Plaintiffs' complaint and the State Plaintiffs' amended complaint and the Plaintiff-Intervenors' Complaints in Intervention. The Court has jurisdiction to enter this Consent Decree and, pursuant to the Consent Decree, has jurisdiction to order the relief contained herein.

2. These two civil actions are consolidated for the purpose of entry of this Consent Decree and any further proceedings in these matters. All future filings shall be made only in *Natural Resources Defense Council v. Granholm*, 20 Civ. 9127.

3. This Consent Decree applies to, is binding upon, and inures to the benefit of the Parties (and their successors, assigns, and designees).

4. For each of the 20 categories of consumer products and industrial equipment

listed in the below table, DOE shall sign and post on DOE’s publicly accessible website the document that, when effective, represents a final agency action pertaining to energy conservation standards (hereinafter, “Agency Action Document”) for that particular category of consumer product or industrial equipment no later than the corresponding deadline listed in the below table:

<i>Product Category</i>	<i>Deadline</i>
Computer Room Air Conditioners	June 30, 2023
Pool Heaters	June 30, 2023
Commercial Water Heaters	July 30, 2023
Room Air Conditioners	July 30, 2023
Dedicated Outdoor Air Systems	August 31, 2023
Microwave Ovens	August 31, 2023
Variable Refrigerant Flow Air Conditioners and Heat Pumps	August 31, 2023
Non-Weatherized and Mobile Home Gas Furnaces	September 30, 2023
Residential Clothes Dryers	February 29, 2024
Residential Refrigerators and Freezers	December 30, 2023
Conventional Cooking Products	January 31, 2024
Residential Clothes Washers	February 29, 2024
Electric Motors	April 30, 2024
Residential Water Heaters	April 30, 2024
Distribution Transformers	June 30, 2024
Residential Dishwashers	June 30, 2024
Furnace Fans	October 31, 2024
Oil Furnaces and Weatherized Gas Furnaces	October 31, 2024
Walk-In Coolers and Freezers	November 30, 2024
Commercial Refrigeration Equipment	November 30, 2024

5. For purposes of Paragraph 4, an Agency Action Document is a rulemaking document prepared by DOE under EPCA that, upon that document's effective date, either: (a) amends energy conservation standards; (b) establishes new energy conservation standards; or (c) conveys DOE's determination to not amend energy conservation standards.

6. Further, for purposes of Paragraph 4, the posting on DOE's publicly accessible website of an Agency Action Document, including any Agency Action Document subject to the error correction procedures at 10 C.F.R. §§ 430.5, 431.3 (or any subsequent amendments thereto), satisfies DOE's obligation to "sign and post . . . the document that, when effective, represents a final agency action pertaining to energy conservation standards," provided that:

(a) For any Agency Action Document not subject to the error correction procedures at 10 C.F.R. §§ 430.5, 431.3 (or any subsequent amendments thereto), DOE transmits the Agency Action Document within 30 days of its signing to the Office of the Federal Register ("OFR") for publication and DOE does not take any action that would delay or preclude publication of the transmitted document in the Federal Register (other than as necessary to correct any typographical errors or other errors of form); and

(b) For any Agency Action Document that is subject to the error correction procedures at 10 C.F.R. §§ 430.5, 431.3 (or any subsequent amendments thereto), DOE transmits the Agency Action Document (or an amended version thereof if necessary changes are identified during the error correction process) to the OFR for publication within 75 days of signing the Agency Action Document, and DOE does not take any action that would delay or preclude publication of the transmitted document in the Federal Register (other than as necessary to correct any typographical errors or other errors of form).

7. If, subsequent to the entry of this Consent Decree by the Court, there is adopted an amendment to Standard 90.1 as published by the American Society of Heating, Refrigerating

and Air-Conditioning Engineers (“ASHRAE”) that would, for any category of industrial equipment listed in Paragraph 4, trigger the process required by 42 U.S.C. § 6313(a)(6)(A)–(B), then the deadline for the affected category of industrial equipment shall be the later of: (a) the date listed in Paragraph 4; or (b) the date calculated pursuant to 42 U.S.C. §§ 6313(a)(6)(A)(ii)(I)–(II) and 6313(a)(6)(B)(i), unless the Parties agree to a different deadline in accordance with the modification procedures in Paragraph 11 of this Consent Decree.

