UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCES YVONNE SCHULMAN,

Plaintiff,

v.

ZOETIS, INC. and ZOETIS REFERENCE LABS, LLC,

Defendants.

Civ. Action No.:
2:22-cv-1351 (MEF)(LDW)

ORAL ARGUMENT REQUESTED

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Dr. Frances Yvonne Schulman is, in the words of her former manager at Zoetis, a "well known and respected" board-certified anatomic pathologist—a "key opinion leader"—and was the most experienced anatomic pathologist on the Zoetis team throughout her employment.[1] SUMF ¶¶ 23, 81. Nonetheless, Zoetis paid her a fraction of what it paid men to do the same job. While it never paid her more than $128,812.50 annually, it paid two less-experienced men, Drs. EJ Ehrhart and Samuel Jennings, salaries of $230,720 and $195,000, respectively, for the same work. *Id*. ¶¶ 16-17, 25-28, 71. When he discovered the more than $100,000 disparity, Dr. Schulman's manager called it "absurd" and "unethical." *Id*. ¶¶ 57, 72.

When Dr. Schulman discovered the disparity and asked for it to be corrected, Zoetis's top brass refused. *Id.* ¶¶ 76–80. The reason they gave: they were only paying Drs. Ehrhart and Jennings their salaries because those pathologists made that amount at their previous company, which Zoetis had acquired. *Id*. ¶¶ 47, 68. But if Zoetis was willing to pay men those salaries, the law required that it pay a more-than-equally qualified woman the same amount for the same work.

[1] As discussed in Part III , while Defendants have at times suggested that Zoetis, Inc. is not a proper party, they have admitted, in a position statement filed with the local civil rights agency, that Zoetis, Inc. was correctly named in Dr. Schulman's Charge of Discrimination. SUMF ¶ 117. For purposes of clarity, and as explained *infra*, because both Zoetis, Inc. and Zoetis Reference Labs, LLC have admitted to being Dr. Schulman's employer, they are collectively referred to in this brief as "Zoetis."

Dr. Schulman moves for partial summary judgment as to her First, Third, and Fourth Causes of Action. *See* FAC ¶¶ 94–105, 112–117. First, as explained in Part I below, Dr. Schulman moves for summary judgment under the federal Equal Pay Act ("EPA") because she has established a prima facie case that she was paid less than men for the same work, and Zoetis cannot establish any affirmative defense. Second, as explained in Part II, Dr. Schulman moves for summary judgment under the New Jersey Equal Pay Act ("NJEPA," also known as the Diane B. Allen Equal Pay Act), and Section 12(a) of the New Jersey Law Against Discrimination ("NJLAD"),[2] because Zoetis also cannot satisfy the NJEPA's affirmative defenses.

In Part III, Dr. Schulman moves for summary judgment against both Defendants, as the undisputed facts demonstrate that they both employed her. Finally, in Part IV, Dr. Schulman moves for summary judgment as to her readily calculable damages under the EPA and the NJEPA in the amount of $466,901.96.

FACTUAL & PROCEDURAL BACKGROUND

Dr. Schulman is a veterinary anatomic pathologist. SUMF ¶ 1. She worked for one company from 1993 to 2019, until it was bought out. *Id.* ¶¶ 4-5. In February

[2] The primary operative provision of the NJEPA is N.J.S.A. § 10:5-12(t), which is contained in the NJLAD statute, N.J.S.A. § 10:5-1 *et seq.* Dr. Schulman also brings a claim under the NJLAD's broad prohibition of employment discrimination, N.J.S.A. § 10:5-12(a). "NJLAD" as used in this brief refers to the statute as a whole, N.J.S.A. § 10:5-1 *et seq.* "Section 12(a)" refers to N.J.S.A. § 10:5-12(a), the broad prohibition of employment discrimination. "NJEPA" refers to N.J.S.A. § 10:5-12(t).

2020, she started doing contract work for a few organizations, including one called ZNLabs, which was owned by Zoetis, Inc. *Id*. ¶¶ 10, 20.

Zoetis, Inc. is an animal-health company headquartered in Parsippany, New Jersey. *Id*. ¶ 6. It moved into the veterinary diagnostic laboratory market by acquiring laboratories: ZNLabs and Phoenix Laboratories in 2019, and Ethos Diagnostic Sciences in February 2020. *Id*. ¶¶ 7-12.[3] When it acquired Ethos, Zoetis hired, among others, two male Ethos anatomic pathologists: Drs. Eugene "EJ" Ehrhart and Samuel Jennings. Zoetis hired them at base salaries of $230,720 and $195,000, respectively. *Id*. ¶¶ 16-17. In October 2020, Zoetis HR discussed reducing their salaries, but Roxanne Lagano, the head of Zoetis HR, decided not to. *Id*. ¶¶ 18-19.

The labs acquired by Zoetis historically had different pay structures. *Id*. ¶ 63. Ethos and Phoenix had generally paid pathologists a salary. *Id*. ZNLabs had paid its pathologists a base salary with additional compensation per case the pathologist did above their minimum case load. *Id*. Dr. David Gardiner, the Director of Anatomic Pathology for Zoetis, advocated for the pathologists' pay to be "reset" when the labs integrated, giving all the pathologists a base salary and the option to make additional

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[3] In 2019, Zoetis formed a subsidiary that operates its lab operations activities; its name is Zoetis Reference Labs, LLC. *Id*. ¶ 8. The anatomic pathologists were in that subsidiary; Zoetis's HR, finance, legal, and IT employees, and many of its executives, were in an entity called Zoetis Services LLC; and both Zoetis Reference Labs, LLC and Zoetis Services, LLC are wholly owned subsidiaries of Zoetis Holdings, LLC, which is wholly owned by Zoetis, Inc. *Id*. ¶¶ 8, 119-122.

case-based compensation. *Id*. ¶ 67. Zoetis's HR decided instead to pay the pathologists fixed salaries with an annual bonus, and to generally pay the pathologists the base salaries they had been paid at their previous labs. *Id*. ¶ 68.

In August 2020, Zoetis offered Dr. Schulman a full-time job. *Id*. ¶ 21. Zoetis HR representative Kelly Winder authorized the hiring manager, David Gardiner, to offer Dr. Schulman $120,000 in base salary, adding that she "would support going up to 130 but would not go above that." *Id*. ¶¶ 22, 24. Dr. Gardiner offered Dr. Schulman $125,000 "[b]ecause [he] thought [he] could get her for 125 and save the company" money. *Id*. ¶¶ 25–26. Dr. Schulman accepted the offer. *Id*. ¶ 28.

Drs. Schulman, Jennings, and Ehrhart "had the same job" at Zoetis. *Id*. ¶ 30. Their core duties were to "[r]eview the cases that are assigned each day, interact with fellow pathologists on difficult cases as needed," and "return phone calls to clients who have questions about reports that [they] issued." *Id*. ¶ 31. As Zoetis has admitted, Drs. Ehrhart and Jennings's positions "required substantially equal skill, effort, and responsibility, and [were] performed under substantially equal conditions as the position of full-time veterinary pathologist held by Dr. Schulman following her employment by Zoetis on or about September 16, 2020." *Id*. ¶ 32.

As Zoetis has further admitted, it did not pay Drs. Ehrhart or Jennings more than Dr. Schulman due to a factor related to their jobs as veterinary pathologists. *Id*. ¶ 46. It paid them more because their prior pay was higher. *Id*. ¶ 47.

In November 2020, Dr. Gardiner wrote to Zoetis HR and Zoetis's Senior Vice President of Global Diagnostics, Lisa Lee, that he had "received the compensation statements for the anatomic pathologists today. With respect to Dr. Ehrhart, I didn't realize there was that big of a discrepancy between Dr Ehrhart's compensation and other pathologists. It is absurd." *Id.* ¶ 57. Lisa Lee replied: "Yes we know that he is an outlier but we made the decision it would be best not to cut the Ethos comp[.]" *Id.* ¶ 58. Dr. Gardiner said: "Attrition does not address the immediate glaring issue that Dr Schulman is every bit as experienced, senior and qualified as Dr Ehrhart, if not more so but was recently hired at 125k. Not to mention the fact she is a female pathologist making 1/2 of a male contemporary. It creates a very uncomfortable and ethically questionable situation." *Id.* ¶ 59. Zoetis's Chief Medical Officer Richard Goldstein responded: "I agree with you – as we have discussed there clearly is a large discrepancy but as you know we did have all of those discussions – multiple times over the last few weeks, including the points in your email. Then the final decision that was made by senior leadership looking at the entire integration picture and not just our group. It was also their decision not to make exceptions." *Id.* ¶ 61.

In 2020, Zoetis was gradually integrating the acquired labs' systems and processes, "from e-mail to payroll to all other elements required to run the business," moving them onto Zoetis platforms. *Id.* ¶ 64. As part of that process, Zoetis HR

planned the integration of the labs' payroll, savings plans, and benefits. *Id*. ¶ 66. The pathologists moved onto Zoetis's payroll platform in January 2021. *Id*. ¶ 70.

Dr. Schulman learned of the disparity in March 2021 and asked Dr. Goldstein to fix it. *Id*. ¶ 74. Dr. Goldstein met with HR and told Dr. Schulman "we are trying to get approval to go beyond a normal salary correction." *Id*. ¶ 75. The correction never came. *Id*. ¶ 76. Roxanne Lagano, the New Jersey-based leader of Zoetis HR, made the ultimate decision, based on the recommendation of a majority-NJ-based HR team, not to raise Dr. Schulman's pay. *Id*. ¶¶ 6, 77, 79, 105-107. That recommendation was made despite the fact that a Zoetis HR representative who was part of that committee said that the committee did a "pay equity review" of the pathologists' salaries, but that after the review, he was "not sure" why multiple men made more than Dr. Schulman. *Id.* ¶ 78. After Ms. Lagano made the decision not to raise Dr. Schulman's pay, Zoetis HR told Dr. Schulman it wouldn't raise her salary because it was "at market." *Id*. ¶ 80.

