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 (JXN)(LDW) **ORAL ARGUMENT REQUESTED** **Return Date**: June 17, 2024

PLAINTIFF'S REPLY IN FURTHER SUPPORT OF HER MOTION FOR PARTIAL SUMMARY JUDGMENT

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Zoetis concedes Drs. Schulman, Ehrhart and Jennings shared the same core set of responsibilities and that it paid Dr. Schulman about half of what it paid Dr. Ehrhart for those responsibilities. It argues it could legitimately pay the men more because it simply matched their prior salaries, but does not argue that prior pay is a defense under the Equal Pay Act ("EPA"). Prior pay is not a defense under the EPA—or New Jersey law—because using prior pay to set salaries perpetuates gender pay inequity. There is also no genuine dispute that New Jersey law applies to Dr. Schulman's claims or that Zoetis is responsible for violations during the entirety of her employment.[1] For these reasons, and as explained below, Dr. Schulman's motion for partial summary judgment must be granted in full.[2]

ARGUMENT

I. Zoetis Violated the EPA by Paying Dr. Schulman Less Than Men for Equal Work.

Dr. Schulman has a prima facie case because the evidence shows she and Drs. Ehrhart and Jennings were paid unequally for substantially equal work, or "work of substantially equal skill, effort and responsibility, under similar working conditions." *E.E.O.C. v. Del. Dep't of Health & Soc. Servs.*, 865 F.2d 1408, 1413–

[1] For the same reasons as in Dr. Schulman's opening brief, Zoetis Inc. and Zoetis Reference Labs LLC are collectively referred to herein as "Zoetis."

[2] Even if the Court disagreed, it should grant the motion in part, ruling on undisputed issues such as those listed here. *See In re G-I Holdings Inc.*, 369 B.R. 832, 836 (D.N.J. 2007) ("The ability of a court to enter partial summary judgment 'serves the purpose of speeding up litigation by eliminating before trial matters wherein there is no genuine issue of fact.'") (quoting Fed. R. Civ. P. 56 Advisory Cmte Note).

14 (3d Cir. 1989). The jobs need not be identical; the crucial question is whether they have a "common core" of similar tasks. *Brobst v. Columbus Servs. Int'l*, 761 F.2d 148, 156 (3d Cir. 1985). "Where the primary duties are essentially the same, differences in detailed subsidiary tasks do not render them unequal, absent a showing that performance of the subsidiary tasks requires significantly greater over-all skill, effort or responsibility than is required for the performance of the common primary functions." *Hodgson v. Food Fair Stores, Inc.*, 329 F. Supp. 102, 105 (M.D. Pa. 1971).[3] Contrary to Zoetis's suggestions, Dr. Schulman need not show that Zoetis set her pay based on gender: she prevails if Zoetis cannot prove an affirmative defense. *Stanziale v. Jargowsky*, 200 F.3d 101, 107 (3d Cir. 2000). It cannot.

A. As Zoetis conceded, Drs. Schulman, Ehrhart, and Jennings did substantially equal work—so Dr. Schulman has a prima facie case.

Although, three years into this case, Zoetis has developed a theory that Drs. Schulman, Ehrhart, and Jennings did not do the same work, the evidence and its own admissions confirm they did. While Dr. Schulman worked at Zoetis, in October 2021, Zoetis filed a position statement admitting that, "following her employment by Zoetis on or about September 16, 2020," the jobs of Drs. Schulman, Jennings,

[3] *See Ryan v. Gen. Mach. Prod.*, 277 F. Supp. 2d 585, 597-99 (E.D. Pa. 2003) (holding plaintiff did substantially equal work to men in multiple different positions); *Woodruff v. Millcreek Twp.*, 657 F. Supp. 522, 524 (W.D. Pa. 1987) (occasional duties did not justify a pay differential); *Brennan v. Sterling Seal Co.*, 363 F. Supp. 1230, 1234 (W.D. Pa. 1973) (same); *Hodgson v. Oil City Hosp., Inc.*, 363 F. Supp. 419, 423 (W.D. Pa. 1972) (same); *Hodgson v. Skyvue Terrace, Inc.*, No. 70-1168, 1972 WL 179, at *2–3 (W.D. Pa. May 1, 1972) (same).

