UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BRITTNEY LEVY, MAURICE ROMALHO, and EMAD HAMID, individually and on behalf of all others similarly situated, Plaintiffs, -against- ENDEAVOR AIR INC., Defendant.	MEMORANDUM & ORDER 21-CV-4387 (ENV) (JRC)

VITALIANO, D.J.

Plaintiffs Brittney Levy, Maurice Romalho, and Emad Hamid commenced this putative class action against their current or former employer, defendant Endeavor Air Inc. ("Endeavor"), alleging that Endeavor failed to pay their wages in a timely fashion as required by New York Labor Law § 191 ("NYLL"). Compl., Dkt. 1, ¶ 1. Principally, they seek liquidated damages for these violations. *Id.* ¶¶ 58, C. Endeavor has moved, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), to dismiss plaintiffs' claims. Dkt. 18. For the reasons set forth below, the motion is denied.

Background

Endeavor is a regional airline, headquartered in Minneapolis, which operates connecting flights for Delta Air Lines. Compl. ¶ 2. Its employees are based at various airports throughout the country, including at LaGuardia Airport in Queens, which is where plaintiffs work or worked as employees of the airline. Def.'s Mem., Dkt. 19, at 11–14.[1] Levy was employed as a flight

[1] All citations to pages of the parties' briefing refer to the Electronic Case Filing System ("ECF") pagination.

attendant; Romalho as a maintenance worker, mechanic, and inspector; and Hamid as a mechanic.[2] Compl. ¶¶ 9–17. Pleading that over 25% of their employment duties involve physical labor, plaintiffs claim that they and the putative class members fall within NYLL § 191's definition of manual workers, and, as such, are entitled to weekly payment of their wages. *Id*. ¶¶ 1, 40, 46, 53, 56–57. By paying them on a biweekly or semi-monthly basis, they contend, Endeavor violated § 191 and its accompanying regulations, entitling plaintiffs to liquidated damages.[3] *Id*. ¶¶ 4–6, 41, 47, 54, 55–58. In its threshold attack on the complaint, Endeavor argues that plaintiffs lack Article III standing, that § 191 does not create a private right of action, and that some of the claims are preempted by a collective bargaining agreement and/or are barred by the Commerce Clause of the Constitution. Def.'s Mem. at 9–11.

Legal Standard

Standing "is an essential and unchanging part of the case-or-controversy requirement of Article III" of the Constitution. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342, 126 S. Ct. 1854, 1861, 164 L. Ed. 2d 589 (2006) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992)); *see also TransUnion LLC v. Ramirez*, 594 U.S. ——, 141 S. Ct. 2190, 2203, 210 L. Ed. 2d 568 (2021). "A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). Ultimately, "[t]he plaintiff bears the burden of proving subject matter jurisdiction by a preponderance of the evidence," *Aurecchione v. Schoolman Transp. Sys., Inc.*, 426 F.3d 635, 638

[2] Specifically, Brittney Levy was employed from September 2016 through May 2018; Maurice Romalho has been employed since May 2014; and Emad Hamid has been employed since June 2018.

[3] Plaintiffs have attached representative wage statements to the complaint. *See* Dkt. 1-1, 1-2.

(2d Cir. 2005),[4] but "at the pleading stage, standing allegations need not be crafted with precise detail," *Baur v. Veneman*, 352 F.3d 625, 631 (2d Cir. 2003) (citing *Lujan*, 504 U.S. at 561).

Where the existence of standing is tested at the doorstep of federal court by a motion to dismiss under Rule 12(b)(1), a court "must accept as true all material factual allegations in the complaint," but must not draw inferences favorable to the party asserting jurisdiction. *J.S. ex rel. N.S. v. Attica Cent. Schs.*, 386 F.3d 107, 110 (2d Cir. 2004). Additionally, in resolving such motion challenging subject matter jurisdiction, "a district court may consider evidence outside the pleadings." *Morrison v. Nat'l Australia Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008). "A challenge to subject matter jurisdiction is a challenge to the power of the court, so when [a] defendant[] move[s] to dismiss under both Rules 12(b)(1) and 12(b)(6), the court must address the 12(b)(1) motion first." *Grauman v. Equifax Info. Servs., LLC*, 549 F. Supp. 3d 285, 289 (E.D.N.Y. 2021).