But Zoetis repeatedly hired less-experienced male pathologists at higher salaries. Around the time it hired Dr. Schulman, it hired a male pathologist with just 1.5 years of experience at a higher salary than Dr. Schulman, who had 29 years of experience—a disparity that a Zoetis HR representative could not explain. *Id*. ¶ 82. Soon after telling Dr. Schulman her salary was market rate, Zoetis hired a less-knowledgeable male anatomic pathologist at a level well over Dr. Schulman's

salary. *Id.* ¶ 83. Not long after, Zoetis HR proposed hiring another male anatomic pathologist at $128,000, and the new Director of Anatomic Pathology responded: "I cannot in good conscience hire a board certified pathologist with his expertise and knowing what I know of salaries elsewhere at $128K." *Id.* ¶¶ 84-89. (He testified that if he were hiring Dr. Schulman, he also could not in good conscience have hired her at $128K. *Id.* ¶ 90.) Zoetis brought that pathologist on at a salary thousands of dollars higher than Dr. Schulman's—and then gave him an additional salary increase at the end of the year. *Id.* ¶ 92. Soon after, it brought on *another* less-experienced male pathologist at a salary much higher than Dr. Schulman's. *Id.* ¶¶ 93-94.

Because of the inequity, Dr. Schulman "had no choice but to look elsewhere for employment" and left in November 2021. *Id.* ¶ 96. She filed a charge of discrimination, received her EEOC right-to-sue-letter, and filed suit. *Id.* ¶¶ 95, 100.

LEGAL STANDARD

Summary judgment must be granted if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute "is genuine if a reasonable jury could return a verdict for the nonmoving party." *Santini v. Fuentes*, 795 F.3d 410, 416 (3d Cir. 2015) (quotation omitted). A fact is material if it "might impact the outcome of the suit under the applicable substantive law." *Id.* (quotation omitted).

"For claims or defenses where the movant bears the burden of proof at trial, a movant must show that it has . . . evidence to support the findings of fact necessary to win." *Oxford Invs., L.P. v. City of Phila.*, 21 F. Supp. 3d 442, 447 (E.D. Pa. 2014) (quotation omitted). But "[f]or claims or defenses that the non-movant bears the burden of proof at trial, a movant can simply point out . . . an absence of evidence to support the nonmoving party's case." *Id.* (quotation omitted). Accordingly, when moving against a defendant who bears the burden of proving an affirmative defense, a plaintiff's burden will be satisfied by either negating an element of the defense *or* showing an absence of evidence to support an essential element of the defense. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986); *see also Shultz v. Wheaton Glass Co.*, 421 F.2d 259, 267 (3d Cir. 1970) (where plaintiff established EPA prima facie case and company failed to prove affirmative defense, claim "was established and an appropriate judgment should have been entered").

ARGUMENT

I. The Undisputed Facts Establish That Zoetis Violated the Federal Equal Pay Act by Paying Men More Than Dr. Schulman to Do the Same Work.

The EPA, 29 U.S.C. § 206(d)(1), is "a very simple piece of legislation" establishing that "equal work will be rewarded by equal wages." S. Rep. No. 88-176, at 1 (1963). "Congress' purpose in enacting the Equal Pay Act was to remedy what was perceived to be a serious and endemic problem of employment discrimination in private industry." *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974). It

"is broadly remedial, and it should be construed and applied so as to fulfill the underlying purposes which Congress sought to achieve." *Id.* at 208.

The EPA creates a form of strict liability. *Clark v. N.J. Dep't of Health*, No. CV127763FLWTJB, 2016 WL 4265724, at *6 (D.N.J. Aug. 12, 2016). Discriminatory intent is not required. *Id.* If a plaintiff makes out a prima facie case by showing an opposite-sex employee was paid more for substantially equal work, the burden shifts to the employer to prove one of the Act's affirmative defenses. *Stanziale v. Jargowsky*, 200 F.3d 101, 107 (3d Cir. 2000). The defenses are that the disparity was due to "(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex." 29 U.S.C. § 206(d)(1). The employer must show "not merely that [its] proffered reasons could explain the wage disparity, but that the proffered reasons do in fact explain the wage disparity." *Stanziale*, 200 F.3d at 107-108. In other words, it must "prove that the factor of sex provided no basis for the wage differential." *Dubowsky v. Stern, Lavinthal, Norgaard & Daly*, 922 F. Supp. 985, 993 (D.N.J. 1996). Summary judgment must be granted to the plaintiff if the employer cannot show that one of the affirmative defenses "actually motivated the wage disparity." *Stanziale*, 200 F.3d at 108.

Dr. Schulman is entitled to summary judgment because she was paid less than men for equal work and Zoetis cannot prove an affirmative defense. It has conceded

that the disparity was not due to a seniority, merit, or production system. And it cannot establish the final affirmative defense for three separate, equally dispositive reasons: it cannot show that prior salary, the asserted basis for the differential, isn't based on sex; that it is job-related; or even that it explains the entire disparity.

A. Dr. Schulman has satisfied her EPA prima facie burden.

To make out a prima facie case, an EPA plaintiff must show that she and the comparator were paid unequally for "substantially equal" work, that is "work of substantially equal skill, effort and responsibility, under similar working conditions." *E.E.O.C. v. Del. Dep't of Health & Social Servs.,* 865 F.2d 1408, 1413–14 (3d Cir. 1989). The central question is whether the jobs share "a common core of tasks." *Dubowsky*, 922 F. Supp. at 990. At this stage, "it is the jobs, and not the individuals who held the jobs," that are compared. *Id*. A plaintiff need only show unequal pay "with respect to a single male employee to prove her EPA claim." *Id*.

Dr. Schulman has a prima facie case. She is a woman and Zoetis paid her less than men for substantially equal work. SUMF ¶¶ 2, 16-17, 25-28, 30-47, 71, 99. Zoetis paid Dr. Schulman a salary of $125,000, raised to $128,812.50 in 2021, while it paid Drs. Ehrhart and Jennings salaries of $230,720 and $195,000, respectively. *Id*. ¶¶ 16-17, 25-28, 71.

Furthermore, Zoetis has admitted that Drs. Schulman, Ehrhart, and Jennings's jobs required equal skill, effort, and responsibility, and were performed under similar

working conditions, including in its statement to the New Hampshire Commission on Human Rights. SUMF ¶¶ 30-46; PL-00307 (Ex. 3) ("Zoetis admits . . . that Dr. Ehrhart's former position with Zoetis as a full-time veterinary pathologist required substantially equal skill, effort, and responsibility, and was performed under substantially equal conditions as the position of full-time veterinary pathologist held by Dr. Schulman following her employment by Zoetis on or about September 16, 2020."); PL-00310 (Ex. 3) (same regarding Dr. Jennings, phrased in present tense). And indeed, the record shows that Drs. Schulman, Ehrhart, and Jennings did the same job. SUMF ¶¶ 30-46. As Dr. Schulman has a prima facie case, the analysis turns to the affirmative defenses—which Zoetis bears the burden of proving.

B. Zoetis cannot establish an affirmative defense under the EPA.

An employer is presumptively liable once the plaintiff states a prima facie case, *Corning Glass*, 417 U.S. at 195, and Zoetis cannot overcome that presumption. While Zoetis asserted all four affirmative defenses in its Answer, it has conceded that the salary differential between Dr. Schulman and Drs. Ehrhart and Jennings was not due to seniority, merit, or production, the first three defenses. SUMF ¶¶ 37-39; *see also* 29 U.S.C. § 206(d)(1). This leaves only the EPA's fourth affirmative defense, that a differential was based on "any other factor other than sex." Zoetis cannot establish the fourth affirmative defense, either. It has admitted it cannot satisfy the fourth defense by showing a difference in education, training, experience,

expertise, or shift differentials. SUMF ¶¶ 40-44. This leaves the only contention Zoetis has advanced on this issue: that Drs. Ehrhart and Jennings's prior pay, which it claims it retained after having acquired their prior employer, explains the disparity.

Prior pay cannot satisfy the fourth basis for three reasons. First, Zoetis cannot show prior pay is based on a factor other than sex because, as the Third Circuit has observed and the record evidence shows, prior pay is pervasively based on sex. *Greater Phila. Chamber of Com. v. City of Phila.*, 949 F.3d 116, 143 (3d Cir. 2020); SUMF ¶¶ 48-51. Second, Zoetis cannot show it is job-related, as it would have to, because it has conceded as to both Dr. Ehrhart and Dr. Jennings that each was "not paid more than [Dr. Schulman] because of a factor related to his job as a Veterinary Pathologist." PL-00309, PL-00312 (Ex. 3); *see* SUMF ¶ 46. Finally, Zoetis cannot show that Drs. Ehrhart and Jennings's prior pay or its "market rate" rationale explains the entire disparity, as after hiring Dr. Schulman it repeatedly hired less-experienced male pathologists at higher salaries. SUMF ¶¶ 82-94.

1. Zoetis cannot show that prior salary is a "factor other than sex."

Prior pay is not a "factor other than sex" because it incorporates and perpetuates pervasive patterns of sex discrimination in pay. It is a form of the "market forces" theory—the idea that women can be paid less because of their comparative lack of market power and resulting lower previous salaries—that the Supreme Court has held is not a valid defense. *Corning*, 417 U.S. at 209-10.

