UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCES YVONNE SCHULMAN,	:	
	:	
Plaintiff,	:	Civil Action No. 2:22-cv-01351
	:	
vs.	:	
	:	**Return date: June 17, 2024**
ZOETIS, INC. and ZOETIS REFERENCE LABS, LLC,	:	
	:	
Defendants.	:	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Defendants Zoetis Reference Labs, LLC ("ZRL") and Zoetis, Inc.'s (collectively, "Defendants") motion for summary judgment should be granted as Defendants have presented a record of undisputed material facts to establish any pay disparity resulting from the Integration and formation of ZRL was not due to gender and did not perpetuate sex-based wage disparities. Indeed, a review of Plaintiff's Response to Defendants' Rule 56.1 Statement of Material Facts ("SOMF") reinforces there is no factual dispute in this litigation. Instead of providing evidence to support her reasons for disputing certain paragraphs, in whole or in part, of the SOMF, Plaintiff relies on legal argument and unsupported opinion to confuse the issues and manufacture issues of material fact where none exist. For example, Plaintiff repeatedly states certain portions of the SOMF are disputed, but then cites back to the same deposition testimony cited by Defendants, therefore conceding she does not dispute Defendants' statement of fact. In short, Plaintiff concedes the material facts as stated by Defendants are not in dispute and, therefore, has failed to introduce a triable issue of material fact sufficient to defeat Defendants' arguments. (See Defendants' Response to Plaintiff's Counterstatement of Facts, Section I).

Plaintiff's opposition brief contains legal argument not supported by the facts in the record. While suggesting ZRL engaged in individualized hiring decisions with respect to Drs. Eugene Ehrhart and Samuel Jennings ("the "Comparators"), Plaintiff simultaneously and repeatedly acknowledges ZRL inherited these employees and their previously set salaries as a result of the asset purchase of Ethos and made the business decision not to reduce ***any*** of the legacy Ethos salaries, not just the Comparators, at the time of Integration on January 1, 2021. Plaintiff does not dispute, nor do her opposition papers even address, this was a ***gender-neutral*** decision applied uniformly to men and women to assist ZRL in achieving its ultimate objective: to promptly enter, immediately compete and succeed in the field of laboratory diagnostic services. Importantly,

contrary to Plaintiff's arguments in her opposition brief, ZRL did not negotiate nor set salaries for the legacy Ethos employees, including but not limited to the Comparators, nor did they offer them ***more*** money to remain with ZRL post-Integration. Further, the decision not to reduce legacy Ethos pay did not perpetuate a gender-based wage disparity, as set forth in Defendants' moving papers.

Plaintiff relies solely on Ninth Circuit case law which first, is not binding on this Court and second relates to a "prior pay" defense. Importantly, Defendants are not asserting a "prior pay" defense to Plaintiff's claims under the Equal Pay Act, 29 U.S.C. § 206(d) ("EPA") and the New Jersey Equal Pay Act, N.J.S.A. § 10:5-12(t) ("NJEPA"). Plaintiff's reliance on Rizo v. Yovino, 950 F.3d 1217 (9th Cir. 2020), is misguided as the ***factual*** circumstances and reasoning for the Ninth's Circuit's holding vastly differ from this case. The case at bar does not represent a pattern of individualized salary negotiations with employees. Rather, ZRL, through its acquisition process, was made aware the Ethos salaries, while not gender based, did represent compensation "outliers." As such, ZRL did not ***rely*** on the Ethos salaries to ***set*** new salaries – either for the acquired Ethos employees (whose salaries were inherited) or subsequent hires post-Integration. ***It is the inquiring into and relying on when setting salaries which is prohibited by Rizo and the Ninth Circuit***. Plaintiff cannot credibly argue that's what occurred here. The bottom line is, ZRL, at all times, considered the Ethos salaries to be gender-neutral "***outliers***" and "***anomalies***" to be appropriately addressed through attrition. The legacy Ethos compensation did not become a new "base" for ZRL compensation and, therefore, could not and has not perpetuated the type of historical discrimination the EPA and NJEPA (as well as Rizo) aim to eliminate. Plaintiff has also failed to submit any evidence to suggest, prior to acquisition, the acquired companies set salaries by relying on prior pay. For these reasons, Defendants have established their affirmative defense under the EPA and NJEPA, and these claims should be dismissed.

