

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FRANCES YVONNE SCHULMAN,

Plaintiff,

v.

ZOETIS, INC.,

Defenda

nt.

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

ORAL ARGUMENT
REQUESTED

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT
ZOETIS INC.'S MOTION TO DISMISS**

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PRELIMINARY STATEMENT

Dr. Frances Yvonne Schulman (“Plaintiff” or “Dr. Schulman”) brings this case seeking to remedy a gross pay inequity perpetrated by a New Jersey-headquartered employer, Zoetis, Inc.¹ (“Defendant” or “Zoetis”), which employed her as a remote worker. Zoetis paid Dr. Schulman, a veterinary pathologist and a woman, approximately \$105,000 less than one veterinary pathologist who is a man with six fewer years of experience and \$70,000 less than another veterinary pathologist who is a man with nineteen fewer years of experience. Dr. Schulman seeks to vindicate her rights under both federal and New Jersey laws prohibiting such discrimination.

Dr Schulman’s state law claims are consistent with the State Legislature’s broad interest in rooting out pay discrimination at New Jersey-headquartered businesses, expressed in both the New Jersey Law Against Discrimination (“NJLAD”) as a whole, as well as in the explicit text of the New Jersey Equal Pay

¹ Defendant Zoetis, Inc., has not moved to dismiss any of Dr. Schulman’s claims on the basis that it is not a proper party but has merely suggested, in footnotes, that it is not a proper party. *See* Def.’s Mem. at 1 nn. 1 & 3. Dr. Schulman maintains that Zoetis, Inc. is properly named as a party here, in part because Defendant already admitted, in a position statement filed with the local civil rights agency, that it was correctly named in Dr. Schulman’s Charge of Discrimination. Nevertheless, should facts emerge in discovery which suggest that Zoetis Reference Labs, LLC is a proper party, Dr. Schulman will seek to add that entity as an additional party. And as evidenced by Defendant’s motion papers, Zoetis Reference Labs, LLC, has received notice of this action.

Act (“NJEPA”). The NJEPA, which is a part of the NJLAD,² specifically makes it an unlawful employment practice for an NJLAD-subject employer to pay “*any of its employees who is a member of a protected class* at a rate of compensation, including benefits, 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) (emphasis added). The NJEPA also explicitly requires that comparisons of pay be made based on all employees of a business, regardless of where in the country those employees are based. *Id.*

Dr. Schulman has pleaded facts sufficient to show that an NJLAD-subject employer, the New Jersey-headquartered Zoetis, Inc., paid her, one of its employees who is a member of a protected class due to her gender, at a rate less than men who were doing the same jobs, and appears to have made these

² The primary operative provision of the NJEPA is N.J.S.A. § 10:5-12(t), which is contained within the full 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 provision, N.J.S.A. § 10:5-12(a)—which, as relevant here, makes it an “unlawful employment practice” “[f]or an employer, because of the . . . sex . . . of any individual . . . to discriminate against such individual in compensation or in terms, conditions, or privileges of employment”

For the purposes of clarity, “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)” as used in this brief refers specifically to N.J.S.A. § 10:5-12(a). By contrast, “NJEPA” as used in this brief refers specifically to N.J.S.A. § 10:5-12(t).

Of course, both Section 12(a) and the NJEPA incorporate definitions contained in N.J.S.A. § 10:5-5, as explained below.

discriminatory pay decisions in New Jersey, in violation of the NJEPA and Section 12(a).

Accordingly, and for the reasons explained below, Dr. Schulman has alleged facts that sufficiently demonstrate that she has plausible claims for relief under the NJEPA and Section 12(a). As such, Defendant's motion to dismiss Dr. Schulman's NJEPA and Section 12(a) Causes of Action should be denied in its entirety.

FACTUAL & PROCEDURAL BACKGROUND

Plaintiff Frances Yvonne Schulman is a highly credentialed veterinary pathologist who has worked in the field of veterinary pathology since 1988 and has been board-certified since 1992. Compl. ¶¶ 15–21.