Accordingly, the Third Circuit, while it has not addressed this issue in the context of an EPA claim, has recognized that "relying on wage history can perpetuate gender and race discrimination." *Greater Phila.*, 949 F.3d at 143. The Third Circuit also approvingly cited a Ninth Circuit holding that an employer cannot "justify a wage differential between male and female employees" under the EPA "by relying on prior salary." *Id*. at 148 (quoting *Rizo v. Yovino,* 887 F.3d 453, 460–61 (9th Cir. 2018) (*en banc*)). Indeed, most circuits to have considered this question have agreed that prior salary, or prior salary alone, is not an affirmative defense under the EPA. *See Boyer v. United States*, 97 F.4th 834, 841-42 (Fed. Cir. 2024) (collecting cases). Because Zoetis cannot show that Drs. Schulman, Ehrhart, and Jennings's prior pay is unaffected by sex discrimination, it cannot show that the challenged pay differential is based on a "factor other than sex" and so cannot state an affirmative defense.

The Third Circuit's decision in *Greater Philadelphia* shows why prior pay is not as a factor other than sex. In upholding a City of Philadelphia ordinance that prohibited employers from inquiring into applicants' wage histories, the Circuit noted that "the wage gap is substantial and real" and "researchers over many years have attributed the gap, in substantial part, to discrimination." 949 F.3d at 143. Accordingly, it observed, "relying on wage history can perpetuate gender and race discrimination." *Id*. The Third Circuit held that its decision in *Greater Philadelphia*

"[wa]s consistent with the *en banc* opinion of the Court of Appeals for the Ninth Circuit in *Rizo*." *Id*. at 148. *Rizo*, as the Third Circuit recited, held that using prior salary in setting pay violates the EPA because it "allow[s] employers to capitalize on the persistence of the wage gap and perpetuate that gap ad infinitum." *Id*.

Rizo was correct that prior pay is not a "factor other than sex," alone or in combination with other factors, when setting pay. As the Supreme Court has explained, a factor that perpetuates existing gender pay disparities is not a "factor other than sex." *Corning*, 417 U.S. at 209-10. Prior pay is just such a factor. As the Ninth Circuit explained, "[a]llowing employers to escape liability by relying on employees' prior pay would defeat the purpose of the Act and perpetuate the very discrimination the EPA aims to eliminate." *Rizo v. Yovino*, 950 F.3d 1217, 1229-32 (9th Cir. 2020) (*en banc*);[4] *see also Rizo v. Yovino*, No. 1:14-CV-0423-MJS, 2015 WL 9260587, at *9 (E.D. Cal. Dec. 18, 2015) (noting evidence of "across-the-board pay disparity between male and female educators nationwide," demonstrating "virtual certainty" that "pay structure based exclusively on prior wages . . . will perpetuate a discriminatory wage disparity between men and women" educators).

In fact, the evidence here also shows that, as Dr. Schulman's expert testified, "[w]omen receive lower wages on average than comparably qualified and

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[4] The 2018 *en banc* decision in *Rizo* was vacated on procedural grounds; the Ninth Circuit then issued another *en banc* decision with similar analysis, arriving at the same holding, in 2020.

performing men," so "use of prior salary history to set starting salary results in wage discrimination by gender." SUMF ¶¶ 48, 50.

Consistent with that reality—and with *Corning*, *Greater Philadelphia*, and *Rizo*—the most analogous district court case in this circuit, *Dubowsky*, also correctly recognized that a prior-pay defense was the prohibited market-forces theory in disguise. It held that an employer could not rely on previous salary as a defense where it had "not established beyond dispute that [the] plaintiff's previous salary was unrelated to her status as a woman in the marketplace or that her previous salary accurately reflected the value of her skills in the marketplace." *Dubowsky*, 922 F. Supp. at 994.

This is, as *Greater Philadelphia* recognized, in line with most circuits that have addressed the question, which have held that prior pay cannot alone justify pay disparities. 949 F.3d at 148; *see also Boyer*, 97 F.4th at 841-42 (collecting cases).[5]

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[5] Although inapplicable here, because Drs. Ehrhart and Jennings's higher salaries were not due in part to some factor like greater experience, the approach some circuits have taken of allowing prior salary to be used in combination with some other factor like experience is incorrect because it has the effect of allowing *some* discrimination in the form of reliance on discrimination-infected prior salaries. If the comparator has enough additional experience to justify his higher salary, then experience alone is a sufficient reason to pay him more. But if he doesn't have the additional experience, expertise, or other legitimate plus factor to justify his higher prior salary, pervasive gender discrimination in the American labor market is a likely explanation for the unexplained gap. *Greater Phila.*, 949 F.3d at 143, 154. Allowing a little bit of reliance on prior salary would be allowing a little bit of discrimination—a result at odds with the EPA's requirement that sex play no part in compensation. *Dubowsky*, 922 F. Supp. at 993.

The Third Circuit was correct to recognize that employers cannot justify gender disparities by relying on prior salary. *Greater Phila.*, 949 F.3d at 148. Prior pay is not a defense under the EPA because if the Act immunized pay differentials based on prior pay differentials, it would be self-defeating. As the Supreme Court has dryly remarked, courts "should not lightly conclude that Congress enacted a self-defeating statute." *Pugin v. Garland*, 599 U.S. 600, 607 (2023). Congress passed the Equal Pay Act to remedy pervasive pay discrimination against women. *Corning*, 417 U.S. at 195. It did not pass it to preserve the pay gap by ensuring that it could follow women throughout their careers. Because the EPA is "broadly remedial" and "should be construed and applied so as to fulfill the underlying purposes which Congress sought to achieve," it should not be construed to defeat itself. *Id*. at 208.

2. Zoetis cannot show prior salary is a job-related factor.

Next, prior salary is not "any other factor other than sex" under the EPA because it is not job-related. A number of circuits have held that to make out the fourth affirmative defense, the "other factor" must be job-related. *See Rizo*, 950 F.3d at 1223-26 (collecting cases). In addition, principles of statutory interpretation dictate that this affirmative defense must be read in the context of the other three defenses, all of which are job-related.

The statute makes clear that the final exception is connected to the first three because it links them with the word "*other*" in "any *other* factor." *Id*. (emphasis

added). The "other" that modifies "factor" has meaning: we must "assume that every word in a statute has meaning" and "avoid interpreting part of a statute so as to render another part superfluous." *Polansky v. Exec. Health Res. Inc*, 17 F.4th 376, 385–86 (3d Cir. 2021), *aff'd*, 599 U.S. 419 (2023) (quotation and alteration omitted). Accordingly, the final factor references and must be understood in light of the first three, under which pay is determined through job-related systems: a seniority system, merit system, or production-based system. *See Rizo*, 950 F.3d at 1224.

The canons of *ejusdem general* and *noscitur a sociis*[6] also underscore that the fourth exception must be construed in line with the first three. *See id.* at 1224-25. The EPA's first three exceptions are all job-related. A seniority system must be a structured, uniformly applied "system that gives employees rights and benefits that improve the longer they work for" the employer. 3d Cir. Model Jury Instructions for Sex Discrimination Claims Under the EPA, 11.2.1 Equal Pay Act Defenses - Seniority System (Aug. 2020), https://www.ca3.uscourts.gov/sites/ca3/files/11_Chap_11_2020_August.pdf. A seniority system rewards an employee for her "heightened value" to her employer accrued "personal work experiences" over time. *Jones & Laughlin Steel Corp. v.*

[6] *Ejusdem generis* instructs that where a more general term follows more specific terms in a list, the general term is usually understood to embrace only objects similar to those previously listed. *Rizo*, 950 F.3d at 1225. *Noscitur a sociis* means "that words grouped together should be given similar or related meaning." *Id*. at 1224.

Pfeifer, 462 U.S. 523, 535 (1983). A merit system must systematically "reward persons because they performed better," and must "not be based upon gender." 3d Cir. Jury Instructions at 11.2.2 Equal Pay Act Defenses - Merit System. A system measuring earnings by quantity or quality of production is a consistently applied system that rewards an employee "because he produces more value for the employer." 3d Cir. Model Jury Instructions at 11.2.3 Equal Pay Act Defenses - System Measuring Earnings By Quantity or Quality. Each, in other words, is a system for gauging which employees are best at their job.

Ejusdem generis instructs that the fourth exception should be understood to embrace only bases similar to the first three. *Rizo*, 950 F.3d at 1225. "Under the canon of *ejusdem generis*, a 'general term' ('any other appropriate relief') following a 'series of specific items' ('restrain such violation,' 'require compliance,' and so on) 'is confined to covering subjects comparable to the specifics it follows.'" *United States v. EME Homer City Generation, L.P.*, 727 F.3d 274, 292 (3d Cir. 2013); *see also Reed v. Mount Carmel Area Sch. Dist.*, No. 4:23-CV-00890, 2023 WL 6449429, at *7 (M.D. Pa. Oct. 3, 2023) (applying *ejusdem generis* to interpret "a person who is a volunteer or an employee of a school or *any other person* who has direct contact with a student at a school" to not include students (emphasis added)).

"Applying the *ejusdem generis* canon to the EPA's fourth exception, we consider the scope of the category implied by the three enumerated exceptions and

'ask what category would come into the reasonable person's mind.'" *Rizo*, 950 F.3d at 1225 (quoting SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 208 (2012)). As the *en banc* Ninth Circuit put it, the "obvious category" that unites the first three exceptions "is job-relatedness." *Rizo*, 950 F.3d at 1225.[7]

Noscitur a sociis, which means "that words grouped together should be given similar or related meaning," yields the same conclusion. *Id*. at 1224. "Because the enumerated exceptions are all job-related, the more general exception that follows them refers to job-related factors too." *Id*.