Finally, Plaintiff's arguments that New Jersey, not New Hampshire, law should apply, that Zoetis, Inc. was her employer and is a proper party, and her prayer for punitive damages under the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1, *et seq.* ("LAD") and/or Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* ("Title VII") must fail for the reasons set forth in Defendants' moving papers, as well as their papers in opposition to Plaintiff's motion for summary judgment. Accordingly, Defendants' motion for summary judgment should be granted, and Plaintiff's Amended Complaint should be dismissed, in its entirety, with prejudice.

LEGAL ARGUMENT

POINT I

DEFENDANTS HAVE ESTABLISHED THE FOURTH AFFIRMATIVE DEFENSE UNDER THE EPA.

As the record evidence continues to make clear, Defendants have established the fourth affirmative defense under the EPA and are therefore entitled to summary judgment. [1]

A. Plaintiff's "Prior Pay" Argument Fails As Plaintiff Concedes Legacy Salaries Were Inherited.

As maintained throughout this litigation, Defendants are not asserting a "prior pay" defense. Rather, Defendants contend any pay disparity resulting from Integration was the direct result of the business decision not to reduce legacy salaries to aid in successful Integration of three labs. To erroneously analogize and conflate the two, as Plaintiff has, is not supported by the evidence and misconstrues what actually occurred in 2020 and 2021.

In her opposition, Plaintiff argues Rizo, supra, and the Third Circuit's "endorsement" of Ninth Circuit precedent via Greater Phila. Chamber of Com. v. City of Phila., 949 F.3d 116, 143

[1]Plaintiff fails to introduce a triable issue as to her prima facie case and, as such, Defendants maintain their arguments with respect to Plaintiff's prima facie case under the EPA and NJEPA, as stated in their moving papers. (See Defendants' Brief in Support of Motion for Summary Judgment ("D.'s Br."), at Section III(A), IV(C)).

(3d Cir. 2020) precludes summary judgment for Defendants because *reliance* on prior salary when setting salary is not a valid affirmative defense under the EPA. Plaintiff's argument is misguided. First, as Plaintiff acknowledges, there continues to be a split among the Circuits as to whether *relying* on prior pay to *set* new salary is a valid factor other than sex under the EPA. Notwithstanding, the factual circumstances of "prior pay" cases, whether in the Ninth, Seventh, or Eleventh Circuits,[2] all involve individualized salary decisions made during the hiring process. However, there is no evidence that is what occurred at ZRL and, therefore, this is not the proper inquiry.

It is correct to note these authorities have held relying on past pay to set new salaries risks perpetuating pay discrimination by establishing the new pay as a benchmark going forward. It is ***this*** rationale that has led some circuits, including the Ninth, to adopt "pay-inquiry bans." Here, however, ***ZRL did not set salaries***. Instead, they were inherited and at no time did ZRL consider the legacy Ethos salaries to be anything other than "outliers," to be addressed and reconciled through attrition. After Dr. Ehrhart resigned in June 2021, his position was not backfilled at his salary. Why? Because ZRL knew it was not going to rely on the "anomaly" Ethos salaries to determine compensation going forward. This is confirmed by the fact ZRL has not hired any Pathologist at the level of legacy Ethos salaries since January 1, 2021. The decision not to reduce the Ethos salaries, male or female, was a business decision made to ensure a successful Integration. See SOMF, ¶¶ 84-99, 127, 132-33, 173-88). Finally, Plaintiff has not introduced any evidence to suggest the Ethos, Phoenix, and ZNLabs salaries were set under discriminatory conditions. While Plaintiff relies on the net opinions of her expert, Dr. Janice Madden, to argue "[T]he legacy labs all paid male pathologists, on average, more than female [p]athologists," the fact is Dr. Madden

[2] The Fourth, Seventh and Eighth Circuits hold prior pay is a valid affirmative defense under the EPA, while the Sixth, Tenth, and Eleventh Circuits hold prior pay, in connection with another factor, is a valid affirmative defense.

did not account for (or even consider) person-specific factors unrelated to gender in her calculations of the three labs pre-Integration, which resulted in an "overstated difference in averages."[3] (See Certification of Robert J. Cino, Esq. in Opposition to Plaintiff's Motion for Summary Judgment ("Cino Opp. Cert."), Exhibit 8, p. 7). Moreover, there is no evidence that ZRL applied its decision to not reduce salaries in a discriminatory manner, since its decision applied to all acquired employees, including those from Ethos.