After completing degrees at Harvard and Tufts and working in other roles in the field, *id.* ¶¶ 15–20, Dr. Schulman began working remotely for Defendant Zoetis, Inc., within a division called Zoetis Reference Labs, on September 16, 2020. *Id.* ¶¶ 13, 36. Defendant was and is headquartered in New Jersey, *id.* ¶ 33, and its upper management executives were and still are also based in New Jersey. These executives made personnel and pay decisions, including about Dr. Schulman's compensation, centrally. *Id.* ¶¶ 35, 44–45.

Because Dr. Schulman was a remote worker who worked from her home in New Hampshire, Defendant shipped her work equipment from New Jersey, sending her a computer, monitors, a microphone for dictation, a camera, and other

computer accessories, which she used to carry out her work for the company. *Id.* ¶ 34.

Dr. Schulman worked on a team with other remotely-based veterinary pathologists, who also worked from home offices or other locations throughout the country. *Id.* ¶ 36. Her job, and that of other pathologists on the Zoetis Reference Labs team, was to evaluate biopsy specimens that were initially processed at a central laboratory in Louisville, Kentucky. *Id.* ¶ 37. These specimens were then assigned to different pathologists, who would analyze them in conjunction with other case material. *Id.* The pathologists would then write reports, including histologic descriptions, diagnoses, pictures, and case comments, to help the submitting veterinarians identify the type and cause of animals' illnesses and prognoses, as well as to guide treatments. *Id.*

Plaintiff and the team of other veterinary pathologists all worked under the same Zoetis Vice President, Richard Goldstein, who was based in New Jersey. *Id.* ¶¶ 35, 39. As a senior member of the team with deep experience in the field, Dr. Schulman was consulted daily by other remote pathologists on the team. *Id.* ¶ 40.

In early 2021, Dr. Schulman learned that her salary was significantly lower than at least two men who were also employed in the same job: Dr. Eugene "EJ" Ehrhart and Dr. Samuel Jennings. *Id.* ¶ 46. Like Dr. Schulman, Dr. Jennings and Dr. Ehrhart were each assigned approximately 25 cases per day; they performed

the same job functions as Dr. Schulman. *Id.* ¶ 47. Dr. Schulman discovered that her base salary of \$125,000 was approximately \$105,000 less than that of Dr. Ehrhart, whom Zoetis paid approximately \$230,000 annually as his salary, plus benefits, for his position as a veterinary pathologist, and was \$70,000 less than that of Dr. Jennings, whom Zoetis paid \$195,000 annually as his salary, plus benefits, for his position as a full-time veterinary pathologist. *Id.* ¶¶ 48, 60. Zoetis paid Dr. Schulman less than these men despite the fact that she performed the same job functions, *id.* ¶¶ 52, 64, had six more years of experience as a board-certified veterinary pathologist than Dr. Ehrhart, *id.* ¶ 49, and had nineteen more years of experience than Dr. Jennings, *id.* ¶ 61.

After Dr. Schulman discovered this pay inequity, she complained about it to Richard Goldstein on or around March 15, 2021. (Again, Dr. Goldstein was based in New Jersey. *Id.* ¶¶ 71, 35.) Dr. Goldstein in subsequent emails indicated that he was speaking with Human Resources, and that there were meetings held to discuss the issue of Dr. Schulman's pay. *Id.* ¶ 72. Finally, in mid-May 2021, Dr. Schulman was informed by Human Resources that Zoetis considered her salary to be a "fair market price" for her job, and the company would not correct or raise her salary. *Id.* ¶ 76. The final decision not to raise Dr. Schulman's pay was made by upper management executives at Zoetis, including Dr. Goldstein, Lisa Lee, and Abhay

Nayak. *Id.* ¶ 77. These executives, who had the final say on decisions regarding salaries for Zoetis Reference Labs employees, were all based in New Jersey. *Id.*

Dr. Schulman ultimately left Zoetis because of the continued pay inequity and sex discrimination she faced there, and Zoetis’s refusal to do anything to correct it. *Id.* ¶¶ 81–82. Dr. Schulman’s last day with Zoetis was November 4, 2021. *Id.* ¶ 83.