and Ehrhart "required substantially equal skill, effort, and responsibility, and [were] performed under substantially equal conditions." Pl.'s SUMF, ECF No. 111, ¶¶ 32-36, 98; Baran Decl., ECF No. 112-3, Ex. 3, PL-00307-319. Former Director and HR Business Partner Ivelisse Williams, who took part in Zoetis's "pay equity review" and the recommendation not to raise Dr. Schulman's salary, repeatedly verified that those statements were true. Defs.' 56.1 Stmt., ECF No. 106-2, ¶¶ 56, 154-59 (Willliams took part in pay equity review and decision); Pl.'s 56.1 Resp., ECF No. 122, ¶ 219; Baran Decl., Ex. 3, PL-00319 (verifying accuracy of statements).

Moreover, Zoetis admits that "Plaintiff and Drs. Ehrhart and Jennings shared a core set of responsibilities." Defs.' 56.1 Resp., ECF No. 119-1, ¶ 31. Their manager, Dr. Gardiner, testified that Drs. Schulman, Ehrhart, and Jennings had the same duties in 2021. Pl.'s SUMF ¶ 31. He identified no differences between the work that Drs. Jennings and Schulman did in 2020 or 2021, or that Drs. Ehrhart and Schulman did in 2021. Pl.'s 56.1 Resp. ¶ 111.

Furthermore, in responding to Dr. Schulman's 56.1 Statement, Zoetis once again did not deny that Drs. Ehrhart and Jennings' jobs required equal skill, effort, and responsibility, and were performed under similar working conditions to Dr. Schulman's. Defs.' 56.1 Resp. ¶¶ 32-33, 35-36. Although it argues that whether Drs. Ehrhart, Jennings, and Schulman did substantially similar work is a legal conclusion and so did not admit or deny those statements, *id*., "whether the work performed by

[the plaintiff] and her male comparator was substantially equal, i.e., whether the jobs to be compared have a common core of tasks, is purely a question of fact." *Brinkley-Obu v. Hughes Training, Inc*., 36 F.3d 336, 350 (4th Cir. 1994). As Zoetis failed to deny these facts, they may "be deemed undisputed for purposes of the summary judgment motion." L. Civ. R. 56.1(a); *see EMA Fin., LLC v. AppTech Corp*., No. 21-CV-06049 (LJL), 2022 WL 4237144, at *1 n.2 (S.D.N.Y. Sept. 13, 2022).

Despite its admissions and this uncontroverted evidence, Zoetis argues that it only learned through discovery that it paid Drs. Schulman, Ehrhart, and Jennings differently because they did not do equal work. *See* Defs.' Opp., ECF No. 119, at 5 (arguing the verified facts in the position statement should be disregarded because "[a]t the time the position statement was submitted," it "did not have the benefit of discovery" into its own employees' duties). This is a post hoc attempt to manufacture a basis for a pay disparity that no witness has ever suggested was due to differing duties at Zoetis. No evidence supports it.[4]

Drs. Jennings and Schulman both worked on standard operating procedures. Pl.'s 56.1 Resp. ¶¶ 60, 166, 220. Dr. Gardiner thought Dr. Ehrhart may have helped with some histology lab oversight in 2020, but was unsure, *id*. ¶ 204; even Zoetis

[4] Zoetis misleadingly claims that Dr. Schulman "testified that while the Comparators had the same job title as [her], they had additional responsibilities." Defs.' Opp. 6. In reality, she testified that they did the same work for Zoetis. Pl.'s SUMF ¶¶ 30, 34. She said she was sure they had had responsibilities *at Ethos* beyond reading cases, Pl.'s 56.1 Resp. ¶ 163—but that isn't the job at issue.