As stated, Plaintiff heavily relies on Rizo, 950 F.3d at 1220, which held the defendant's use of a Standard Operating Procedure, which set new pay for every new hire by adding 5% to each applicant's prior salary at their prior employer, was not a valid defense under the EPA. While the ***factual circumstances*** of Rizo – relying on past pay to set new salary – may risk perpetuating the gender wage gap, they cannot be argued to be similar to what occurred at ZRL.

Contrary to Plaintiff's argument that the Third Circuit "endorsed" the Ninth Circuit's decision in Rizo, Greater Phila., supra, was not an EPA case.[4] In referencing Rizo in dicta, the Third Circuit concluded the city of Philadelphia's proposed ordinance prohibiting 1) ***inquiring*** about prior salary, and 2) ***relying*** on prior salary ***to negotiate or set new salary*** was Constitutional. However, neither of the two provisions at issue (the inquiry and reliance provisions) were applied in this case. ZRL did not inquire, nor did they rely on prior salary to set new salary for the Comparators, or any other legacy Ethos employee. In short, the rationale behind the Ninth Circuit's "prior pay" line of cases cannot be reconciled with the facts of this case because ZRL did not engage in the individualized inquiry and reliance provisions, prohibited under Rizo. As such,

[3] For example, "Plaintiff's expert does not account for David Gardiner's expected higher pay as Director of ZNLabs…Plaintiff's expert does not account for…part-time schedule or any other ***person-specific non-discriminatory legitimate business*** factors that impact compensation." (Cino Opp. Cert., Exhibit 8, p. 7).

[4] The issue addressed by the Third Circuit in Greater Phila. was the Constitutionality of Philadelphia's proposed "pay-inquiry ban" ordinance. 949 F.3d at 121-122.

because ZRL did not rely on prior pay to set the salaries of the acquired legacy colleagues – since it did not set these salaries – Rizo and the "prior pay" line of cases cited by Plaintiff are inapplicable.

Plaintiff's opposition attempts to discredit Arthur v. College of St. Benedict, 174 F. Supp. 2d 968 (D. Minn. 2001), Russell v. Placeware, Inc., 2004 U.S. Dist. LEXIS 21465 (D. Or. Oct. 15, 2004), and Wachter-Young v. Ohio Cas. Grp., 236 F. Supp. 2d 1157 (D. Or. 2002) because they refer, in dicta, to Kouba v. Allstate Insurance Co., 691 F.2d 873 (9th Cir. 1982), which Rizo overturned.[5] Arthur did not ***rely*** on Kouba, rather it contemplated whether "grandfathering" compensation set by two separate institutions, before merging, was a viable defense under the EPA. See Arthur, 174 F. Supp. 2d at 977. Further, Wachter-Young and Russell remain good law post-Rizo. These cases, cited by Defendants in their moving brief, simply do not involve the type of reliance on prior pay Rizo prohibited, and Plaintiff therefore cannot provide any reason the Court should not consider these cases given the *factual similarities* to the case at bar.

B. Defendants Have Established Their Purported Reason For The Disparity Accounts For The Entire Disparity And Is Job-Related.

Defendants have undeniably established the gender-neutral reason for the pay disparity – the acquisitions and Integration[6] of the three labs and the subsequent decision not to reduce the Ethos' salaries regardless of gender – is job-related and accounts for the entire disparity. (See D.'s Opp. Br., pp. 10, 16-19). Plaintiff continues to argue Defendants have "no legitimate explanation for why her salary was so low" in contending Defendants cannot account for the entire disparity.

[5] As explained in prior briefing, ***Defendants are not asserting a market force theory defense*** and, therefore, Plaintiff's argument that Defendants' reliance on Taylor v. White, 321 F.3d 710 (8th Cir. 2003), for an entirely different premise, is improper because Kouba's "blessing of 'business reasons' for pay disparities could not 'be squared with the Supreme Court's rejection of the market force theory'" has no merit. (See Pl.'s Opp. Br., pp. 12-13, n.5).

[6] In Plaintiff's Opposition to the SOMF, she alleges the term "Integration" is vague and undefined. This is incorrect. As established by the factual record, it is uncontested the Integration took place on January 1, 2021 and, prior to this date, the three acquired labs were working independently. (See SOMF, ¶¶ 62-65, 78, 79, 101, 118, 123, 132 n. 14).