On March 14, 2022, Dr. Schulman sued Defendant in this District, alleging violations of the federal Equal Pay Act, *id.* ¶¶ 88–93, Title VII of the Civil Rights Act of 1964, as amended, *id.* ¶¶ 94–99, the New Jersey Equal Pay Act, *id.* ¶¶ 100–105, and the New Jersey Law Against Discrimination, *id.* ¶¶ 106–111.

On June 6, 2022, Defendant filed the instant partial Motion to Dismiss, seeking to dismiss both Dr. Schulman’s NJEPA claim and her Section 12(a) claim. *See* Def.’s Mot. to Dismiss, ECF No. 14.

LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiffs, a court finds that plaintiff’s claims lack facial plausibility.” *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011). While “a formulaic recitation of the elements of a cause of action” will not survive a motion to dismiss, a complaint does not need to

contain detailed factual allegations; it must simply plead “enough facts to state a claim of relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Doe v. Boys & Girls Club of Clifton*, No. 20-03008 (JXN) (ESK), 2021 WL 3400862, at *2 (D.N.J. Aug. 4, 2021) (“[A] complaint will survive a motion to dismiss if it provides a sufficient factual basis such that it states a facially plausible claim for relief.”) (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)).

In deciding a motion to dismiss, the district court “generally may not consider matters extraneous to the pleadings” unless the documents are “integral to or explicitly relied upon in the complaint.” *Red Hawk Fire & Sec., LLC v. Siemens Indus. Inc.*, 449 F.Supp.3d 449, 461 (D.N.J. 2020) (quoting *In re Burlington Coat Factory Sec. Litig.*, 113 F.3d 1410, 1426 (3d Cir. 1997)).

ARGUMENT

I. Dr. Schulman Has Plausibly Alleged that New Jersey Law Applies to Her Claims.

At the motion to dismiss stage, a plaintiff is required only to allege “some facts to show that he or she is entitled, as a threshold matter, to the protection of the NJLAD.” *Donovan v. W.R. Berkley Corp.*, 566 F. Supp. 3d 224, 233 (D.N.J. 2021).

Here, because Dr. Schulman has alleged sufficient facts showing her entitlement to the protection of both the NJEPA and Section 12(a), her New Jersey claims should be allowed to proceed.

First, as explained in Part I.A below, Defendant is incorrect that the NJLAD as a whole does not extend to out-of-state employees of New Jersey employers. *See* Def.'s Mem. at 9. The statute is not so limited and, as the state's intermediate appellate court recently confirmed, it can apply to remote workers like Dr. Schulman under "appropriate circumstances." *See Calabotta v. Phibro Animal Health Corp*, 460 N.J. Super. 38, 45 (App. Div. 2019).

Second, as explained in Part I.B below, Dr. Schulman has alleged sufficient facts to show that these are the kinds of "appropriate circumstances" in which both the NJEPA and Section 12(a) can apply to out-of-state workers of New Jersey employers. With respect to Dr. Schulman's NJEPA claim, the plain text of the statute extends its protections to any employee of New Jersey employers, regardless of where the employees are geographically located, and thus permits her to bring this claim. With respect to both the NJEPA Section 12(a), Plaintiff has alleged sufficient facts showing that New Jersey has the most significant relationship to her claims.

In sum, and for the reasons explained below, Dr. Schulman has plausibly alleged facts sufficient to support her Third Cause of Action under the NJEPA, and

her Fourth Cause of Action under Section 12(a), and thus Defendant's motion should be denied.