Federal regulations also confine the fourth factor to job-related factors that do not differentiate based on sex. Education and experience, for example, reflect qualification for a job and are permissible where "applied on a sex neutral basis." 29 C.F.R. § 1620.13(c). Additional duties can be permissible, but are closely scrutinized to ensure they are bona fide and not discriminatorily applied. *Id*. § 1620.20. On the other hand, a collective bargaining agreement agreeing to "unequal rates of pay,"

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[7] A Second Circuit panel considering this question oddly concluded that a seniority system is not job-related—a conclusion inconsistent with the Supreme Court's holding that a seniority system rewards an employee for her "heightened value" to her employer accrued through "personal work experiences" over time. *Jones*, 462 U.S. at 535; *see Eisenhauer v. Culinary Inst. of Am*., 84 F.4th 507, 522 (2d Cir. 2023). That said, while the Second Circuit did not embrace a job-relatedness requirement, it nevertheless held that "we must interpret 'factor other than sex' to avoid loopholes that would sanction sex-based pay discrimination," such as "differentials that perpetuate the effects of historic sex-based pay discrimination by an employer." 84 F.4th at 522 n.48 (cleaned up).

which clearly does not relate to an individual's performance and is purely intended to perpetuate unequal pay, "does not constitute a defense." *Id.* § 1620.23.

Finally, legislative history underscores that the final exception was meant to protect job-related reasons for higher pay. The House Report on the EPA provided several examples that it anticipated would qualify as exceptions, and all were job related—like shift differentials, hours of work, and differences based on experience, training, or ability. H.R. Rep. No. 88-309, at 3 (1963); *see also* 109 Cong. Rec. 8683 (1963) (statement of Rep. Adam Powell) (rejecting "[t]he payment of wages on a basis other than that of the job performed").

3. Zoetis cannot account for the entire disparity.

Finally, summary judgment is warranted because Zoetis cannot show that "sex provided no part of the basis for the wage differential." *Balmer v. HCA, Inc.*, 423 F.3d 606, 612 (6th Cir. 2005) (quotation omitted), *abrogated on other grounds*, *Fox v. Vice*, 563 U.S. 826 (2011); *Stanziale*, 200 F.3d at 107-08. Zoetis has no explanation for why it paid Dr. Schulman *such* a low salary (other than to "save the company" money), when it hired less-experienced pathologists after her at higher salaries—both before and after telling her that her salary was market rate. *See* SUMF ¶¶ 26, 80, 82-94; *Drum v. Leeson Elec. Corp.*, 565 F.3d 1071, 1073 (8th Cir. 2009) (holding it "is insufficient as a matter of law" to justify only the male comparator's salary; "[j]ustifying [his] salary does not justify [the plaintiff's] salary. It is the

differential that must be explained.”). Zoetis has no explanation for why, despite Dr. Schulman being the most experienced pathologist, most of the pathologists made more than her. SUMF ¶ 81. And it cannot explain why it paid her $128k when its own Director of Anatomic Pathology said he “cannot in good conscience hire a board certified pathologist . . . at $128K.” SUMF ¶ 89.

II. Zoetis Likewise Violated the NJEPA and NJLAD Section 12(a).

A. Zoetis violated the NJEPA.

The NJEPA holds employers to an even stricter standard than its federal analogue. Therefore, because Zoetis cannot win under the EPA, it cannot win under the NJEPA, either. As laid out in Part I.A above, Zoetis paid Dr. Schulman, who is a member of a protected class as a woman, less than Drs. Ehrhart and Jennings—who are not women and thus not members of her protected class— for (more than) “substantially similar work.” N.J.S.A. § 10:5-12(t). Accordingly, she has established an NJEPA prima facie case. *Id.*

The NJEPA’s affirmative defenses require the employer to show *either* (1) that the pay differential is based on a seniority or merit system, or (2) to make out *all five* of the following showings:

> (1) That the differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, such as training, education or experience, or the quantity or quality of production;

> (2) That the factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class;
> (3) That each of the factors is applied reasonably;
> (4) That one or more of the factors account for the entire wage differential; and
> (5) That the factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

N.J.S.A. § 10:5-12(t); *see* ECF No. 62-1 at 30 (Zoetis conceding that it must prove "that all of the . . . five factors are true"). Failure to make even one of the showings is fatal. *See id*.

Zoetis admits it did not pay her less due to a seniority or merit system. SUMF ¶¶ 37-38. It would therefore have to make the five required showings for the second affirmative defense. But Zoetis cannot make any of them.

First, Zoetis has admitted that the differential is not based on training, shift differentials, education, experience, or production. SUMF ¶¶ 39, 41-43. It cannot show that the differential is not based on "characteristics of members of the protected class," § 10:5-12(t), when salary histories typically reflect discrimination in the general labor market towards women, and the differential is therefore likely based on women's characteristic as a pervasively underpaid group. SUMF ¶¶ 48-51.

Second, given pervasive gender pay gaps in the economy broadly and in the veterinary industry specifically, salary history *is* "based on," and *does* "perpetuate, a differential in compensation based on sex." § 10:5-12(t), SUMF ¶¶ 48-51.

Third, Zoetis did not apply any factor reasonably. It was not reasonable to pay Dr. Schulman so much less than less-experienced pathologists that her manager called the discrepancy "absurd" and "unethical." SUMF ¶¶ 57, 72. It was not reasonable that Dr. Schulman "had the most experience, but most of the pathologists made more than her." *Id*. ¶ 81. It was not reasonable to repeatedly hire less-experienced male pathologists at higher salaries. *Id*. ¶¶ 81, 82-94. And it was not reasonable to pay Dr. Schulman $128k when her manager said that he "cannot in good conscience hire a board certified pathologist" at $128k. *Id*. ¶ 89.

Fourth, Zoetis cannot show "[t]hat one or more of the factors account for the entire wage differential," § 10:5-12(t), for the reasons stated above in Section I.B.3.

Finally, Zoetis cannot show "the factors are job-related" for the reasons stated in Section I.B.2, or "based on a legitimate business necessity." Even if Zoetis could meet its burden of showing the four prior factors (which it cannot) and the existence of a "legitimate business necessity," Dr. Schulman would meet her burden based on the undisputed evidence that there were "alternative business practices" that Zoetis could have pursued "that would serve the same business purpose without producing the wage differential." § 10:5-12(t).

The only purported "business necessity" Zoetis's witnesses have suggested is that salaries had to be maintained to retain talent. *See* Winder Dep. 142:12-14. But that in no way required maintaining the huge pay disparity here—and, in fact, Zoetis's practice of adopting pathologists' prior salaries resulted in it *losing* female pathologists who felt underpaid and left, including Dr. Schulman, the most experienced pathologist employed by Zoetis. SUMF ¶ 97.

There were multiple alternative business practices that could have served an employee-retention purpose without producing the wage differential. First, and most obviously, Zoetis could have kept Drs. Ehrhart and Jenning's salaries and just paid Dr. Schulman the salary it paid Dr. Ehrhart—a salary that *it determined* was worth paying to an experienced pathologist. SUMF ¶¶ 16-19. Second, instead of shifting the ZNLabs pathologists to a straight salary, Zoetis could have shifted the Phoenix and Ethos pathologists to a relatively uniform salary plus case-based pay, like that which ZNLabs historically used, and which Dr. Gardiner advocated for Zoetis to use. *Id*. ¶¶ 63, 67-68. Notably, ZNLabs was the legacy lab with the smallest pay gap (men paid 3.8% more in October 2020, compared to 26% more at Phoenix and 16.5% more at Ethos), suggesting that this could help close the gender pay gap. *Id*. ¶ 56. But instead, Zoetis rejected a case-based pay model. *Id.* ¶ 68.

B. Zoetis violated the NJLAD's Section 12(a).

A violation of the federal EPA is a violation of the NJLAD Section 10:5-12(a). *Dubowsky*, 922 F. Supp. at 996 (citing *Grigoletti v. Ortho Pharm. Corp.*, 118 N.J. 89, 109–10, 570 A.2d 903 (N.J. 1990)). Summary judgment is therefore warranted because, as explained *infra*, Zoetis violated the EPA.

Moreover, Zoetis's affirmative defense is clearly foreclosed under the NJLAD, because the New Jersey Supreme Court has held that it makes no difference "that the wage differentials are residuals of earlier employment." *Grigoletti*, 570 A.2d at 914 (holding "the inference is virtually inescapable that when unequal pay is given for the performance of substantially equal work, impermissible discrimination is afoot").

C. New Jersey law applies because New Jersey has the most significant relationship to Dr. Schulman's claims.

As this Court has already decided, the "New Jersey LAD can reach a remote worker who worked for a New Jersey-based company, but physically outside of New Jersey." *Schulman v. Zoetis, Inc.*, No. CV 22-1351(MEF)(LDW), 2023 WL 4539476, at *2 (D.N.J. July 14, 2023). As this Court has explained, New Jersey's law applies unless there is a conflict. *Id.* "If an actual conflict exists, then" the Court would "apply the choice-of-law principles described in the Second Restatement [of Conflict of Laws]," particularly sections 145, and 146, and 6, to determine the state with the most significant relationship to the claims. *Calabotta v. Phibro Animal*

Health Corp., 213 A.3d 210, 218–19 (App. Div. 2019); *see also Rampersad v. Dow Jones & Co., Inc*., No. CV1911733MASTJB, 2020 WL 529212, at *4 (D.N.J. Jan. 31, 2020)2.