(Pl.'s Opp. Br., p. 16-17). Plaintiff's argument fails. It is not disputed Plaintiff was hired by Dr. Gardiner as a ZNLabs employee, first as a Pathology contractor and later as a full-time Pathologist, in accordance with ***ZNLabs' pay scale***.[7] (SOMF, ¶¶ 25-31, 36-57). When Plaintiff was hired as a full-time ZNLabs Pathologist in August 2020, Dr. Gardiner, who set Plaintiff's salary, testified he believed $120,000 annually, for the number of cases Plaintiff would be reading, was "an acceptable compensation, factoring in business needs and kind of ***where our pay scale was at ZNLabs***." (DSOF, ¶ 43). Therefore, because Plaintiff was hired by ZNLabs and compared to the ZNLabs' Pathologists, her salary of $125,000, the second highest among all ZNLabs' Pathologists at the time of her hiring (SOMF, ¶ 55), was ***not*** low, but firmly in accordance with, and in fact, above, the ZNLabs' pay scale. It is not disputed Plaintiff was paid by ZNLabs until Integration on January 1, 2021, while the legacy Ethos employees, including the Comparators, were paid by Ethos. (DSOF, ¶ 65; PRSOF, ¶ 65). As such, but for Integration, the Comparators would not have been employed by ZRL, and no disparity would exist. (Defendants' Response to Plaintiff's Statement of Material Facts("DRSOF"), ¶¶ 46, 47; SOMF, ¶ 145). Accordingly, Defendants have established that acquiring and integrating three labs with three different pay scales (a fact Plaintiff concedes) accounts for the entire disparity. (See Plaintiff's Statement of Material Facts, ¶ 63).

Notwithstanding, Plaintiff argues that because male Pathologists were hired at higher salaries post-Integration, Defendants have somehow failed to explain the entire disparity. (P.'s Opp. Br., p. 17). Again, Plaintiff's argument fails. Defendants' opposition to Plaintiff's motion for summary judgment clearly establishes ZRL hired seven female Pathologists in 2021 and 2022 (post-Integration), six of whom had starting salaries higher than Plaintiff. (DRSOF, ¶¶ 83, 90, 92).

[7] While Plaintiff insinuates she was hired as a full-time Pathologist by "Zoetis," not ZNLabs, because she was hired after ZNLabs was acquired by Zoetis Lab Holdings, she seems to have forgotten she testified she was hired as a part-time Pathologist by ZNLabs – ***speaking to and negotiating only with Dr. Gardiner – in February 2020, 3 months after ZNLabs' acquisition***. (SOMF, ¶¶ 14, 27, 28, 30-33).

Further, no Pathologist has been hired by ZRL anywhere near the inherited Ethos salaries since Integration, reinforcing ZRL's continued efforts to address any pay disparity through attrition. (Id.). Accordingly, Defendants have established a legitimate justification for the entire disparity.

Defendants have also established any disparity was, in fact, "job-related." Job-relatedness is not a factor under the EPA. (See D.'s Opp. Br., pp. 16-17). Nonetheless, even if it were, the Comparators' jobs at ZRL only existed as a result of the asset purchase of Ethos and, therefore, the asserted reason for the disparity – Integration – is clearly job-related. Thus, Defendants have established the fourth affirmative defense under the EPA and, therefore, Plaintiff's EPA claim should be dismissed.[8]

C. Plaintiff Has Not, And Cannot, Establish Pretext.

Plaintiff cannot establish Defendants' reason for the disparity is pretextual. (See P.'s Opp. Br., pp. 17-18).[9] In her opposition, Plaintiff argues ZRL did not apply its "retention rationale" equally to Plaintiff and the Comparators. However, Plaintiff ignores the fact the "retention rationale" as testified to by Dr. Goldstein was ***not*** applied to the Comparators. Neither Dr. Ehrhart, Dr. Jennings, nor any other legacy Ethos Pathologist was offered additional compensation by ZRL to ensure retainment. The undisputed evidence establishes ZRL made the decision not to reduce the salaries of ***all*** legacy Ethos Pathologists, both males and females, as an incentive to retain ***all*** Pathologists in furtherance of the goal of competing in the diagnostic laboratory arena. (SOMF, ¶¶ 71-99). What Plaintiff is arguing is her salary – and ***only*** her salary – should have been increased to match or exceed Dr. Ehrhart. (Pl.'s Opp. Br., p. 23; SOMF, ¶ 144, 147). If this were done, what

[8] Because Plaintiff's LAD discrimination claim follows the same framework as her EPA claim, her LAD claim will fail for the same reasons noted herein and in prior briefing. Therefore, the LAD claim should also be dismissed.