A. The New Jersey Legislature Intended for the New Jersey Law Against Discrimination to be Applied Broadly.

Defendant wrongly argues that the NJLAD does not extend to out-of-state employees of New Jersey employers. The opposite in fact is true. The NJLAD was enacted as broad remedial legislation with the goal of “nothing less than the eradication of the cancer of discrimination.” *Meade v. Twp. of Livingston*, 249 N.J. 310, 327 (2021) (quoting *Fuchilla v. Layman*, 109 N.J. 319, 334 (1988)). The New Jersey Supreme Court has recognized that the NJLAD evinces the “clear public policy of this state” to “abolish discrimination in the workplace.” *Catalane v. Gilian Instrument Corp.*, 271 N.J. Super. 476, 491 (App. Div. 1994). As such, it is well settled that the NJLAD “should be liberally construed,” as “the more broadly [the LAD] is applied the greater its antidiscriminatory impact.” *Nini v. Mercer Cnty. Comm'ty. Coll.*, 202 N.J. 98, 115 (2010) (internal citations omitted); *see also DeJoy v. Comcast Cable Comms., Inc.*, 941 F. Supp. 468, 476 (D.N.J. 1996) (“The New Jersey Legislature declared its intent the NJLAD be interpreted liberally.”) (citing N.J.S.A. § 10:5-3). These concerns trigger “special rules of interpretation” requiring courts to recognize the NJLAD's broad public policy goals when faced with interpretive questions about the statute. *Smith v. Millville Rescue Squad*, 225 N.J. 373, 390 (2016) (quoting *Nini*, 202 N.J. at 108).

As New Jersey’s intermediate appellate court has confirmed, the State Legislature, in passing the NJLAD, did *not* intend to “limit the statute’s protections to job applicants who live in New Jersey, or to those employees who perform all of their employment functions in New Jersey.” *Calabotta*, 460 N.J. Super. at 64. Instead, the NJLAD “can extend in appropriate circumstances to plaintiffs who reside or work outside of this state.” *Id.* at 45. In *Calabotta* the Appellate Division recognized that an out-of-state employee who applied for a transfer to a position in New Jersey and was discriminated against by a New Jersey-based employer could maintain failure-to-promote and wrongful dismissal claims under the NJLAD. *Id.* at 72–75. The *Calabotta* court found that the NJLAD’s “broad and strong language” permitted the plaintiff to bring claims under the statute, even though he lived and worked out-of-state. *Id.* at 61. Federal courts in this District have endorsed *Calabotta*’s interpretation of the NJLAD, holding that in the absence of “any New Jersey Supreme Court authority that suggests it would construe the NJLAD differently,” the New Jersey Supreme Court “would adopt *Calabotta*’s reasoning.” *Rampersad v. Dow Jones & Co., Inc.*, No. 19-11733 (MAS)(TJB), 2020 WL 529212, at *3 (D.N.J. Jan. 31, 2020); *see also Donovan*, 566 F. Supp. 3d at 230–33 (applying *Calabotta* framework).

The plain text of the NJLAD statute was the basis of the *Calabotta* court’s analysis. The NJLAD states clearly that “[t]he Legislature intends that such

damages be available to *all persons* protected by this act and that this act shall be *liberally construed* in combination with other protections available under the laws of this State.” N.J.S.A. § 10:5-3 (emphasis added). Moreover, the NJLAD broadly defines the term “person” without limiting it to New Jersey residents or in-state employees. N.J.S.A. § 10:5-5(a) (“‘Person’ includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.”); *see also Calabotta*, 460 N.J. Super. at 61. The NJLAD’s definition of “employee” is similarly expansive and is not limited to New Jersey residents or in-state employees; the only exclusion is for individuals employed in domestic service. N.J.S.A. § 10:5-5(f) (“‘Employee’ does not include any individual employed in the domestic service of any person.”). Additionally, “employer” is defined broadly to include all persons not excluded by another subsection of the NJLAD. N.J.S.A. § 10:5-5(e) (“‘Employer’ includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of P.L.1945, c. 169 (C.10:5-1 et seq.), and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies.”).