The undisputed facts show that Zoetis's essential conduct in this case was overwhelmingly centered in New Jersey—and did not involve New Hampshire, Dr. Schulman's home state, at all. *See* SUMF ¶¶ 101–115. The employees involved in putting together Dr. Schulman's salary offer, Kelly Winder and David Gardiner, worked in New Jersey and Utah—not New Hampshire. *Id.* ¶ 102. The Vice President who oversaw the anatomic pathologists, Richard Goldstein, was in New Jersey. *Id.* ¶¶ 103-104. Dr. Goldstein, together with Zoetis HR and Senior VP of Global Diagnostics Lisa Lee, who also worked in New Jersey, made the decision—in New Jersey—about the pay model Zoetis would use for pathologists. *Id.* ¶ 104. The majority of the team that worked on integrating the labs was in New Jersey. *Id.* ¶ 65.

Critically, the head of Zoetis HR—who made the ultimate decision not to raise Dr. Schulman's pay to correct the pay disparity—was based at Zoetis headquarters in New Jersey, where the decision was made. *Id.* ¶¶ 19, 79, 106. She made that decision not to raise Dr. Schulman's pay based on the recommendation of a majority-New Jersey (and no-part New Hampshire) HR team. *Id*. ¶ 107. She also decided in New Jersey to pay Drs. Ehrhart and Jennings their prior salaries. *Id*. ¶ 105.

Applying the Second Restatement factors, New Jersey has the most significant relationship to the parties and the occurrence, and its law applies. In particular, the Section 145 factors tip decidedly toward New Jersey.[8] Regardless of where the injury "occurred," 2d Rstmt. (Conflict of Laws) § 145(a), the "conduct causing the injury" centered in New Jersey, § 145(b). As *Calabotta* put it, if a "plaintiff can establish that the company's decision" at issue in the case "was made or centered in New Jersey, that would be a counterweight on the New Jersey side of the scale." 213 A.3d at 229; *see also Halliday v. Bioreference Labs., Inc.*, No. A-3219-19, 2022 WL 3051348, at *15-16 (N.J. Super. Ct. App. Div. Aug. 3, 2022) (whether Texas-based employee was fired with input or approval of NJ-based employees—in other words, "where the cause of the injury occurred"—is "an essential contact under section 145"); *see also Herrera v. Goya Foods, Inc.*, No. CV 21-11628-ES-AME, 2022 WL 16949129, at *6 (D.N.J. Nov. 14, 2022) (defendants' NJ headquarters, combined with decision to terminate the plaintiff being made in New Jersey, was sufficient for NJ law to apply to claims by Connecticut resident who worked in Connecticut).

Moreover, when, as here, the place of injury is unclear or unimportant, "the place where the defendant's conduct occurred will usually be given particular weight

[8] By contrast, the Section 146 consideration of "where the injury occurred" is neutral because the "place of injury" is "not easily identified" when the discriminatory conduct occurred in New Jersey, SUMF ¶¶ 19, 79, 106, but the injury is arguably felt in the state where the employee resides. *See Calabotta*, 213 A.3d at 228.

in determining the state of the applicable law." 2d Rstmt. § 145(2) cmt. (e); *see also Hayden v. Hartford Life Ins. Co.*, Civ. A. No. 10-3424 (GEB), 2010 WL 5140015, at *4 (D.N.J. Dec. 9, 2010) ("[W]here a corporation's discriminatory conduct occurs in New Jersey, even if the employee is employed elsewhere, New Jersey law applies." (citing *D'Agostino v. Johnson & Johnson, Inc.*, 133 N.J. 516 (1993))). The undisputed facts show that New Hampshire has very little to do with this case, except that it was where Dr. Schulman logged on to work for her NJ-based employer. Zoetis's decisions at issue in this case were made almost entirely in New Jersey—and none in New Hampshire. *Id.* ¶¶ 102-107. Dr. Schulman only worked from New Hampshire because that is where she happened to live when hired by Zoetis, which employs pathologists across the country. *Id.* ¶¶ 113. Zoetis does not operate a location in New Hampshire, and she was its only pathologist there. *Id.* ¶¶ 112, 114. When Dr. Schulman left, Zoetis listed the "Primary Location" in the posting for the position to replace her as "US NJ Remote." *Id.* ¶¶ 115. Where Dr. Schulman was when she logged on to work for her NJ-based employer "bears little relation to the occurrence" here and "will not play an important role." 2d Rstmt. § 145(2) cmt. (e).

The other Section 145 Restatement factors also weigh toward applying New Jersey law. For example, § 145(d), the place where the parties' relationship is centered, tips decisively toward New Jersey.[9]

Finally, the Section 6 factors also all weigh in favor of applying New Jersey law, as it would promote uniformity and consistency, would in no way impede New Hampshire's similar interests in fair pay, and would accomplish the NJLAD's goals. *See* 2d Rstmt. (Conflict of Laws) § 6. First, the needs of the interstate system favors applying New Jersey law to a New Jersey company whose executives and HR staff are concentrated in New Jersey, because this best ensures predictability and uniformity of treatment for employees across the company.[10] *See* SUMF ¶¶ 101-108;

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[9] Again, Dr. Schulman worked on a remote team spread across the country, and New Jersey—where the Vice President who oversaw the anatomic pathologists, and the HR team and executives that set their compensation and benefits was—was the locus of control. SUMF ¶¶ 6, 19, 79, 103, 106. As discussed above, nearly all the relevant decisionmakers were in New Jersey. *Id.* ¶¶ 102-107. The only contact to New Hampshire was Dr. Schulman living there—alone among the pathologists, HR staff, and executives involved in this matter. *Id.* ¶¶ 113-14. Zoetis's address on Dr. Schulman's pay stubs was in New Jersey, as was its address on her W-2. *Id.* ¶¶ 110-11. Zoetis's Code of Conduct Compliance Team and Compliance Officer are in New Jersey, so employees could send complaints of discrimination to Zoetis's headquarters in New Jersey. *Id.* ¶ 108. Dr. Schulman had to send her Compliance Exit Checklist back to the Zoetis Compliance team in New Jersey. *Id.* ¶ 109. And tellingly, Zoetis viewed the "Primary Location" in the posting for the position to replace her as "US NJ Remote." *Id.* ¶ 115.

[10] The fact that employees on the same team worked from different locations across the country also weighs in favor of uniformly applying NJ law instead of subjecting Zoetis to the law of whichever state the employee happens to be in (or their direct

Calabotta, 213 A.3d at 228. Second, the "the policies and interests of this state and other jurisdictions are fairly accommodated by applying local law to an employer's conduct" in New Jersey that violates New Jersey law. *Calabotta*, 213 A.3d at 228. Third, New Hampshire's policies do not counsel against applying New Jersey law. New Hampshire also has a policy of ensuring equal pay for equal work, *see* N.H. Rev. Stat. § 275:37, which applying New Jersey law here in no way impedes.

Fourth, Zoetis, a New Jersey company, can have no "justified expectations" in being exempt from New Jersey law and in subjecting its employees to unequal pay, regardless of where they live. *See D'Agostino*, 133 N.J. at 545. Fifth, the basic policies underlying the NJLAD support applying it here. "If the purposes sought to be achieved by a local statute or common law rule would be furthered by its application to out-of-state facts, this is a weighty reason why such application should be made." 2d Rstmt. § 6 cmt. e. That weighty reason applies here. Applying the NJLAD here furthers the statute's broad remedial goals of eradicating and deterring discrimination. *See Nini v. Mercer Cnty. Cmty. Coll.*, 202 N.J. 98, 115 (2010) ("The

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supervisor or HR representative happens to be in). *See Calabotta*, 213 A.3d at 228 (applying NJLAD to decisions made in NJ about an out-of-state worker best promoted "certainty, predictability, and uniformity" and "needs of the interstate . . . systems"). Moreover, "the forum state should not apply its choice-of-law principles in a way that discriminates against out-of-state residents." *In re Accutane Litig.*, 194 A.3d 503, 522 (N.J. 2018). Dr. Schulman was just as subject to the discriminatory decisions of Zoetis's NJ-based executives and HR as she would have been if she had worked remotely in NJ and should not be excluded from the NJLAD's protection because of the happenstance of her remote location.

more broadly the LAD is applied the greater its antidiscriminatory impact.") (cleaned up).

In sum, certainty, predictability, and uniformity of result, and ease in determination and application of the law to be applied, support applying New Jersey law. "New Jersey law regulates conduct in New Jersey," and the illegal conduct in this case centered in New Jersey. *D'Agostino*, 133 N.J. at 539 (NJ law applied to wrongful discharge claim by Swiss resident employed by NJ corporation's Swiss subsidiary as case was "about regulating the conduct of parent companies in New Jersey that engage in corrupt practices").

III. Zoetis, Inc. and Zoetis Reference Labs Are Both Liable as a Single Employer or, in the Alternative, as Joint Employers, for All the Violations in This Case.

If the Court finds liability on any of Plaintiff's claims in this action, Zoetis Reference Labs, LLC is an entity that is indisputably liable. *See* SUMF ¶ 116 (admitting that Zoetis Reference Labs was Plaintiff's employer). But Plaintiff is also entitled to summary judgment that Zoetis, Inc. is liable for all violations in this case, under both a single- and joint-employer analysis.

Zoetis References Labs and Zoetis, Inc. have both admitted to being Dr. Schulman's employer. *Id.* ¶¶ 116-18; Answer ¶ 13 ("admit Plaintiff was employed by Zoetis Reference Labs"); PL-00299, 302 (Ex. 3) (Zoetis, Inc. admitted that Dr. Schulman "was offered employment by Zoetis in August 2020" and accepted and

"began full-time employment with Zoetis on September 16, 2020" and "Zoetis" referred to "Zoetis, Inc."); D-0007 (Ex. 36) (agreement with Dr. Schulman that governed her "employment by" "Zoetis, Inc.", defining Zoetis, Inc. as "the Company" and governing Dr. Schulman's "employment by the Company"). Zoetis, Inc. has also admitted that it was correctly named in Plaintiff's charge of discrimination filed with her local civil rights agency. SUMF ¶ 117.