does not argue that this counted as an extra duty. Dr. Ehrhart continued to do research with Ethos, but no manager identified it as a duty of his; it did not factor into his pay at Zoetis; and Dr. Schulman also did research while at Zoetis. *Id*. ¶¶ 165, 204, 221. Reading cases from Ethos clinics was not a different duty; it was part of their shared duty of reading cases. Dr. Schulman's duties also included providing second opinions on difficult cases. Pl.'s SUMF ¶ 45; Pl.'s 56.1 Resp. ¶ 60; Cino Cert., Ex. E, Gardiner Dep. 60:18-63:22. In short, as their manager testified, Drs. Schulman, Ehrhart, and Jennings had the same duties in 2021, and identical or substantially identical duties in 2020. Pl.'s SUMF ¶ 31.

B. Zoetis cannot state an affirmative defense, as "grandfathering" is simply a prior pay defense by another name.

There is no genuine dispute of facts regarding Zoetis's affirmative defense under the EPA, and its stated defense fails as a matter of law for three reasons. First, prior pay is not a "factor other than sex," 29 U.S.C. § 206(d)(1), because it can incorporate and perpetuate sex discrimination, both as a matter of law and a factual matter. And there is no dispute that Zoetis's actions here were in fact based on prior pay, because "grandfathering" is in fact a prior pay defense, as Zoetis's own cases show. Second, the "factor other than sex" must be job-related—meaning based on differences in job performance or qualifications—and Zoetis has previously rightly conceded it was not. Finally, Zoetis has no lawful explanation for the entire disparity—as it would have to—as it admittedly hired Dr. Schulman at $125,000 to

save the company money, which is not a "factor other than sex" that justifies a pay gap under the EPA. *Corning Glass Works v. Brennan*, 417 U.S. 188, 205 (1974).

There is no genuine dispute regarding the reasons for the salary differential. Zoetis maintains that it paid Drs. Ehrhart and Jennings, and the rest of the pathologists from Ethos, their prior salaries to retain them. Defs.' Br., ECF No. 106-1, at 3, 14, 32-33. It admits Dr. Schulman's salary was set at just $125,000 to save the company money. Defs.' 56.1 Resp. ¶ 26. Moreover, Zoetis cannot show—as a factual matter—that sex was not a factor in the disparity because as Plaintiff's expert testified, "[w]omen receive lower wages on average than comparably qualified and performing men," so the "use of prior salary history to set starting salary results in wage discrimination by gender." Pl.'s SUMF ¶¶ 48, 50.[5]

Zoetis's prior-salary defense fails as a matter of law, as Zoetis indisputably paid its pathologists based on their prior salaries. It claims its defense should be analyzed as "grandfathering," Defs.' Opp. 7-16, not "prior pay"—seemingly to distance itself from the Third Circuit's decision in *Greater Philadelphia Chamber*

[5] Zoetis claims these opinions of Dr. Madden's are "factually unsupported expert opinions and/or expert opinions that merely announce legal conclusions" but does not deny them. Defs.' 56.1 Resp. ¶¶ 48, 50. In fact, Dr. Madden's expert opinions are extensively researched and based on factual evidence about the gender pay gap (as detailed in her declaration) and are admissible at trial and at summary judgment. *See Wyeth v. Abbott Labs*, 720 F.3d 1380, 1384–85 (Fed. Cir. 2013) (accepting as true expert's opinions on matters within their expertise for purposes of summary judgment). As Zoetis does not deny them, the Court may deem these facts admitted.

of Commerce v. City of Phila., 949 F.3d 116, 148 (3d Cir. 2020) approving the Ninth Circuit's holding in *Rizo v. Yovino*, 950 F.3d 1217, 1220–21 (9th Cir. 2020), that prior salary is not a "factor other than sex."[6] But its "grandfathering" cases, Defs.' Opp. 12-15, make clear that an employer's decision to match prior pay is, *ipso facto*, setting pay based on prior salary. *See Arthur v. Coll. of St. Benedict*, 174 F. Supp. 2d 968, 977 (D. Minn. 2001) (holding defense "which provides a better analytic by which to consider grandfathering" is "'previous employer salary'").[7] Although it resists the framing, Zoetis undisputedly made the "decision to not reduce the salaries of the legacy employees," *i.e.*, to pay them their prior salaries. Defs.' Opp. 11.[8]

Prior pay is not a "factor other than sex" under the EPA. As explained in Dr. Schulman's opposition brief, Zoetis's handful of out-of-circuit cases holding that

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[6] Per *Rizo*, the EPA does not bar employers from inquiring into prior pay; it "prevents employers from relying on prior pay to defeat EPA claims." 950 F.3d at 1231.