Assuming subject matter jurisdiction has been established, to survive a Rule 12(b)(6) motion, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007)). This "plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (internal quotation marks omitted). Then, when considering a Rule 12(b)(6) motion, a court "must accept as true all [factual statements alleged] in the complaint and draw all reasonable inferences in favor of the nonmoving party." *Vietnam Ass'n for Victims of Agent Orange v. Dow*

[4] One court in this district has suggested that the plaintiff only bears a lighter burden, specifically, that the plaintiff need only "plausibly allege" subject matter jurisdiction at the motion to dismiss stage. *Amadei v. Nielsen*, 348 F. Supp. 3d 145, 154 & n.4 (E.D.N.Y. 2018). Because the Court ultimately concludes that the heavier burden in *Aurecchione* is satisfied here for the reasons described below, the Court need not decide whether this looser standard applies instead.

Chem. Co., 517 F.3d 104, 115 (2d Cir. 2008) (*quoting Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 591–92 (2d Cir. 2007)).

Discussion

I. Standing

To meet the challenge to their standing to sue, plaintiffs must plausibly plead, and ultimately prove by a preponderance, three essential elements: first, that they have suffered an "injury in fact," that is, "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; second, that there is "a causal connection between the injury and the conduct complained of," in other words, an injury that is "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court"; and third, that the injury is likely to be "redressed by a favorable decision." *Lujan*, 504 U.S. at 560–61, 112 S. Ct. 2130 (cleaned up).

Defendant drops the gloves on the opening face-off, contending that plaintiffs have not pleaded invasion of a legally protected interest as *Lujan's* first element requires. *Id.* at 560. Statutory law is, more often than not, the creator of such protected interests. The fact that the enactment is the work of the state legislature rather than Congress is of no moment. *Maddox v. Bank of New York Mellon Tr. Co., N.A.*, 19 F.4th 58, 61 (2d Cir. 2021). Plaintiffs pin satisfaction of this element to § 191's creation of a manual worker's right to a weekly wage, which they contend Endeavor did not pay. Compl. ¶¶ 41, 43, 47, 49–50, 54. This claim clearly qualifies as one rooted in the invasion of a legally protected interest. *See Grauman*, 549 F. Supp. 3d at 290. Indeed, Endeavor offers no realistic argument to the contrary.

Nevertheless, a state's statutory conferral of legal interests only grants standing to sue in a federal district court to a plaintiff who "can allege concrete and particularized injury to that

interest." *Strubel v. Comenity Bank*, 842 F.3d 181, 188 (2d Cir. 2016); *see also TransUnion*, 141 S. Ct. at 2203. A plaintiff cannot, for example, "allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III." *Shimon v. Equifax Info. Servs. LLC*, 431 F. Supp. 3d 115, 123 (E.D.N.Y. 2020), *aff'd*, 994 F.3d 88 (2d Cir. 2021) (quoting *Spokeo*, 136 S. Ct. at 1549). At the same time, the Supreme Court has not "categorically . . . precluded violations of statutorily mandated procedures from qualifying as concrete injuries supporting standing." *Strubel*, 842 F.3d at 189.

It has, though, provided refined guidance, specifically in its recent decision in *TransUnion LLC v. Ramirez*, 594 U.S. ——, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). In that case, the Court explains that the central question in assessing an injury's concreteness is "whether the alleged injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts," though an "exact duplicate" is unnecessary. *Id.* at 2204 (quoting *Spokeo*, 578 U.S. at 341). A concrete injury can, moreover, be tangible or intangible. *Id.* at 2200; *see also Grauman*, 549 F. Supp. 3d at 290–91 ("Certain tangible harms, such as physical and monetary damage, readily qualify as concrete, but various intangible harms, such as reputational damage, can, too.").