Defendant recognized the importance of *Calabotta* in its brief, even though it attempted to minimize the case by claiming, in a footnote, that its facts are materially different and thus inapplicable to Dr. Schulman’s claims. *See* Def.’s

Mem. at 11 n.6. But *Calabotta*'s holding and framework apply beyond the precise circumstances presented in that case. *Calabotta* emphasized that, with respect to claims under the NJLAD for which legislative intent was not clear, a choice-of-law analysis must be conducted that is fact-intensive and considers all the relevant factors. See *Calabotta*, 460 N.J. Super. at 73–74. Moreover, the *Calabotta* court explicitly acknowledged that if a “plaintiff can establish that the company’s [discriminatory] decision . . . was made or centered in New Jersey, that would be a counterweight on the New Jersey side of the scale,” and that “[m]any other facts and factors may also bear upon the calculus.” *Id.* at 73. And the *Calabotta* court expressly recognized that its holding—which was notably adopted over seven months *before* the onset of the COVID-19 pandemic in the United States and the changes it has sparked in many workplaces—had “practical significance” due to the changed nature of work in our world, “as employees and their supervisors more often perform their work tasks remotely in multiple locations rather than in a traditional common physical location” and “[t]he ‘office’ where an individual works” has become “an elusive or non-existent concept these days.” *Id.* at 74.

B. Dr. Schulman Has Sufficiently Alleged that She Is Entitled to the Protections of the NJEPA and Section 12(a).

In determining whether Dr. Schulman has alleged sufficient facts to show that she is entitled, as a threshold matter, to the protections of the NJEPA and Section 12(a), the Court must first determine whether an actual conflict exists

between these New Jersey laws and the laws of any other interested states. *Calabotta*, 460 N.J. Super. at 57. If no conflict exists, then the law of the forum state applies automatically. *Id.* at 54.

If a conflict may exist—which Plaintiff accepts, for purposes of this motion, that there appears to be here³—then the Court “must consider whether New Jersey public policy requires the application of [New Jersey] substantive law...regardless of the interest of another state” as demonstrated by “an explicit statutory directive or by a process of interpretation and construction.” *Rampersad*, 2020 WL 529212, at *3 (quoting *Calabotta*, 460 N.J. Super. at 55). Where statutory text and/or intent is clear, that is the end of the analysis, and New Jersey law applies. But where no such directive exists, a court must determine whether a plaintiff has plausibly alleged that New Jersey has the most significant relationship to her claims, in light of the factors set forth in the Restatement (Second) of Conflict of Laws. *Id.*;

³ Plaintiff concedes that, for purposes of this motion, there appears to be an actual conflict between the NJEPA and New Hampshire’s analogous cause of action, the New Hampshire Equal Pay Act, N.H. RSA § 275:37, and between the NJLAD and New Hampshire’s Law Against Discrimination, N.H. RSA § 354-A:1 *et seq.* Nevertheless, Plaintiff disputes certain aspects of Defendant’s analysis as to that conflict. For example, Defendant is mistaken that attorney’s fees are unavailable in civil actions brought under the New Hampshire Law Against Discrimination. *See* N.H. RSA § 354-A:21-a(I) (“A court in cases so removed may award all damages and relief which could have been awarded by the commission”); *E.D. Sweet, Inc. v. N.H. Comm’n for Human Rights*, 124 N.H. 404 (1983) (finding New Hampshire Commission for Human Rights has authority to award reasonable attorney’s fees).

Restatement (Second) of Conflict of Laws §§ 6, 145-46 (Am L. Inst. 1971) (hereafter “Second Restatement”).

As explained in Part I.B.1 below, the statutory text of the NJEPA permits Dr. Schulman to bring her claim. No further choice of law analysis is needed to determine whether she has plausibly alleged that she is entitled to the protection of the NJEPA.

As explained in Part I.B.2 below, with respect to both her claims under the NJEPA⁴ and Section 12(a), Dr. Schulman has alleged sufficient facts showing that New Jersey has the most significant relationship to her claims.

1. The New Jersey Legislature Specifically Extended the New Jersey Equal Pay Act’s Protection to “Any” of the Protected Employees of NJLAD-Subject Employers.