Even if Zoetis were to try to walk back its admissions that Zoetis, Inc. was Dr. Schulman's employer, it cannot escape liability. The undisputed facts here show that Zoetis Reference Labs and Zoetis, Inc. both employed Dr. Schulman for purposes of the EPA, Title VII, and the NJLAD.[11]

A. Zoetis Reference Labs and Zoetis, Inc. are a single employer.

The facts show that Zoetis, Inc. and Zoetis Reference Labs are a single employer under Title VII, NJLAD, and the EPA (which is part of the Fair Labor Standards Act, or FLSA). Two entities may be considered a single employer under Title VII if *either*: a parent company directs a subsidiary to perform the alleged discrimination; or the two companies' "affairs are so interconnected that they collectively caused the alleged discriminatory employment practice." *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 86 (3d Cir. 2003). Interconnectedness is shown where the "operations of the companies are so united that nominal employees of one

[11] Because the NJEPA is also part of the NJLAD, there is no separate analysis for it.

company are treated interchangeably with those of another." *Id*. at 87. Factors relevant to this inquiry are:

> (1) the degree of unity between the entities with respect to ownership, management (both directors and officers), and business functions (e.g., hiring and personnel matters),
> (2) whether they present themselves as a single company such that third parties dealt with them as one unit,
> (3) whether a parent company covers the salaries, expenses, or losses of its subsidiary, and
> (4) whether one entity does business exclusively with the other.

Id. Courts analyzing whether a company and its subsidiaries are a single employer under the NJLAD use the same factors and look to Title VII case law in interpreting them. *See Kalski v. Brandywine Senior Living, LLC*, No. CV224484MASLHG, 2022 WL 17823862, at *3 (D.N.J. Dec. 20, 2022). In addition, "[a]lthough the Third Circuit has not yet endorsed a 'single employer' theory in the FLSA context, district courts in the Circuit have held that 'employees may hold all the members of a single enterprise accountable for the FLSA violations of a single member' so long as 'the particular facts of the case ... merit it.'" *Walsh v. AMA Staffing Servs. LLC*, 22-cv-1786 (KSH) (ESK), 2023 WL 4677732, at *3 (D.N.J. July 21, 2023) (noting that relevant factors include "(i) whether the companies share common ownership or financial control; (ii) the interrelatedness of the companies' operations; (iii) whether the companies share common management; and (iv) whether the companies centralized control of labor relations").

Zoetis, Inc. and Zoetis Reference Labs, LLC are a single employer under Title VII and NJLAD *both* because Zoetis, Inc. directed the discriminatory act at issue here, and because of the companies' interconnectedness. And they are functionally a single employer under the FLSA/EPA because of their interrelatedness.

The undisputed facts here show that Zoetis, Inc. and Zoetis Reference Labs constitute a single employer because Zoetis, Inc., the parent company, directed Zoetis Reference Labs' discriminatory act—paying Dr. Schulman less than men for equal work. Zoetis, Inc. admitted that the "practice of not reducing the compensation of employees acquired through Zoetis' acquisition of other companies" was its own, and that it "made the decision about what to pay" Drs. Ehrhart and Jennings when each "became an employee of Zoetis," SUMF ¶ 139. Zoetis, Inc. also admitted that it investigated the pay disparity when Dr. Schulman complained and decided not to raise her pay. *Id.* ¶ 140. And this was rightly admitted. Roxanne Lagano, a member of the Zoetis, Inc. executive team, decided to keep Drs. Ehrhart and Jennings's salary based on their prior pay, and decided to not raise Dr. Schulman's pay—in other words, she directed the discriminatory action. *Id.* ¶¶ 19, 77, 79, 106.

Zoetis, Inc. and Zoetis Reference Labs, LLC are also a single employer because of their interconnectedness. First, they share ownership, management, and business functions. Zoetis Reference Labs is a wholly owned subsidiary of Zoetis, Inc., *see* Corp. Disclosure Stmt., ECF No. 15, that operates the lab operations

activities for Zoetis, Inc., SUMF ¶¶ 119-20. Zoetis Services, LLC, an entity that Zoetis, Inc.'s U.S. executive team members are part of, is a wholly owned subsidiary of Zoetis Holdings, LLC, which is wholly owned by Zoetis, Inc. *Id.* ¶ 123. Zoetis Services LLC provides the HR, finance, legal, and IT services for Zoetis Reference Labs. SUMF ¶ 122. If a Zoetis Reference Labs employee needed IT assistance, they would use Zoetis, Inc.'s IT department, a service shared by all U.S.-based Zoetis subsidiaries—which is not paid for by Zoetis Reference Labs; it is paid by Zoetis Services, LLC, a subsidiary of an entity wholly owned by Zoetis, Inc. *Id.* ¶¶ 122-24, 129-30. Zoetis, Inc.'s IT department orders laptops for Zoetis Reference Labs employees. *Id.* ¶ 130. All employees of Zoetis subsidiaries have access to a shared intranet. *Id.* ¶ 131. In addition, as described above, Zoetis, Inc. uses a platform, Workday, that houses all of its employee data and payroll records, and through which Zoetis's "application process flows." *Id*. ¶¶ 128. Zoetis, Inc.'s "HR integration team" planned the "integration for all of the three labs, the Workday integration for all of the three labs, the benefits integration, the savings plan, the health and welfare benefits," and Zoetis, Inc.'s HR's compensation team specifically worked on integrating the employees from the legacy labs into the "compensation programs" of the "overall corporation, Zoetis," including base pay, bonus, and long-term incentives. *Id.* ¶¶ 66, 132-33.

Second, Zoetis, Inc. and Zoetis Reference Labs are interconnected as they in many ways present themselves as one company, "Zoetis." For example, they share a physical address. *Id.* ¶ 101. Employees of all Zoetis, Inc. subsidiaries, including Zoetis Reference Labs, use the same Zoetis.com e-mail domain name. *Id.* ¶ 131. An offer letter sent to Dr. Schulman said "ZNLabs is now part of Zoetis." *Id.* ¶¶ 27. Employees like Dr. Schulman, who worked for Zoetis Reference Labs, received a benefits package and benefits guide for "U.S. Colleagues" of "Zoetis." *Id.* ¶¶ 135. Indeed, many deposed employees identified their employer simply as "Zoetis," not a specific sub-entity; one thought it was Zoetis, Inc. *Id.* ¶ 138.

Third, the parent company pays expenses, including HR, finance, legal, and IT services for Zoetis Reference Labs. *Id.* ¶¶ 122-24 (the entity that provides HR, finance, legal, and IT does not have income; it is "simply a series of cost centers" for the company). And finally, Zoetis, Inc. does business exclusively through its subsidiaries—including Zoetis Reference Labs. *Id.* ¶¶ 8, 119. The companies are therefore so interconnected as to be a single employer. As a single employer, then, neither Zoetis, Inc. nor Zoetis Reference Labs can escape liability here by pointing to the other entity. As a single entity, they are both liable for the violations here.

B. In the alternative, Zoetis Reference Labs and Zoetis, Inc. both employed Dr. Schulman as joint employers.

Alternatively, the facts also show that Zoetis Reference Labs and Zoetis, Inc. jointly employed Dr. Schulman under the EPA, Title VII, and the NJLAD. Under

the EPA, more than one entity can be an employer of an employee. 29 C.F.R. § 791.2. "A joint employer relationship may exist when 'both employers "exert significant control" over the employee "by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer."'" *Kociuba v. Kari-Out, LLC*, No. CV2301832JKSJBC, 2024 WL 397740, at *4–5 (D.N.J. Feb. 2, 2024) (quoting *Thompson v. Real Estate Mortg. Network*, 748 F.3d 142, 148 (3d Cir. 2014) (quoting 29 C.F.R. § 791.2(b)(3)), and also noting that "[u]nder the FLSA, the definition of 'employer' is broad"). Under these circumstances, each employer may be held jointly and severally liable for the violations of the other. *See Thompson*, 748 F.3d at 149. The "joint employer" theory of liability extends to the Title VII context. *See Myers v. Garfield & Johnson Enterprises, Inc.*, 679 F. Supp. 2d 598, 607 (E.D. Pa. 2010) (citing *Graves v. Lowery*, 117 F.3d 723, 727 (3d Cir. 1997)). And the "employment analysis under the NJLAD is substantially similar to that for Title VII." *Plaso v. IJKG, LLC*, 553 F. App'x 199, 205 (3d Cir. 2014).

To assess if an entity is an employer under the FLSA and NJLAD, courts look at the situation's "economic reality," *see Thompson*, 748 F.3d at 148, and consider:

> (1) the alleged employer's authority to hire and fire the relevant employees;
> (2) the alleged employer's authority to promulgate work rules and assignments and to set the employees' conditions of employment: compensation, benefits, and work schedules, including the rate and method of payment;

> (3) the alleged employer's involvement in day-to-day employee supervision, including employee discipline; and
> (4) the alleged employer's actual control of employee records, such as payroll, insurance, or taxes.

Id. at 149. The analysis of who is an employer in the Title VII context is similar. *See Myers*, 679 F. Supp. 2d at 607. No "aspect of the employer/employee relationship is determinative," as "an individual may be employed by two separate entities that have apportioned the various duties of employer between themselves as they saw fit." *Id.* at 610. These factors—particularly authority to promulgate work rules and to set compensation and benefits, and control over employee records—underscore that Zoetis Inc., and not just Zoetis Reference Labs, was Dr. Schulman's employer.