Grounded in this guidance, plaintiffs' claims surely satisfy Article III's injury-in-fact requirement. Plaintiffs plead that they were temporarily deprived of—or, in other words, that they lost out on the time value of—money to which they were legally entitled. Other courts have routinely found that the time value of money is real and concrete, and those courts have therefore found that wrongful deprivation of such time value is a concrete harm. *Habitat Educ. Center v. U.S. Forest Serv.*, 607 F.3d 453, 457 (7th Cir. 2010); *Van v. LLR, Inc.*, 962 F.3d 1160, 1164–65 (9th Cir. 2020); *MSPA Claims 1, LLC v. Tenet Fla., Inc.*, 918 F.3d 1312, 1318 (11th Cir. 2019);

see also Stephens v. U.S. Airways Grp., Inc., 644 F.3d 437, 442 (D.C. Cir. 2011) (Kavanaugh, J., concurring). Accordingly, those courts have found that plausibly pleading the loss of the time value of money, as plaintiffs do here, satisfies Article III standing requirements. *Habitat Educ. Center*, 607 F.3d at 457; *Van*, 962 F.3d at 1164–65; *MSPA*, 918 F.3d at 1318.

For its part, defendant does not dispute that, in certain instances, delayed payment of wages can constitute an injury-in-fact, nor do they dispute that the time value of money is sound as a matter of economic theory. Def.'s Reply, Dkt. 22, at 9–10. However, Endeavor protests that, as pleaded, plaintiffs have failed to explain how that economic theory fits their case, or how—apart from, as the airline puts it, the bare procedural violation of NYLL § 191 alleged—plaintiffs were actually harmed by a one-week delay in payment. *Id.; see also* Def.'s Mem. at 17–18. Endeavor chiefly relies on the Second Circuit's recent decision in *Maddox v. Bank of New York Mellon Trust Co., N.A.*, for the proposition that a "plaintiff must plead enough facts to make it plausible that [he] did indeed suffer the sort of injury that would entitle [him] to relief." Def.'s Reply at 8 (quoting 19 F.4th 58, 65–66 (2d Cir. 2021) (alterations original)).

Defendant's argument demands a stretch well beyond the reach of *Maddox*. That case arises from a legal landscape far different from the one pleaded here. In *Maddox*, borrowers of a mortgage brought an action against their mortgage lender, a bank, for its alleged violation of a pair of New York statutes requiring mortgage lenders to record satisfactions of mortgages within a specified time period. *See Maddox*, 19 F.4th at 59. In sustaining the bank's challenge to the borrowers' Article III standing, the court held that, notwithstanding any failure to comply with the statutes' timely recording requirements, the plaintiffs failed to adequately allege that they had actually been harmed by the recording delay. *See id.* at 64–66. Specifically, it held, in pertinent part, that while the lender's delay in recording the mortgage satisfaction risked creating a false

appearance to, for example, a potential creditor that that the borrowers had not paid the underlying debt and, as such, were more indebted and less creditworthy, the plaintiffs failed to allege that the risk of this type of reputational harm, while plainly an actionable injury, ever materialized. *Id.* at 65.