[9] Plaintiff's arguments with respect to pretext under the EPA and Title VII largely overlap and, therefore, are both addressed in this section. Nonetheless, Defendants maintain Plaintiff has failed to establish a *prima facie* case under Title VII, for the reasons explained in-depth in Section V(C) of their moving brief. Plaintiff fails to adequately rebut these arguments in her opposition and, therefore, Defendants' motion for summary judgment should be granted.

was ZRL to do about the inevitable disparity created between Plaintiff and the remaining ZNLabs and Phoenix colleagues? Had ZRL decided to pay Plaintiff a salary, which every witness testified was an "outlier" and substantially above market, it would have had to raise all Pathologists, which it could not have afforded. (See D.'s Opp. Br., p. 28). Integration is a multi-year process (DSOF, ¶ 133, Cino Opp. Cert., Exhibit 8, p. 18), and Plaintiff's overnight, "snap your fingers" solution, which she fails to consider the reasonableness of, is not supported by the record or the law.

As such, Plaintiff's reliance on Gokay v. Pennridge Sch. Dist., 2004 U.S. Dist. LEXIS 2127, (E.D. Pa. Feb. 5, 2004) is misguided as Gokay is wholly inapplicable. (P.'s Opp. Br., p. 20). There, the company raised a male's salary in order to retain his services after he threatened to leave but did not similarly raise the plaintiff's salary after she threatened to leave. Id. at *26-27. Gokay involved ***individualized pay decisions***, which is not the case here. Plaintiff argues ZRL paid Drs. Ehrhart and Jennings their respective salaries because it wanted to retain them and, consequently, should have increased Plaintiff's salary to be equal to Dr. Ehrhart to retain her. Again, Plaintiff's argument misses the mark. ZRL did not "increase" Drs. Ehrhart and Jennings' previously set Ethos salaries to retain them – rather, and as supported by the record, ZRL made the decision ***not to reduce any*** of the legacy salaries, in part because it wanted to retain ***all*** legacy employees to successfully integrate, which included its desire to retain colleagues, but more importantly the customer relationships previously established at Ethos. (SOMF, ¶¶ 70-99). As such, ZRL's decision not to reduce legacy pay applied to all legacy employees, male and female.

Plaintiff has provided no evidence the Comparators requested, negotiated, or received additional compensation as an incentive to remain with ZRL. Moreover, Plaintiff cannot dispute ZRL's decision not to reduce the legacy Ethos salaries was applied uniformly and regardless of

gender. As Plaintiff cannot establish pretext, whether under the EPA or Title VII,[10] these claims should be dismissed as a matter of law.

POINT II

PLAINTIFF'S OPPOSITION FAILS TO PRESENT A TRIABLE ISSUE OF MATERIAL FACT AS TO HER NJEPA CLAIM.

Defendants have established all five of the requisite factors within the second affirmative defense under the NJEPA and, therefore, their motion for summary judgment as to this claim should be granted. First, as argued at length in Defendants' moving brief, opposition to Plaintiff's summary judgment motion, and herein, the record confirms any pay differential was based on a legitimate, bona fide factor other than sex.

Second, Defendants have established Integration did not and does not perpetuate a differential in compensation based on sex. (Id.). The Ethos salaries were outliers and not used to set compensation at ZRL moving forward. (Id.; DRSOF, ¶¶ 83, 90, 92). Plaintiff has introduced no evidence that Ethos' pay practices were discriminatory, nor has Plaintiff established any such alleged discrimination was furthered by Integration. The opinion of Plaintiff's expert fails to consider any factor, other than gender, that may account for the disparity as she "makes no attempt to use available data to link her discussions of initial salaries or gender pay gap to [ZRL] during the period of Plaintiff's employment." (See Cino Opp. Cert., Exh. 8, p. 4). Dr. Madden also does not account for person-specific factors that may impact compensation, including Dr. Gardiner's