As to the first factor, Zoetis, Inc. has admitted to hiring Dr. Schulman. SUMF ¶¶ 117-18. Zoetis, Inc. also had authority to fire her: for example, it entered into a contract with her agreeing that she was "an employee at will" of Zoetis, Inc. "and [was] subject to termination at any time and for any or no reason." *Id*. ¶ 118.

As to the second, Zoetis, Inc. had authority to promulgate work rules and to set conditions of employment, including compensation and benefits—and Zoetis, Inc. exercised that authority. Regarding work rules, it entered into a "Confidentiality, Non-Solicitation and Assignment of Inventions Agreement" with Dr. Schulman that governed her "employment by" "Zoetis, Inc." *Id*. Zoetis, Inc.'s HR (which it ran through another subsidiary, Zoetis Services, LLC) had "pre hire contingencies and background check that [needed] to be completed" before Dr. Schulman could be

hired, and Zoetis, Inc.'s HR "cleared" Dr. Schulman to start her job. *Id*. ¶¶ 122-25. All employees of Zoetis, Inc. entities are expected to be trained on and comply with Zoetis, Inc.'s Code of Conduct. *Id*. ¶ 126. Additionally, all of Zoetis, Inc.'s U.S. employees are given common training on subjects including the Code of Conduct, the system for processing and tracking invoices and expenses, and how to use technology, so Dr. Schulman received the same on-boarding training that any other employee of a U.S.-based Zoetis, Inc. entity would receive. *Id*. ¶ 127. The head of compensation for Zoetis, Inc., Catherine Matus, had authority over compensation for employees within Zoetis Inc. from August 2020 through the end of 2021, and her deputy, Phillip Hoertz, oversaw "compensation for most employees within Zoetis, Inc."—meaning all non-executive, non-union employees. *Id*. ¶ 133. Zoetis, Inc. has a benefits package and benefits guide for "U.S. Colleagues," and the pathologists transitioned onto Zoetis, Inc. health and insurance benefits beginning in October-November 2020. *Id*. ¶¶ 135, 137. Dr. Schulman's 401(k) was associated with Zoetis, Inc. *Id*. ¶ 136. If an employee had questions, they could contact an HR team that responded to questions "across all of Zoetis's different entities" in the U.S., including Reference Labs employees after the integration. *Id*. ¶ 134. Zoetis, Inc. has admitted that it set Dr. Schulman's compensation; that it made the decision about what to pay Drs. Jennings and Ehrhart when they each became an employee of Zoetis, and that when Dr. Schulman raised the issue of the pay disparity, it

investigated and decided her salary was appropriate. *Id*. ¶¶ 117, 139-40. And Roxanne Lagano, the HR leader for the entire Zoetis Inc. portfolio and a member of the Zoetis Inc. executive team, decided to keep Drs. Ehrhart and Jennings's salaries based on prior pay, and to not raise Dr. Schulman's pay. *Id*. ¶¶ 19, 77, 79, 106.

Zoetis, Inc. does not appear to "have apportioned" to itself the "duties" of day-to-day supervision. *Myers*, 679 F. Supp. 2d at 610. It did, however, apportion to itself control of employee records. Zoetis, Inc. uses a platform, Workday, that houses all of its employee data and payroll records, and through which Zoetis, Inc.'s "application process flows." SUMF ¶ 128.

In conclusion, considering the economic reality of the situation here, the undisputed facts show that both Zoetis Reference Labs and Zoetis, Inc. employed Dr. Schulman. As joint employers they are therefore jointly and severally liable.

IV. Dr. Schulman Is Entitled to Damages Under the Federal EPA and New Jersey EPA Based on the Difference Between Her and Dr. Ehrhart's Pay.

Because Dr. Schulman is entitled to summary judgment for her federal EPA and NJEPA claims, the Court should also grant summary judgment on her damages under both statutes, which are readily calculable based on the undisputed facts here.[12] *See AEP Energy Servs. Gas Holding Co. v. Bank of Am., N.A.*, 626 F.3d 699,

[12] Plaintiff does not move for summary judgment on her Section 12(a) damages as the precise amount of those damages (*e.g.*, for emotional distress and front pay) is not readily calculable based on undisputed material facts. *See Scala v. Del. Dep't of*

740 (2d Cir. 2010) ("[C]ourts do routinely award damages that are readily calculable based on the undisputed facts on summary judgment.") (collecting cases); *Hart v. Rick's Cabaret Int'l, Inc.*, 60 F. Supp. 3d 447, 474 (S.D.N.Y. 2014) ("District courts may grant summary judgment as to damages for which there exist no disputed issues of material fact.") (collecting cases); *U.S. v. Gregg*, 32 F. Supp. 2d 151, 160 (D.N.J. 1998) ("The court may award statutory damages by summary judgment when no material facts are in dispute.").

A. Under the federal EPA, Dr. Schulman is entitled to $116,725.49 in back wages and an equal amount as liquidated damages.

Under the federal EPA—which is part of the FLSA—Dr. Schulman is entitled to her full "unpaid minimum wages" and "an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). Under § 206(d)(2) of the federal EPA, "any amounts owing to any employee which have been withheld in violation of this subsection," i.e. in violation of 29 U.S.C. § 206(d), the statutory prohibition on unequal wages on the basis of sex—"shall be deemed to be unpaid minimum wages . . . under this chapter." 29 U.S.C. § 206(d)(2); *see also E.E.O.C. v. Altmeyer's Home Stores, Inc.*, 698 F. Supp. 594, 600 (W.D. Pa. 1988) ("The Equal Pay Act does not provide for

Corr., No. CIV. A. 99-030-SLR, 2001 WL 641075, at *16 (D. Del. May 22, 2001) ("issue of emotional damages is fact intensive and not conducive to summary judgment"). The one exception is back pay damages, but as these overlap with her EPA/NJEPA back pay damages, a separate award on these damages is unnecessary.

back pay, but back pay and liquidated damages can be recovered by the employee under the provisions of the FLSA.") (citing 29 U.S.C. § 216(b)).

Accordingly, Dr. Schulman may recover the full illegal pay differential as her "unpaid minimum wages." The differential between Drs. Schulman and Ehrhart's pay over the period of Dr. Schulman's employment was undisputably $116,725.49. SUMF ¶ 99.[13] The Court should thus find that Dr. Schulman is entitled to recover that differential between herself and Dr. Ehrhart—who had six less years of experience—as unpaid minimum wages. Other courts have approved of using the highest-paid comparator's pay for determining EPA damages. *See, e.g.*, *Grimes v. Athens Newspaper, Inc.*, 604 F. Supp. 1166, 1168 (M.D. Ga. 1985) (calculating EPA damages based on "highest male salary being paid for the job at the time of performance").

While some courts have held that the pay differential for EPA purposes should instead be calculated based on the average of comparators' pay, *see, e.g.*, *Melanson v. Rantoul*, 536 F. Supp. 271, 291 (D.R.I. 1982), there is no binding Third Circuit authority requiring the Court do so here—nor should it. For one, in this Circuit a plaintiff is permitted to establish her prima facie case based on one comparator. *See*

[13] While Dr. Ehrhart left Zoetis in June 2021, that is of no moment; it is not required that an EPA comparator's employment fully overlap with plaintiff's. *See Dubowsky*, 922 F. Supp. at 991; *Puchakjian v. Twp. of Winslow*, 804 F. Supp. 2d 288, 296 (D.N.J. 2011) (plaintiff established prima facie case as to male predecessor).

Barthelemey v. Moon Area Sch. Dist., No. 2:16-cv-00542, 2020 WL 1899149, at *13 n.29 (W.D. Pa. Apr. 16, 2020) (noting, in discussing prima facie case under EPA, that courts in this Circuit have always, outside a situation where the court lacked full briefing, "held that a plaintiff may elect one, single comparator if they so choose").

Furthermore, assessing EPA damages based on the highest salary paid to a man doing the same work best fulfills the EPA's remedial purpose, as required under Supreme Court precedent. *See Corning Glass Works*, 417 U.S. at 208 (EPA is "broadly remedial, and it should be construed and applied so as to fulfill the underlying purposes which Congress sought to achieve"); *see also Grimes*, 604 F. Supp. at 1168 ("To do otherwise [than calculating EPA damages based on highest-paid male comparator] would be to depart from the equal pay for equal job purpose of the Act."); *Booker v. Taylor Milk Co., Inc.*, 64 F.3d 860, 866 (3d Cir. 1995) (noting, in discussing purpose of back pay awards under Title VII, that "back pay is designed to restore a victim of discrimination to the economic position he would have enjoyed absent the unlawful discrimination").

Finally, unlike the plaintiffs in some other cases where the average of comparators' wages was used to determine damages (such as *Melanson*), Dr. Schulman has six more years of experience than Dr. Ehrhart (and nineteen more than Dr. Jennings). SUMF ¶ 43. Given that Dr. Ehrhart is the closest behind Dr. Schulman in terms of experience, and given that Dr. Jennings is far less-experienced than her,

it is more reasonable to use Dr. Ehrhart's salary to determine the illegal pay differential than any even-less-experienced man. The facts are thus nothing like a case like *Melanson*, where the plaintiff compared herself to men with roughly equal or slightly less experience than her.