The statutory text of the NJEPA is clear that *any* employees of an employer subject to the NJLAD who experience unlawful pay inequity are protected by the statute. Under the NJEPA, it is an “unlawful employment practice” “[f]or an employer to pay *any of its employees who is a member of a protected class* at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and

⁴ The most-significant-relationship allegations represent a second, independent ground for allowing Dr. Schulman’s NJEPA claim to proceed.

responsibility.” N.J.S.A. § 10:5-12(t) (emphasis added). A member of a protected class is defined broadly as “*an employee* who has one or more characteristics” listed in Section 12(a). *Id.* Again, the NJLAD’s definitions of “employee” and “employer”—and thus the NJEPA’s use of these terms—are expansive. *See supra* Part I.A; N.J.S.A. § 10:5-5(f); N.J.S.A. § 10:5-5(e). Dr. Schulman, as an employee of Zoetis, is thus protected by the NJEPA.

The NJEPA’s statutory text further indicates its broad application beyond the borders of New Jersey in its instruction that inequitable pay rates are to be evaluated on a workforce-wide basis. Under the NJEPA, “Comparisons of wage rates shall be based on wage rates in *all* of an employer’s operations or facilities.” N.J.S.A. § 10:5-12(t) (emphasis added). This provision is not limited to an employer’s operations or facilities in New Jersey, and therefore further indicates the Legislature’s intent to root out pay inequity across all of an NJLAD-subject employer’s operations. The wider scope of the NJEPA is thus consistent with its specific purpose: to establish equal pay for “substantially similar work” as a wage floor for all employees of NJLAD-subject employers. *Id.*

Under *Calabotta*, the statutory text is the end of the analysis. No choice-of-law analysis is necessary with respect to Dr. Schulman’s NJEPA claim. *See*

Calabotta, 460 N.J. Super. at 57–58 (choice of law analysis only necessary where legislative intent is unclear).⁵

Dr. Schulman has pleaded facts sufficient to show that an NJLAD-subject employer, the New Jersey-headquartered Zoetis, Inc. (Compl. ¶¶ 22, 23), paid her, one of its employees who is a member of a protected class due to her gender (*id.* ¶¶ 12, 102), at a rate less than men who were doing the same jobs (*id.* ¶¶ 2, 3, 46–70), and appear to have made these discriminatory pay decisions in New Jersey (*see id.* ¶¶ 35, 45, 77), in violation of the NJEPA, *id.* ¶¶ 100–105. Accordingly, Dr. Schulman has plausibly alleged that she is entitled to relief under the NJEPA, and Defendant’s motion to dismiss her NJEPA claim must be denied.

2. Dr. Schulman Has Plausibly Alleged that New Jersey Has the Most Significant Relationship to Her Claims Under the NJEPA and Section 12(a).

Dr. Schulman has alleged sufficient facts, under this state’s choice-of-law analysis, to allege that New Jersey has the most significant relationship to both her claim under the NJEPA (to the extent that the Court deems such allegations

⁵ Defendant makes much of a state Division on Civil Rights guidance document on the NJEPA, Def.’s Mem. at 13–15, but a Frequently Asked Questions document from an administrative agency—which only addresses one scenario where the NJEPA can apply to a worker who lives out-of-state—does not trump the clear text of the statute. Moreover, the cases relied upon in Defendant’s brief for the proposition that “the LAD does not extend to employment outside of New Jersey” all pre-date *Calabotta*, *see* Def.’s Mem. at 9–11, and thus no longer constitute persuasive authority as to how New Jersey’s highest court would decide these issues.

necessary, per Part I.B.1 above),⁶ and her claim under Section 12(a). She has shown that “she is entitled, as a threshold matter, to the protection of the NJLAD” for both her claims. *Donovan*, 556 F. Supp. 3d at 233.