Unlike in *Maddox*, where the harm pleaded as resulting from the statutory violations was at best hypothetical, the harm plausibly pleaded here by plaintiffs as resulting from the violation of § 191 is actualized. To put it differently, the loss of the time value of the money owed to plaintiff is not a harm that *might* occur, but one that *has* occurred; it is not a harm that *might* materialize, but one that *has* materialized. At its essence, defendant's attack is not one of law, but of economics. Endeavor refuses to recognize here what it must certainly recognize in the handling of its own business affairs: there is a time value to the possession of money. Plaintiffs need not, as defendant suggests, spell out how the time value of money, as an economic theory, applies to their case. It does apply; the delay in payment alleged, due to defendant's unlawful rate-of-payment practices, necessarily means that plaintiffs were forced to wait to receive money that, as compared with when they should have received it, was, when they did receive it, worth less. *See Porsch v. LLR, Inc.*, 380 F. Supp. 3d 418, 424 (S.D.N.Y. 2019) ("It is a basic principle of economics and accounting that 'a dollar today is worth more than a dollar tomorrow.'") (quoting *Atlantic Mut. Ins. Co. v. Commissioner*, 523 U.S. 382, 383, 118 S. Ct. 1413, 1416, 140 L. Ed. 2d 542 (1998)). Nor need plaintiffs describe how they would have spent their wages had they been timely received. *See* Def.'s Reply at 8. The delay in receiving wages stripped plaintiffs of the opportunity to use funds to which they were legally entitled. Certainly, in accordance with the Supreme Court's instructions in *TransUnion*, this is an injury sufficiently analogous to harms traditionally recognized at common law. *See Van*, 962 F.3d at 1164 (recognizing the "firmly

established principle" that tort victims should be compensated for loss use of money and pointing to the common law tort remedies of replevin and conversion as examples).

In a final and thoroughly meritless stroke, Endeavor argues that a one-week delay in pay is not deprivation enough to establish standing. Def.'s Reply at 10. But "[t]here is no de minimis exception to . . . Article III standing." *Porsch v. LLR, Inc.*, 380 F. Supp. 3d 418, 425 (S.D.N.Y. 2019). To the contrary, "[t]he injury-in-fact necessary for standing need not be large; an identifiable trifle will suffice." *Leyse v. Lifetime Ent. Servs., LLC*, 679 F. App'x 44, 46 (2d Cir. 2017) (quoting *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 105 (2d Cir. 2013)); *cf. Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161, 136 S. Ct. 663, 669, 193 L. Ed. 2d 571 (2016), *as revised* (Feb. 9, 2016) ("As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.") (quoting *Chafin v. Chafin*, 568 U.S. 165, 172, 133 S. Ct. 1017, 1023, 185 L. Ed. 2d 1 (2013)). The Court declines defendant's invitation to erect a severity-of-harm barrier on top of an already-formidable Article III standing doctrine. Plaintiffs' claim that Endeavor's deprivation of the time value of their wages was in violation of New York statutory law is enough to establish Article III standing. Defendant's motion to dismiss under Rule 12(b)(1) on that ground for want of subject matter jurisdiction is denied.

II. Preemption

Endeavor reaches for another key to lock the courthouse door, but in a challenge specific to Levy, asserting that the Court lacks subject matter jurisdiction over her rate-of-pay claim because the adjudication of it would necessarily require interpreting, in violation of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151–188, the collective bargaining agreement ("CBA") governing the terms of her, and the prospective flight attendant class's, employment. Def.'s Mem.

at 10, 30–32. In stating its defense, Endeavor points to §§ 153(i) and 184 of RLA, which provide that minor disputes relating to the interpretation or application of agreements concerning "rates of pay, rules, or working conditions" are subject to a mandatory arbitration mechanism established by the Act. *Id.* at 30–31. Defendant argues that the Court would have to interpret the CBA in determining both how often Levy was paid and whether she constitutes a "manual worker" under NYLL. *Id.* at 31–32.

Ultimately, Endeavor may have, in fact, stated a winning defense against the claims of Levy and her putative subclass. But, at this moment in the litigation, plaintiffs, including Levy, have plausibly pled that they are within the bounds of, and protected by, § 191. It is simply premature at this time to determine whether the ultimate resolution of what is a question of New York statutory law will require incursion into fields preempted by federal statutory law.[5] *Cf. Drake v. Lab. Corp. of Am. Holdings*, 458 F.3d 48, 66 (2d Cir. 2006) ("For those claims for which preemption cannot be easily determined from the pleadings, our standard of review requires us to affirm the district court's decision to deny the defendant-appellants' motion to dismiss, with the understanding that the claims may ultimately prove to be preempted at a later stage of the litigation.") (citation and internal quotation marks omitted); *In re Allianz Glob. Invs. U.S. LLC Alpha Series Litig.*, No. 20 Civ. 10028 (KPF), 2021 WL 4481215, at *12 (S.D.N.Y. Sept. 30, 2021)