[7] *See also Wachter-Young v. Ohio Cas. Grp.*, 236 F. Supp. 2d 1157, 1164 (D. Or. 2002) (following now-overruled Ninth Circuit precedent that said EPA "does not prohibit use of prior salary"); *Russell v. Placeware, Inc.*, No. CIV. 03-836-MO, 2004 WL 2359971, at *13 (D. Or. Oct. 15, 2004) (same); *Hubers v. Gannett Co.*, No. 16 C 10041, 2019 WL 1112259, at *4 (N.D. Ill. Mar. 11, 2019) (following Seventh Circuit precedent "that prior wages are a valid 'factor other than sex'").

[8] Zoetis's contention that it "inherited" the pay of legacy lab employees rather than "set" their pay is a distinction without a difference. Neither "set" nor "inherit" are statutory terms; the relevant issue is what salaries Zoetis actually paid. *See* 29 U.S.C. § 206(d)(1). Moreover, Zoetis made several pay-setting decisions for pathologists, including deciding what pay structure to use, transitioning legacy ZNLabs pathologists off a case-based structure, and matching prior pay. Defs.' SOMF ¶¶ 70-99; Pl.'s SUMF ¶¶ 62-69. Finally, Zoetis HR determined the pay range for Dr. Schulman. Pl.'s SUMF ¶¶ 22-24 & 69; Pl.'s Resp. to Defs.' Supp. Stmts. of Fact ¶ 18 (Winder provided HR services for Zoetis Reference Labs until November 2020).

prior salary is a "factor other than sex" cannot be squared with the EPA's text and purpose, the Supreme Court's interpretation of the EPA, or the Third Circuit's endorsement of *Rizo* in *Greater Philadelphia*. Pl.'s Opp., ECF No. 125 at 9-14. Given all that authority, Zoetis understandably does not argue that *Rizo* was wrong that prior pay is not a "factor other than sex," or that the Third Circuit was wrong to embrace *Rizo*. Because the disparity here is due, at least in part, to Zoetis paying Drs. Ehrhart and Jennings their prior salaries, and prior pay is not an affirmative defense, Zoetis cannot make out a defense to Plaintiff's EPA claim.

Zoetis also cannot establish an affirmative defense because the disparity is not job-related. It does not rebut Dr. Schulman's point that, when read "holistic[ally]" as statutes must be, *Monzon v. De La Roca*, 910 F.3d 92, 102 (3d Cir. 2018), the plain text of the EPA's final defense is connected to and informed by the first three job-related defenses. The first three factors are job-related—a fact Zoetis does not contest. The "factor other than sex" defense therefore also encompasses only job-related factors. *See Rizo*, 950 F.3d at 1224; Pl.'s Br., ECF No. 110,16-17.

Zoetis responds that the EPA is not ambiguous, addressing only a different issue of whether the "any factor" language in the statute can actually mean *any* factor. According to Zoetis, the Court need not look to the canons of *ejusdem generis* and *noscitur a sociis*. Defs.' Opp. 16; Pl.'s Br.17-19. But that does not rebut the plain-text argument above regarding the interpretation of the four affirmative

defense factors. And as to the meaning of "any," if the statute is, as here, capable of two or more plain-text interpretations, resort to canons of construction is required. *Monzon*, 910 F.3d at 102. As *Rizo* explains, the plain text of the EPA's fourth defense should be understood to refer only to job-related factors. *Rizo*, 950 F.3d at 1224. If, as Zoetis argues, it is capable of another interpretation, resort to *ejusdem generis*, *noscitur a sociis*, interpretive regulations, statutory purpose, and legislative history is necessary to disambiguate it. All of these show that the final defense refers only to job-related factors. *See* Pl.'s Br. 16-20; *Rizo*, 950 F.3d at 1224-27.