“[A] court presiding over an employment discrimination claim must apply New Jersey substantive law if New Jersey has the ‘most significant relationship’ to the matter in light of the factors set forth in the Restatement (Second) on Conflict of Laws.” *Rampersad.*, 2020 WL 529212 at *3. Sections 6, 145, and 146 of the Second Restatement provide the relevant factors to guide the court’s analysis. *Calabotta*, 460 N.J. Super at 55–56. Importantly, however, at this point in the litigation, a plaintiff “need not allege chapter and verse of every choice-of-law factor, but rather, sufficient facts for the court to determine, at the dismissal stage, that the plaintiff may seek relief under the NJLAD.” *Donovan*, 566 F. Supp. 3d at 233.

The Second Restatement’s most-significant-relationship test is a “highly fact-specific inquiry that depends on the weighing of at least eleven factors.”

⁶ It is Dr. Schulman’s position, as discussed above, that a choice-of-laws analysis is not necessary with respect to her NJEPA claim, her Third Cause of Action, because the statutory text is clear that the Legislature intended the NJEPA’s protections to extend to “any” of an NJLAD-subject employer’s employees who are members of a protected class. Nevertheless, to the extent the Court disagrees, the allegations identified below support a finding under a choice-of-laws analysis that Plaintiff has sufficiently alleged that New Jersey has the most significant relationship to her NJEPA claim, and thus represent a second, independent ground for allowing Dr. Schulman’s NJEPA claim to proceed.

Rampersad., 2020 WL 529212, at *4. Applying the Second Restatement factors, Dr. Schulman’s NJEPA and Section 12(a) claims must be allowed to proceed because she has presented facts that, taken as true, plausibly allege that New Jersey has the most significant relationship to the discrimination that occurred.

Section 146 of the Second Restatement begins with the principle that, in ordinary, clear-cut tort cases, “the local law of the state where the injury occurred” applies “unless, with respect to the particular issue, some other state has a more significant relationship” to the matter. Second Restatement § 146 (emphasis added); *see also In re Accutane Litig.*, 235 N.J. 229, 259 (2018) (“That presumption may be overcome if ‘some other state has a more significant relationship with the parties and the occurrence’[.]”) (citation omitted).

Section 145 of the Second Restatement sets forth four significant state contacts in the context of this analysis:

- (a) the place where the injury occurred;
- (b) the place where the conduct causing the injury occurred;
- (c) the domicil[e], residence, nationality, place of incorporation and place of business of the parties; and
- (d) the place where the relationship, if any, between the parties is centered.

Second Restatement § 145.

Section 6 provides several additional considerations:

- (a) the needs of the interstate and international systems;
- (b) the relevant policies of the forum;
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue;

- (d) the protection of justified expectations;
- (e) the basic policies underlying the particular field of law;
- (f) certainty, predictability and uniformity of result; and
- (g) ease in the determination and application of the law to be applied.

Id. § 6(2).

In arguing for dismissal, Defendant places undue emphasis on where it believes the injury took place in this case—which they claim was New Hampshire, which it describes as the place in which she was employed. But Dr. Schulman reported to a virtual office and worked on a virtual team while working for her New Jersey-based employer. While Plaintiff may have *physically* been located in New Hampshire, describing New Hampshire as the place where her employment was “based” or as the place in which she was “employed” is a pre-Internet anachronism.

Moreover, it is not at all clear where the “place of injury” is when a New Jersey-based employer discriminates against a remote employee, particularly when the Complaint indicates that the company’s discriminatory pay decisions were likely made in New Jersey by executives employed at the company’s headquarters. In *Calabotta*, the court found that the “place of injury” could not be determined at the motion to dismiss stage, even though the plaintiff resided out of state when the alleged discrimination occurred. *Calabotta*, 460 N.J. Super. at 71. The *Calabotta* plaintiff’s factual allegations were sufficient to survive a motion to dismiss where his complaint stated that “the place where the discriminatory denial of the

promotion occurred was New Jersey, although that locale is not conceded by defendants.” *Id.*