[10] As explained above, by alleging only male Pathologists were hired at higher salaries post-Integration, Plaintiff further ignores the entirety of the record. (Pl.'s Opp. Br., p. 17). It is undisputed ZRL hired both male and female Pathologists at higher salaries as a way to address the disparity through time and attrition. (DRSOF, ¶¶ 83, 90, 92). Further, Plaintiff mischaracterizes Dr. Gardiner's comments regarding the difference in salary. (Pl.'s Opp. Br., p. 21). Dr. Gardiner did not call the decision not to reduce Ehrhart's salary absurd, but instead insinuated that Dr. Ehrhart's compensation was absurd, a salary he had never seen before, and, therefore, an "outlier." (See SOMF, ¶¶ 15, 132-33). Further, by stating he could hire two pathologists for the price of Dr. Ehrhart's salary, he confirmed he did not feel a salary of $115,000 – lower than Plaintiff's – was unjust or unethical. (Id.). In fact, Dr. Gardiner testified that, even knowing what he knows now, he would still offer Plaintiff the same starting salary of $125,000. (DRSOF, ¶ 72).

higher pay as Director of ZNLabs or an employee only working part-time which, therefore, results in overstated differences in averages within the labs. (Id., p. 7).

Third, Plaintiff cannot dispute ZRL's business decision of acquiring and integrating the three labs was applied reasonably. ZRL's decision not to reduce legacy Ethos pay was gender neutral. (SOMF, ¶¶ 70-99). ZRL's decision not to raise any Pathologists' salaries, including Plaintiff's, following the March 2021 pay equity review, was gender neutral. (Id., ¶¶ 151-162, 173-187). ZRL's decision to address the disparity through time and attrition was gender neutral. (DRSOF, ¶¶ 83, 90, 92).

Fourth, the acquisitions and Integration accounted for the entire wage differential. But for the ZNLabs' asset purchase with Ethos, the Comparators are never colleagues of Plaintiff. (SOMF, ¶¶ 46, 47; DRSOF, ¶ 145). Fifth, Integration, which created the Comparators' positions at ZRL, is clearly job-related because, but for the acquisitions and Integration, the Comparators' jobs at ZRL do not exist. (Id.). The decision to enter the diagnostic laboratory services arena was a business decision. Acquiring employees and labs, and maintaining customer relationships, specifically with the Ethos specialty hospitals, were legitimate business necessities.

Fifth, Plaintiff has not and cannot establish there were "alternative business practices" that would have allowed ZRL to successfully achieve its business purpose "***without producing the wage differential***." N.J.S.A. § 10:5-12(t). Defendants have established in their moving papers, which Plaintiff does not dispute in her opposition, increasing all salaries to the level of recognized outliers was not financially feasible and reducing the Ethos salaries was not permissible under the law. The only "alternative business practice" argued by Plaintiff is to raise her – ***and only her*** – salary due to having the most "experience." This argument is not supported by the record and is, in fact, undercut by Plaintiff's concession the Comparators were not paid more due to experience.

Moreover, Plaintiff is disregarding – and directly contradicting – her own argument that all Pathologists were doing the same jobs post-Integration. Plaintiff cannot have it both ways. She cannot in one breath argue all Pathologists were performing substantially equal work, while in the next proclaim only her salary should be increased. Further, and most importantly, ***increasing only Plaintiff's salary does nothing to rectify the multiple gender-neutral pay discrepancies resulting from Integration that would continue to exist even if Plaintiff's salary was raised***. As such, the only viable option ZRL had was the one it took, to remedy any discrepancies in pay resulting from Integration through attrition, which it has done. As such, Plaintiff's argument that alternative business practices existed fails. Defendants have established each of the five prongs of the second affirmative defense under the NJEPA, and, therefore, this claim should be dismissed.[11]

CONCLUSION

For the foregoing reasons, as well as the reasons stated in Defendants' moving papers and opposition to Plaintiff's motion for summary judgment, Defendants respectfully request the Court grant their motion for summary judgment and dismiss Plaintiff's Amended Complaint, in its entirety, while simultaneously denying Plaintiff's motion for partial summary judgment.

Respectfully submitted,

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Dated: May 31, 2024
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[11] As stated in the Preliminary Statement, Defendants rely on the arguments made in their moving papers, as well as their opposition to Plaintiff's motion for partial summary judgment and incorporate same by reference herein in response to Plaintiff's arguments that New Jersey law applies to her claims, Zoetis, Inc. was a single or joint employer, or that Plaintiff's prayer for punitive damages is a jury question. Because Plaintiff's fails to sufficiently rebut any of these arguments, Defendants' motion for summary judgment should be granted with respect to these issues.