In addition to her "unpaid minimum wages," Dr. Schulman is also entitled under the EPA to an equal amount of her unpaid wages as liquidated damages. 29 U.S.C. § 216(b). This award is automatic unless "the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation" of the EPA. 29 U.S.C. § 260; *see Altmeyer's Home Stores, Inc.,* 698 F. Supp. at 600 ("[T]here is a presumption in favor of the employee receiving liquidated damages. The burden of proof then shifts to the employer . . . to show that he acted in good faith and with reasonable grounds for believing that his act or omission was not a violation of the FLSA. The court, then, has the discretion . . . not to award liquidated damages when the employer meets this burden of proof."). As the Third Circuit has explained, "If the employer fails to come forward with plain and substantial evidence to satisfy the good faith and reasonableness requirements, the district court is without discretion to deny liquidated damages." *Martin v. Cooper Elec. Supply Co.*, 940 F.2d 896, 908 (3d Cir. 1991) (quotation omitted).

An employer's burden to show *both* "good faith" and "reasonable belief" to escape automatic liquidated damages is extremely high. *See, e.g., Dep't of Lab. v. Am. Future Sys., Inc.*, 873 F.3d 420, 434 (3d Cir. 2017) (obtaining advice of counsel was insufficient to establish good faith and reasonable grounds); *Rood v. R&R Express, Inc.*, No. 2:17-CV-1223-NR, 2022 WL 1082481, at *10 (W.D. Pa. Apr. 11, 2022) (relying on HR professional's advice insufficient); *Mozingo v. Oil States Energy Servs., L.L.C.,* No. CV 15-529, 2017 WL 5901037, at *3 (W.D. Pa. Nov. 30, 2017) (adherence to "industry standard practice" insufficient); *Krause v. Cherry Hill Fire Dist. 13*, 969 F. Supp. 270, 280 (D.N.J. 1997) (instituting reorganization plan based on letter from DOL insufficient to show objective reasonableness).

The record is "devoid of evidence showing good faith and reasonable grounds" for Zoetis's conduct. *Martin v. Selker Bros.*, 949 F.2d 1286, 1299 (3d Cir. 1991). For example, a Zoetis HR representative who was part of the committee responding to Dr. Schulman's complaint said that after the committee did a "pay equity review" of the pathologists' salaries, he was "not sure" why multiple men made more than Dr. Schulman. SUMF ¶ 78. And Zoetis ignored *its own* managers who decried the pay gap as "absurd" and "unethical" and who said "I cannot in good conscience hire a board certified pathologist . . . at $128K." *Id.* ¶¶ 57, 72, 89. Instead, Zoetis told Dr. Schulman her pay was "market rate" and refused to increase it *while hiring* less-experienced male pathologists at higher salaries. *Id.* ¶¶ 80-94.

Given the "absence of evidence to support" the required substantial showing of good faith or reasonable belief that its conduct was lawful, Dr. Schulman is entitled to an award of liquidated damages. *See Celotex Corp.*, 477 U.S. at 331. Accordingly, she should be awarded $116,725.49 in unpaid minimum wages and $116,725.49 in liquidated damages for her federal EPA claims.

B. Under the New Jersey EPA, Dr. Schulman is entitled to her unpaid wages plus twice that amount as liquidated damages.

Under the NJEPA, Dr. Schulman is entitled to a mandatory award of "three times any monetary damages" she suffered. N.J.S.A. § 10:5-13(a)(2)(d) (where "employer has committed an unlawful employment practice prohibited by [§ 10:5-12(t)], the judge shall award three times any monetary damages to the person . . . aggrieved"). While the statute does not explicitly define "monetary damages", the substantive prohibition of the NJEPA creating the violation here prohibits employers from paying "any of its employees who is a member of a protected class at a rate of compensation . . . which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work . . . ." N.J.S.A. § 10:5-12(t). This indicates that "monetary damages" under the NJEPA are measured based on the amount of the inequitable wage differential.

The NJEPA therefore effectively provides for monetary damages plus twice that amount as liquidated damages. The NJEPA thus parallels the federal EPA damages standard, except for two key differences: (1) a prevailing plaintiff is

entitled to double their unpaid wages as liquidated damages; and (2) the NJEPA does not provide an affirmative defense parallel to 29 U.S.C. § 260 to the award of liquidated damages; instead, the award of liquidated damages is mandatory.

Because the NJEPA is to be interpreted liberally to accomplish its purposes, Dr. Schulman should be awarded double the difference between her pay and that of her highest-paid—and most comparable—comparator, Dr. Ehrhart, during the relevant time period, for the reasons explained above. Accordingly, Dr. Schulman should be awarded $233,450.98 in liquidated damages—twice her damages of $116,725.49—under the NJEPA.

C. Because liquidated damages under the federal EPA and the NJEPA serve fundamentally different purposes, the Court should award Dr. Schulman liquidated damages under both.

Liquidated damages under the EPA (and the FLSA more broadly) serve a compensatory purpose: compensating workers for the late payment of legally owed wages. By contrast, the double liquidated damages available under the NJEPA serve a different purpose: punishing and deterring further equal pay violations after decades of ongoing gender pay inequity. Accordingly, since they do not overlap, the Court should award Dr. Schulman liquidated damages under both statutes.

Courts may award damages under two statutes concerning the same underlying loss when those damages serve different purposes. *See, e.g.*, *In re Olick*, 422 B.R. 507, 551 n.54 (Bankr. E.D. Pa. 2009) ("I am aware that I am assessing

separate, non-compensatory damages against the Knights under two (2) statutes (COBRA and the ADEA) based on the same core conduct . . . . This is appropriate because the two (2) statutes have distinct purposes that justify separate enforcement remedies . . . . In granting all of this relief, I have been conscious of the combined, final outcome and have attempted to achieve a result that is harmonious with the deterrent purposes of the remedial provisions of both statutes.").

Under the FLSA, "liquidated damages are compensatory, not punitive in nature. Congress provided for liquidated damages to compensate employees for losses they might suffer by reason of not receiving their lawful wage at the time it was due." *Marshall v. Brunner*, 668 F.2d 748, 753 (3d Cir. 1982); *see Am. Future Sys., Inc.*, 873 F.3d at 433 (under FLSA, "[l]iquidated damages are compensatory").

But the NJEPA's mandatory award of treble damages with no affirmative defense serves a different purpose: punishing and deterring violations and incentivizing private plaintiffs to bring lawsuits. Indeed, state courts have repeatedly made clear that treble damages provisions in protective statutes are either entirely punitive or one-third compensatory and two-thirds punitive. *See Allstate N.J. Ins. Co. v. Lajara*, 117 A.3d 1221, 1230 (N.J. 2015) (in context of NJ's Insurance Fraud Prevention Act, "Because only the first third of a treble-damages award is intended to compensate the victim for actual damages, the remaining award is clearly in the nature of punitive damages."); *Furst v. Einstein Moomjy, Inc.*, 860 A.2d 435, 442

(N.J. 2004) (NJ's Consumer Fraud Act's "remedy of treble damages . . . was not intended to make the defrauded consumer whole, but to punish the wrongdoer and to deter others from engaging in unfair and deceptive commercial practices"); *St. James v. Future Fin.*, 776 A.2d 849, 864 (N.J. App. Div. 2001) (in context of N.J. RICO, treble damages and punitive damages are "species of exemplary damages" and awarding punitive damages plus one-third of statutory treble damages to avoid duplicating the two-thirds of the treble damages that were punitive in nature); *In re: O'Brien*, No. 03-17448 (RTL), 2010 WL 1999611, at *2 (Bankr. D.N.J. May 18, 2010) (treble damages "are punitive in nature").

Dr. Schulman is therefore entitled, at minimum, to the two-thirds of the treble damages available under the NJEPA that are clearly punitive in nature, as they do not overlap with the compensatory damages available under the EPA.

Binding caselaw concerning the interpretation of the NJLAD, of which the NJEPA is a part, further supports allowing Dr. Schulman to recover liquidated damages under both the EPA and the NJEPA. The NJLAD is broad remedial legislation designed to eradicate "the cancer of discrimination," *Meade v. Twp. of Livingston*, 249 N.J. 310, 327 (2021) (citation omitted). As such, the NJLAD "should be liberally construed," as "the more broadly [the LAD] is applied the greater its antidiscriminatory impact." *Nini*, 202 N.J. at 115 (citations omitted). These concerns trigger "special rules of interpretation" requiring courts to recognize the NJLAD's

broad public policy goals when faced with statutory interpretation questions. *Smith v. Millville Rescue Squad*, 225 N.J. 373, 390 (2016) (quoting *Nini*, 202 N.J. at 108).

Allowing Dr. Schulman to recover liquidated damages under the NJEPA in addition to her damages under the EPA, thus increasing the penalties for employers who violate equal pay laws, best advances the NJLAD's remedial purpose by further deterring violations by employers who continue to pay men and women unequally for equal work. The Court should therefore enter a damages award as follows:[14]

Category	**Damages**
Unpaid Minimum Wages Under the EPA and the NJEPA	$116,725.49
100% Liquidated Damages Under the EPA	$116,725.49
200% Liquidated Damages Under the NJEPA	$233,450.98
Total Equal Pay Damages Under the EPA and NJEPA	**$466,901.96**

CONCLUSION

Zoetis violated the EPA, the NJEPA, and Section 12(a) when it paid Dr. Schulman, its most experienced pathologist, about "1/2 of a male contemporary"—a salary Dr. Schulman's manager said he could not "in good conscience" pay an experienced board-certified pathologist. SUMF ¶¶ 59, 89. As Zoetis cannot meet its burden of proving any affirmative defense, summary judgment should be granted on Plaintiff's First, Third, and Fourth Causes of Action—against both Defendants. The Court should award Dr. Schulman damages of $466,901.96.

[14] Dr. Schulman is also entitled to recover reasonable attorneys' fees and costs under both statutes. 29 U.S.C. § 216(b); N.J.S.A. § 10:5-27.1; *see also* Proposed Order.

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