As Zoetis previously conceded, the disparity here was not job-related. Pl.'s SUMF ¶¶ 46-47; Baran Decl., Ex. 3, PL-00309-12. To be job-related, it would have to "be rooted in legitimate differences in responsibilities or qualifications for specific jobs." *Rizo*, 950 F.3d at 1226. But Zoetis did not pay Drs. Ehrhart or Jennings more because of duties or qualifications Dr. Schulman didn't have. *See* Pl.'s SUMF ¶¶ 30-47; Defs.' 56.1 Stmt. ¶¶ 97, 126; Pl.'s 56.1 Resp. ¶¶ 126, 170, 172, 204-18.

Finally, Zoetis cannot establish an affirmative defense because it cannot show that a factor other than sex motivated the entire disparity—because it has no legitimate explanation for why Dr. Schulman's salary was so low. Pl.'s Br. 20-21. It has no lawful explanation for why Zoetis HR Business Partner Kelly Winder, who knew the Ethos salaries, told Dr. Gardiner she "would support going up to 130 but would not go above that" for Dr. Schulman; why Dr. Gardiner, who also knew the

Ethos salaries, offered her just $125,000; or why Zoetis decided not to raise Dr. Schulman's salary while hiring less-experienced male pathologists at higher salaries.[9] Pl.'s SUMF ¶¶ 24-26, 76-94; Pl.'s 56.1 Resp. ¶¶ 15, 139; Defs.' 56.1 Resp. ¶ 57. Its decision to selectively save money on Dr. Schulman's salary "may be understandable as a matter of economics," but it "became illegal once Congress enacted into law the principle of equal pay for equal work." *Corning Glass*, 417 U.S. at 205. Zoetis can establish no affirmative defense.[10]

II. Zoetis Violated the NJLAD Section 12(a) and NJEPA, and New Jersey Law Applies Based on the Undisputed Facts.

Zoetis violated the NJLAD Section 12(a) and the NJEPA for all the reasons laid out in Dr. Schulman's moving and opposition briefs. *See* Pl.'s Br. 21–25; Pl.'s Opp. 21–25. While Zoetis continues to object to the application of New Jersey law, it has not shown that there is an actual conflict between New Hampshire and New Jersey laws—so New Jersey law applies. *See* Pl.'s Opp. 26-27; Pl.'s Br. 25–31.

[9] Zoetis implies it is a defense that it hired some other women at higher salaries while refusing to increase Dr. Schulman's. It is not. *See Cox v. Off. of Att'y Ethics*, No. CIV. 05-1608 (AET), 2006 WL 3833470, at *5 (D.N.J. Dec. 29, 2006) ("under the EPA, a plaintiff does not have to prove a pattern of discrimination, or that an employer paid all women less than all men").

[10] Zoetis at times quarrels with whether Dr. Schulman was the "[m]ost experienced pathologist" and "every bit as experienced, senior, and qualified as Dr. Ehrhart, if not more so," Pl.'s SUMF ¶ 43, but does not argue experience justified paying any pathologist more than her. Pl.'s Resp. to Defs.' Supp. Stmts. of Fact ¶ 43.