8. If, subsequent to the entry of this Consent Decree by the Court, there is a change in statute or a judicial decision of any court that DOE concludes would preclude DOE from completing a document required by Paragraph 4 using the factual analysis, legal rationale, or rulemaking procedures DOE was intending for that rulemaking, the following procedures shall apply:

(a) Within 30 days of the enactment of such a statute, or within 30 days of the issuance of the judicial decision by a court, DOE shall transmit to the Public Interest Plaintiffs, State Plaintiffs, and Plaintiff-Intervenors a written notice that: (i) identifies the specific change in statute or judicial decision; (ii) identifies which rulemaking(s) of the categories of consumer products and industrial equipment in Paragraph 4 are impacted by this change in statute or judicial decision; (iii) briefly summarizes how the change in statute or judicial decision impacts DOE’s ability to complete the rulemaking by the deadline specified in Paragraph 4; and (iv) proposes a substitute deadline for each category of consumer products and industrial equipment identified in the notice.

(b) Within 15 days of receiving the notice required by Subparagraph 8(a), the Parties shall meet and confer in good faith about the need for, and selection of, a substitute deadline for each category of consumer products and industrial equipment identified in DOE’s notice. If the Parties are able to agree on a substitute deadline, the Parties shall amend the

deadline in Paragraph 4 in accordance with the modification procedures for stipulations in Paragraphs 11 and 12 of this Consent Decree.

(c) If, 30 days after initiating the meet-and-confer process required by Subparagraph (b), the Parties are unable to agree on the need for, or selection of, a substitute deadline, DOE may file with the Court a motion to modify the relevant deadline in Paragraph 4. If the Parties disagree on the need for a substitute deadline for any category of consumer products and industrial equipment identified in DOE's motion, or agree on the need for a substitute deadline but disagree on the date of the substitute deadline, the Court shall, after consideration of the motion and any response filed by Public Interest Plaintiffs, State Plaintiffs, or Plaintiff-Intervenors, and any reply by DOE, decide whether a substitute deadline is warranted and, if so, decide what the substitute deadline will be. For purposes of this Paragraph, the Parties stipulate that at the time of entering this Consent Decree, the Parties are not aware of specific legislation or cases that they currently anticipate would result in a change of law that would make DOE's compliance with any deadline in Paragraph 4 substantially more onerous or unworkable; accordingly, no Plaintiff may oppose the relief sought by DOE in its motion on the ground that any changed circumstances were anticipated at the time the Parties entered into this Consent Decree. Plaintiffs otherwise preserve all grounds or bases for opposition to any motion under this Subparagraph.

(d) Any deadline established pursuant to Subparagraphs (b) and (c) may subsequently be modified in accordance with the modification procedures for stipulations in Paragraphs 11 and 12 of this Consent Decree.

9. If DOE signs and posts an Agency Action Document for a category of consumer products or industrial equipment required by Paragraph 4 by the deadline

applicable to that category provided by this Consent Decree, and the final agency action pertaining to energy conservation standards represented by that Agency Action Document is subsequently determined by a final judgment of any court to be legally invalid either in whole or in part and the rulemaking is remanded in whole or in part to DOE for further action, DOE shall not be in violation of its obligation to “sign and post” the Agency Action Document by the deadline applicable to that category provided by Paragraph 4 of this Consent Decree. However, the Plaintiffs retain their right to seek appropriate relief, including but not limited to the establishment of additional deadlines, either by motion or by commencing new litigation pursuant to EPCA. DOE reserves all defenses to such motion or separate action.

10. Nothing in this Consent Decree precludes DOE from signing and posting an Agency Action Document for a category of consumer products or industrial equipment prior to the respective deadline provided in Paragraph 4.

11. Notwithstanding any other provisions of this Consent Decree, the terms of this Consent Decree may be modified either by: (a) written stipulation of the Parties approved by the Court; (b) as provided in Paragraph 12 below; or (c) by the Court upon a motion made pursuant to the Federal Rules of Civil Procedure by DOE, the Public Interest Plaintiffs, or the State Plaintiffs, and upon consideration of any response by a non-moving Party and reply by the moving Party; provided, however, that this Consent Decree may not be modified to: (i) establish new deadlines for any category of consumer products or industrial equipment that is not listed in Paragraph 4; (ii) establish additional rulemaking deadlines for any category of consumer products or industrial equipment listed in Paragraph 4 if the applicable deadline provided by this Consent Decree has been satisfied by DOE; or (iii) establish a deadline for any category of consumer products or industrial equipment earlier than the deadline provided in Paragraph 4.

12. If DOE, the Public Interest Plaintiffs, and the State Plaintiffs are able to reach a stipulated agreement on terms modifying this Consent Decree, those parties (the “Requesting Parties”) may submit their stipulation to the Court and request that it be approved. However, at least 14 days before filing any such written stipulation with the Court, the Requesting Parties shall provide a copy of such stipulation to the Plaintiff-Intervenors for their review. After that 14-day period, the Requesting Parties may file the stipulation with the Court. Plaintiff-Intervenors, unless they have consented to the stipulation in writing, may file a response to the stipulation within 10 days and participate in any hearing regarding approval or entry of the stipulation.