[5] In any event, any challenge to Levy's classification as a manual worker would not, at this stage, require reference to the CBA, nor would it likely succeed. Levy alleges that more than 25% of her work involves physical labor, and lists specific tasks as examples. *See* Compl. ¶ 40. These allegations are sufficient to conclude, for purposes of this motion, that she falls within NYLL's "manual worker" definition. *See Beh v. Cmty. Care Companions Inc.*, No. 19 Civ. 1417 (JLS) (HBS), 2021 WL 3914297, at *3–4 (W.D.N.Y. Feb. 1, 2021), *report and recommendation adopted*, No. 19 Civ. 1417 (JLS) (HBS), 2021 WL 3914320 (W.D.N.Y. June 23, 2021). Moreover, the New York Department of Labor has instructed that whether an employee is a "manual worker" is determined by looking "at the duties performed by the worker, not the job title or written description assigned to such work." N.Y. Dep't of Labor Counsel Opinion Letter RO–09–0066.

(denying motion to dismiss on ERISA preemption grounds as premature). Otherwise, defendant's contention that the Court will have to interpret the CBA in determining how often Levy was paid is without merit.

Moreover, it is well settled that "the RLA's mechanism for resolving minor disputes does not pre-empt causes of action to enforce rights that are independent of the CBA." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 256, 114 S. Ct. 2239, 2246, 129 L. Ed. 2d 203 (1994). That is precisely the situation here with Levy's claim, which rests on a right created beyond the borders of the CBA. Nor does any potential parallel between the requirements of § 191 and the provisions of the CBA mandate preemption at this stage. The potential for preemption does not make the pleading of the claim any less plausible. Levy's proof may well fail on preemption grounds. *See Fenn v. Verizon Commc'ns, Inc.*, No. 08 Civ. 2348 (PGG), 2010 WL 908918, at *5 (S.D.N.Y. Mar. 15, 2010); *see also Polanco v. Brookdale Hosp. Med. Ctr.*, 819 F. Supp. 2d 129, 134 (E.D.N.Y. 2011). But that issue is one for another day. Endeavor is therefore free to reassert its preemption argument if and when Levy's classification as a manual worker is contested. But for now, its motion to dismiss on the ground of preemption for want of subject matter jurisdiction is denied.

III. Private Right of Action

Following on the heels of its jurisdictional challenges, Endeavor argues that all of plaintiffs' § 191 claims must be dismissed pursuant to Rule 12(b)(6) because the provision of New York law creating the timely wage requirement does not also expressly create a private right of action to enforce it or suggest that such a right may be inferred from it. Def.'s Mem. at 19–30. Case law provides a roadmap for resolving this issue. "When deciding a question of state law" like this one, a federal court "'look[s] to the state's decisional law, as well as to its constitution and statutes.'" *Chufen Chen v. Dunkin' Brands, Inc.*, 954 F.3d 492, 497 (2d Cir. 2020) (quoting *In*

re Thelen LLP, 736 F.3d 213, 219 (2d Cir. 2013)). Absent a clear directive from a state's highest court, a federal court must "predict how the state's highest court would resolve the uncertainty or ambiguity." *Id.* at 499 (quoting *Thelen*, 736 F.3d at 219). In doing so, the federal court "is bound to apply the law as interpreted by a state's intermediate appellate courts unless there is persuasive evidence that the state's highest court would reach a different conclusion." *V.S. v. Muhammad*, 595 F.3d 426, 432 (2d Cir. 2010).