Even if it had shown a conflict, New Jersey law still applies. As explained in Dr. Schulman's preceding briefs, the undisputed facts show that Zoetis's conduct at issue was centered in New Jersey—and in no part took place in New Hampshire. *See* Pl.'s SUMF ¶¶ 101–115; Defs.' 56.1 Resp. ¶¶ 101–115. Zoetis Reference Labs and Zoetis Inc. are headquartered in New Jersey. Defs.' 56.1 Resp. ¶ 101. And, for example, there is no genuine dispute that Kelly Winder told Dr. Gardiner, from New Jersey, that she "would support going up to 130 but would not go above that" for Dr. Schulman's salary; or that Zoetis's Chief HR Officer, a Zoetis Inc. executive, Roxanne Lagano, made the ultimate decision not to raise Dr. Schulman's pay from New Jersey. Pl.'s SUMF ¶¶ 19, 24, 77, 79, 107; Defs.' 56.1 Resp. ¶¶ 19, 24, 77, 79, 107. There are no connections between this case and New Hampshire beyond Dr. Schulman's residence. *See* Pl.'s SUMF ¶¶ 101–115; Defs.' 56.1 Resp. ¶¶ 101–115. New Jersey has the most significant relationship to the claims, so its law applies.

III. Zoetis Inc. and Zoetis Reference Labs Were a Single Employer of Dr. Schulman or, in the Alternative, Joint Employers.

As argued in Dr. Schulman's moving papers, there is no genuine dispute that Zoetis Inc. is liable for all violations here under both a single- and joint-employer analysis. It admitted, in a position statement, that Zoetis Inc. was Dr. Schulman's employer. Pl.'s Br. 32; Baran Decl., Ex. 3, PL-00299-300. Rightly so, as the undisputed facts show that Zoetis Inc. and Zoetis Reference Labs are a single employer or, alternatively, joint employers under Title VII, NJLAD, and the EPA.

Zoetis's attempt in a footnote to disclaim its prior admission that Zoetis Inc. was Plaintiff's employer, Def.'s Opp. 32 n.20, because it was "drafted and submitted prior to Defendants conducting any discovery," is unavailing. Zoetis did not need discovery from Dr. Schulman to determine if it was her employer, a matter entirely within its own knowledge. This admission is enough, on its own, to establish that Zoetis Inc. was her employer. *See Koger v. Robert Half Int'l*, No. 2:05CV850, 2007 WL 712225, at *8 (W.D. Pa. Mar. 7, 2007), *aff'd*, 247 F. App'x 349 (3d Cir. 2007) (party could not retreat from concession to avoid summary judgment).

Even if the Court looked past this key admission, the undisputed facts show that Zoetis Inc. and Zoetis Reference Labs were a single employer of Dr. Schulman. Zoetis Inc. and Zoetis Reference Labs, its wholly owned subsidiary, were a single employer because of their interconnectedness: most significantly, they share ownership, management, HR, and business functions. Pl.'s Br. 32-36.

They are also a single employer because Zoetis Inc. directed Zoetis Reference Labs' discriminatory acts. Zoetis argues that Dr. Schulman "does not point to any evidence that Zoetis Inc. directed any alleged discriminatory act." Defs.' Opp. 32. In fact, her motion points to many such facts, including that (1) Zoetis Inc. admitted that the "practice of not reducing the compensation of employees acquired through Zoetis' acquisition of other companies" was its own; (2) Zoetis Inc. admitted that it "made the decision about what to pay" Drs. Ehrhart and Jennings when each

"became an employee of Zoetis"; (3) Zoetis Inc. admitted that it investigated the pay disparity when Dr. Schulman complained and decided not to raise her pay; and (4) Roxanne Lagano was a member of the Zoetis Inc. executive team and made the decision not to raise Dr. Schulman's pay. Pl.'s Br. 34. Zoetis does not even deny that Zoetis Inc. was part of the decision not to raise Dr. Schulman's pay; it just says the decision "involved multiple individuals." Defs.' Opp. 32.

Alternatively, as Dr. Schulman argues in her brief, Pl.'s Br. 36-40, the undisputed facts also show that Zoetis Reference Labs and Zoetis Inc. jointly employed her. Among other things, Zoetis Inc. admitted to hiring her, Pl.'s SUMF ¶¶ 117-18, and has not put forward sufficient evidence to allow a reasonable jury to discard that admission. Zoetis Inc. also had authority to fire Dr. Schulman: it even entered into a contract with her agreeing that she was "an employee at will" of Zoetis Inc. and "subject to termination at any time." *Id*. ¶ 118. The undisputed facts show both Zoetis Reference Labs and Zoetis Inc. employed Dr. Schulman.