13. Prior to filing any motion to modify this Consent Decree under Paragraph 11(c) (except for a motion filed pursuant to Subparagraph 8(c)), the Party seeking the modification shall first transmit to the other Parties a written notice that: (i) identifies the requested modification; (ii) briefly summarizes the reason(s) justifying the modification; and (iii) requests consent to the modification. Within 14 days of receiving this notice, the receiving Parties shall each notify the requesting Party whether it consents to the modification or instead requests that the Parties confer about the requested modification. If any Party requests to confer, the Parties shall, within 15 days of such request, meet and confer in good faith with the objective of reaching agreement before any motion to modify is filed with the Court. If, after 30 days of initiating the meet-and-confer process, the Parties are unable to agree, the Party seeking modification may file a motion to modify with the Court, to which any non-moving Party may respond. Nothing in this Paragraph waives or limits any argument that any Party may make to the Court in support of, or in opposition to, such motion. The deadlines set forth in this Paragraph may be modified by agreement of the Parties without Court approval.

14. The Court shall retain jurisdiction to interpret, implement, and effectuate

compliance with this Consent Decree, to resolve any disputes thereunder, and to consider any requests for costs of litigation (including a request for reasonable attorneys' fees the Public Interest Plaintiffs or the State Plaintiffs).

15. Prior to filing any motion to interpret, implement, or enforce the Consent Decree, the Party intending to file such motion shall first transmit to the other Parties a written notice that identifies the relief desired and briefly summarizes the reason(s) justifying the relief sought. Within 15 days of receiving this notice, the Parties shall meet and confer in good faith with the objective of reaching agreement before any motion is filed with the Court. If, after 30 days of initiating the meet-and-confer process, the Parties are unable to agree, the Party seeking relief may file a motion with the Court, to which any non-moving Party may respond. Nothing in this Paragraph waives or limits any argument that any Party may make to the Court in support of, or in opposition to, such motion. The deadlines set forth in this Paragraph may be modified by agreement of the Parties without Court approval.

16. No motion or other proceeding seeking to interpret, implement, or enforce this Consent Decree or for contempt of Court shall be properly filed unless the moving Party has complied with the requirements of Paragraph 15.

17. The Parties acknowledge and agree that the obligations imposed upon DOE under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose and that DOE's actions under this Consent Decree must be consistent with applicable law. No provision of this Consent Decree requires, nor shall be interpreted or construed as requiring, that DOE take any action that is inconsistent with or in contravention of: (a) the Antideficiency Act, 31 U.S.C. § 1341, or any other applicable fiscal or procurement law or regulation; (b) the Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706; (c) EPCA, 42 U.S.C. §§ 6291–6317; or (d) any other applicable provision of law.

18. Nothing in this Consent Decree shall be interpreted or construed as limiting or modifying any discretion accorded to DOE by any laws, including EPCA, 42 U.S.C. §§ 6291–6317, the Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706, and any other statutes, regulations, or principles of administrative law, in taking the actions that are the subject of this Consent Decree—including, but not limited to: (a) the substance of any Agency Action Document required by Paragraph 4; (b) the factors to be considered in proposing or adopting any Agency Action Document required by Paragraph 4; or (c) the conduct of rulemakings for any category of covered products or industrial equipment that is not the subject of this Consent Decree.

19. The Parties acknowledge and agree that the terms of this Consent Decree and the settlement provided for herein are intended to compromise disputed claims and to avoid litigation, and do not constitute and shall not be construed as an admission of any wrongdoing, misconduct, or liability on the part of DOE.

20. The Parties agree that this Consent Decree constitutes a complete and final settlement of all claims asserted by the Plaintiffs in these consolidated actions against DOE. The Plaintiffs therefore discharge and covenant not to sue the United States, including DOE, for such claims; however, the Parties agree that this discharge and covenant not to sue shall not apply to any claim that may arise if any final agency action pertaining to energy conservation standards represented by an Agency Action Document required by Paragraph 4 is vacated or withdrawn.

21. Nothing in this Consent Decree shall be interpreted or construed as precluding any Plaintiff from participating in any of the rulemakings for the categories of consumer products and industrial equipment listed in Paragraph 4, including, but not limited to, submitting comments on proposed rules, participating in public meetings, and challenging pursuant to 42

U.S.C. §§ 6306 or 6316 any final agency action pertaining to energy conservation standards represented by an Agency Action Document required by Paragraph 4.