The handicap that defendant's argument bears is all but insurmountable. Indeed, defendant must, and does, acknowledge that the First Department of the Appellate Division has held in *Vega v. CM & Assocs. Constr. Mgmt., LLC*, 175 App. Div. 3d 1144, 107 N.Y.S.3d 286 (1st Dep't 2019), that New York Labor Law permits employees to seek liquidated damages for the untimely payment of wages, even if wages are no longer past due. More significantly, defendant does not appear to contest the proposition that, since *Vega*, every court in this Circuit to consider that decision has followed its construction of the New York Labor Law. *See, e.g.*, *Carrera v. DT Hosp. Grp.*, No. 19 Civ. 4235 (RA) (KHP), 2021 WL 6298656, at *10 (S.D.N.Y. Nov. 1, 2021), *report and recommendation adopted*, No. 19 Civ. 4235 (RA) (KHP), 2021 WL 6298654 (S.D.N.Y. Dec. 7, 2021) (collecting cases); *Rodrigue v. Lowe's Home Centers, LLC*, No. 20 Civ. 1127 (RPK), 2021 WL 3848268, at *5 (E.D.N.Y. Aug. 27, 2021) (same); *Caul v. Petco Animal Supplies, Inc.*, No. 20 Civ. 3534 (RPK) (SJB), 2021 WL 4407856, at *4 (E.D.N.Y. Sept. 27, 2021), *motion to certify appeal denied*, 2021 WL 6805889 (E.D.N.Y. Dec. 22, 2021). Nothing Endeavor offers as a counterpoint even remotely suggests otherwise, much less provides "persuasive evidence that the state's highest court would reach a different conclusion" than the First Department did in *Vega*. *Muhammad*, 595 F.3d at 432. Consequently, the Court is "bound to apply the law as interpreted by" the intermediate appellate court. *Id.* As such, the Court joins the chorus of post-*Vega* case

law and concludes that § 191 provides a private right of action to enforce the late payment of full wages. This branch of Endeavor's motion to dismiss is, as a result, denied.

IV. A Putative Flight Attendant Class

Cautionary flags are properly hoisted with respect to the claims made by Levy and her putative class members. She pleads that she is based at LaGuardia, Compl. ¶ 39, but it remains unclear where her highly mobile duties (and those of her fellow class members) take her (and them). Endeavor raises a series of geographically based challenges raising the specter that plaintiffs' duties may take them beyond the reach of § 191, or that application of § 191 to employees who spend much or most of their work time beyond the borders of New York may be beyond constitutional reach as violative of the dormant Commerce Clause. Def.'s Mem. at 32–38; *see* U.S. Const. art. I, § 8, cl.3.

But Endeavor's broadside against Levy's putative flight attendant class is premature at this point.[6] A "proposed class definition is not properly adjudicated at the Rule 12(b)(6) stage, and should be raised in connection with any Rule 23 motion for class certification." *Rojas v. Triborough Bridge & Tunnel Auth.*, No. 18 Civ. 1433 (PKC), 2020 WL 1910471, at *3 (S.D.N.Y. Apr. 17, 2020) (citing *Petrosino v. Stearn's Prod., Inc.*, No. 16 Civ. 7735 (NSR), 2018 WL 1614349, at *5 (S.D.N.Y. Mar. 30, 2018) (collecting cases)). As a consequence, defendant's arguments directed at the proposed flight attendant class are dismissed without prejudice to their renewal at the class certification stage.

[6] Critically, Endeavor challenges only the proposed class, and omits any argument as to whether Levy herself is properly covered by NYLL. *See* Def.'s Mem. at 32–38. In any event, there is nothing in the record properly considered on the motion undermining the plausibility of her individual claim.

Conclusion

For the foregoing reasons, defendant's motion to dismiss is denied.

The parties are directed to contact Magistrate Judge James R. Cho for further pre-trial management.

So Ordered.

Dated: Brooklyn, New York
October 22, 2022

/s/ Eric N. Vitaliano
ERIC N. VITALIANO
United States District Judge