IV. Zoetis Has Employed Drs. Schulman, Ehrhart, and Jennings Since It Hired Dr. Schulman in September 2020.

Zoetis claims it is not liable for the period from Dr. Schulman's hiring in September 2020 to January 1, 2021. *See, e.g.*, Defs.' Opp. 35-36. Similarly, it claims Drs. Schulman, Ehrhart and Jennings "were not colleagues, and therefore, not Comparators" until January 1, 2021, so it is not liable for that period. *Id*. at 35.

This cannot be squared with Zoetis's representations to this Court in motions to dismiss that "in August 2020, Zoetis Reference Labs offered Plaintiff . . . a full-time position" and "as noted in the offer letter, Plaintiff was offered and accepted employment with Zoetis Reference Labs," ECF No. 14-1 at 4 & n.3; ECF No. 62-1 at 4 & n.3, and "in September 2020, Zoetis Reference Labs hired Plaintiff," ECF No. 14-3 at 1,[11] or its concession that Dr. Schulman "was offered employment by Zoetis in August 2020" and "began full-time employment with Zoetis on September 16, 2020," Pl.'s SUMF ¶ 117 & Baran Decl., Ex. 3, at PL-00299-300. Factual admissions in pleadings and briefs are binding. *Koger*, 2007 WL 712225, at *7 ("the doctrine of judicial admissions binds a party who makes factually-based concessions in pleadings, briefs or other documents filed during the course of litigation.") (citing *Berckeley Investment Grp. Ltd. v. Colkitt*, 455 F.3d 195, 211 n.20 (3d Cir. 2006)).

Even if its binding admissions were *not* enough, Zoetis also ignores the undisputed material facts, including that Dr. Schulman's August 2020 offer letter offered her a position with Zoetis Reference Labs; and on August 31, 2020, she entered into an agreement governing her "employment by" "Zoetis, Inc." Pl.'s SUMF ¶¶ 27, 118; Defs.' 56.1 Resp. ¶¶ 27, 118.

[11] Similarly, Zoetis represented to the Court in moving to dismiss that Dr. Gardiner had been "employed by Zoetis Reference Labs LLC . . . since the company [he] co-founded, ZNLabs, was acquired by Zoetis Inc. in 2019." ECF No. 14-3 at 1.

Finally, Zoetis's claim that Dr. Schulman was not a colleague of Drs. Jennings and Ehrhart in fall 2020 cannot be squared with its admission that "in connection with its acquisition of Ethos, Zoetis hired two Ethos employees as full-time veterinary pathologists" – Drs. Ehrhart and Jennings – and that "[a]s of September 16, 2020, Zoetis paid Dr. Ehrhart $230,000" and "Dr. Jennings $195,000." Pl.'s SUMF ¶¶ 15-17; Baran Decl., Ex. 3, PL-00300-309. Those admissions were correct. An August 2020 organizational chart, when Dr. Schulman was a contractor being hired as an employee, shows Drs. Jennings, Ehrhart, and Schulman *already* on the same team under Dr. Gardiner. Baran 3d Decl., Ex. 48, D-2557; *see also id.*, Ex. 49, D-2675 (same). And an October 2020 spreadsheet shows all three under the same "Business Unit Group," the "Reference Labs." Baran 3d Decl., Ex. 50, D-2629.

There is no genuine dispute that Zoetis hired Plaintiff in August 2020, employed her from September 16, 2020 to December 31, 2020 on a team with Drs. Jennings and Ehrhart, and is liable for all violations during that time period.[12]

* * *

Zoetis's efforts to evade accountability for paying men and women unequally for equal work should end here. Dr. Schulman's motion for summary judgment should be granted in full.

[12] She is also entitled to liquidated damages under the EPA and NJEPA for the entirety of her employment with Zoetis. *See* Pl.'s Br. 40-50.

Dated: New York, NY
May 31, 2024

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