22. Nothing in this Consent Decree shall be construed to confer upon this Court jurisdiction to review any final agency action pertaining to energy conservation standards represented by an Agency Action Document signed and posted by DOE pursuant to this Consent Decree.

23. Nothing in this Consent Decree shall be interpreted or construed as admitting any issue of fact or law, or limiting or waiving any claims, defenses, or arguments the Parties may have related to any final agency action pertaining to energy conservation standards represented by an Agency Action Document required by Paragraph 4 and taken by DOE pursuant to this Consent Decree.

24. Upon the completion of DOE's obligations under Paragraph 4 and the publication of all subject final actions in the Federal Register, DOE may move to have this Consent Decree terminated. The Plaintiffs shall have 30 days in which to respond to such motion, unless the Parties stipulate to a longer time for Plaintiffs to respond.

25. The deadline for filing a motion for costs of litigation (including attorneys' fees) for activities performed prior to entry of the Consent Decree is extended until 90 days after this Consent Decree is entered by the Court. Nothing in this Paragraph shall be construed as an admission or concession by DOE that either the Public Interest Plaintiffs or the State Plaintiffs are entitled to or eligible for recovery of any costs or attorneys' fees.

26. Public Interest Plaintiffs and State Plaintiffs reserve the right to seek additional costs of litigation, including attorneys' fees, incurred after the entry of this Consent Decree and arising from the need to enforce or defend against efforts to modify the Decree's terms or the schedule in Paragraph 4, or for any other unforeseen continuation of this action. DOE reserves

the right to oppose any such request. For purposes of this Paragraph, costs of litigation do not include costs or attorneys' fees associated with Public Interest Plaintiffs' or State Plaintiffs' participation in any administrative proceedings contemplated by this Consent Decree or participation in any petition to a court to review any final agency action pertaining to energy conservation standards represented by an Agency Action Document required by Paragraph 4 and completed pursuant to this Consent Decree.

27. This Consent Decree constitutes the entire agreement among the Parties as to all claims raised by Plaintiffs in their respective complaints, and supersedes all prior agreements, representations, warranties, statements, promises, covenants, and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. Except as expressly stated in this Consent Decree, nothing in this Consent Decree expands or contracts the rights of Plaintiff-Intervenors pursuant to the Intervention Stipulation, and the Parties reserve all arguments as to Plaintiff-Intervenors' constitutional, statutory, or prudential standing.

28. The Parties expressly understand and agree that this Consent Decree was jointly drafted by the Parties, and that any and all rules of construction providing to the effect that an ambiguity in a document is to be construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

29. Each of the undersigned representatives of the Parties certify that such individual is authorized by the Party to enter into this Consent Decree and to bind such Party to comply with the terms of this Consent Decree.

30. This Consent Decree may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument, and photographic, facsimile, or digital copies of such signed counterparts may be used in lieu of the original. The execution of one counterpart by any Party shall have the same force and effect

as if that Party had signed all other counterparts.

31. Any notice required or made with respect to this Consent Decree shall be in writing and effective upon receipt. Any notice required or made pursuant to this Consent Decree shall be sent via electronic mail or certified mail to the following contact persons:

For Public Interest Plaintiffs:

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For State Plaintiffs:

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For DOE:

Environmental Protection Unit
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United States Attorney's Office
Southern District of New York
86 Chambers St., Third Floor
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A Party may alter contact persons or designate additional contact persons under this Paragraph by written notice to the other Parties.

32. Nothing in this Consent Decree shall be construed as making any person or entity not executing this Consent Decree a third-party beneficiary to this Consent Decree.

33. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the proposed Consent Decree may not be used as evidence in any litigation between the Parties.

The Clerk of Court is directed to (1) substitute Secretary Granholm for former Secretary Dan Brouillette as Defendant in both cases pursuant to Federal Rule of Civil Procedure 25(d); (2) consolidate 20-CV-9127 and 20-CV-9362 under 20-CV-9127; and (3) close both cases. Any pending motions are moot. All conferences are vacated.

SO ORDERED on this 20 day of September, 2022.



JESSE M. FURMAN
United States District Judge

For Natural Resources Defense Council and Public Citizen:

/s/ Jared E. Knicley²
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/s/ Timothy Ballo
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For the State of New York:

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/s/ Lisa S. Kwong
LISA S. KWONG
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² Pursuant to S.D.N.Y. ECF Rule 8.5(b), all parties have granted consent to electronically sign this consent decree.

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/s/ Peter Surdo
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