Similarly, here, Dr. Schulman has alleged that the place where the discriminatory pay decisions were made appears to have been New Jersey, where Zoetis’s headquarters are located and where Dr. Schulman understands the company’s executive offices and decisionmakers are located. *See* Compl. ¶ 33 (“Zoetis has its headquarters in New Jersey.”); *id.* ¶ 35 (“[D]ecisions about Plaintiff’s compensation were made centrally by Zoetis upper management executives, including Richard Goldstein, Lisa Lee, and Abhay Nayak, who were based in New Jersey.”); *id.* ¶ 41 (“Dr. Schulman’s pay was not determined by her manager Dr. David Gardiner, but was determined centrally by Zoetis management.”); *id.* ¶ 45 (“Dr. Schulman’s pay...was determined and/or approved centrally by Zoetis management including Richard Goldstein, Lisa Lee, and Abhay Nayak, who were based in New Jersey.”); *id.* ¶ 77 (“These executives, who have the final say on decisions regarding salaries for Zoetis Reference Lab[s], were based in New Jersey.”).

Defendant obfuscates these pertinent facts and glosses over many important pieces of information Dr. Schulman raises in her Complaint that must factor into the Court’s choice-of-law analysis. Defendant does not deny that Dr. Schulman raised the issue of her pay inequity to Vice President Richard Goldstein, who acted

as an intermediary between her and HR executives and told her that meetings were taking place to discuss her compensation. *See id.* ¶¶ 71–77. Dr. Schulman states in her Complaint that Richard Goldstein was based in Zoetis’s New Jersey headquarters, *see id.* ¶¶ 35, 77, and that Zoetis’s executive offices are located in Parsippany, New Jersey, *see id.* ¶ 33. These facts are more than sufficient to plausibly allege that the core conduct described in the Complaint—discriminatory pay decisions made by Defendant that constitute “unlawful employment practices” under the NJEPA and Section 12(a)—occurred in New Jersey.

Defendant’s scant response to these allegations underscore the weakness of its position, as it fails to account for the facts presented in the Complaint that: Richard Goldstein was in communication with Dr. Schulman and participated in the decision-making about her internal complaint, *id.* ¶¶ 71–74; Richard Goldstein was based in New Jersey, *id.* ¶ 77; other executives were involved in making decisions regarding Dr. Schulman’s compensation and complaint, including Lisa Lee and Abhay Nayak, who were also based in New Jersey, *id.* ¶¶ 35, 45, 77; and at least some of the compensation determinations appear to have occurred at the executive offices in New Jersey, *see id.*

At this point in the litigation, prior to discovery, Dr. Schulman has presented her allegations based on all of the information provided and available to her. Defendant’s bald assertion that some of these allegations are “speculative”—

presumably because they are made on information and belief—holds little weight in deciding this motion, especially as it fails to clarify or dispute any of the facts Dr. Schulman presents about these New Jersey connections, even though it undoubtedly knows the answer to these questions. “The *Twombly* plausibility standard . . . does not prevent a plaintiff from pleading facts alleged upon information and belief where the facts are peculiarly within the possession and control of the defendant or where the belief is based on factual information that makes the inference of culpability plausible.” *Greene v. BMW of N. Am.*, Civ. No. 2:11-04330, 2014 WL 47940, at *3 (D.N.J. Jan. 7, 2014) (quoting *Arista Records LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)); see also CHARLES A. WRIGHT AND ARTHUR R. MILLER, 5 FED. PRAC. & PROC. CIV. § 1224 (4th ed. 2022) (“Although there is no express authorization in the federal rules for pleading on information and belief, allegations in this form have been held to be permissible, even after the *Twombly* and *Iqbal* decisions.”). At minimum, Dr. Schulman is entitled to discovery on these issues. See Part II, *infra*.

Even assuming *arguendo* that the place of Dr. Schulman’s injury was New Hampshire, this fact is far from dispositive in the choice-of-law analysis.⁷ In either

⁷ Defendant’s invocation of judicial estoppel to argue that Dr. Schulman should not be allowed to bring claims under the NJLAD solely because she filed a charge of discrimination with the New Hampshire Commission for Human Rights is completely without merit. Def. Mot. at 12. The Third Circuit applies judicial

case, the Restatement factors nonetheless require consideration of “the place where the *conduct causing the injury* occurred[.]” Second Restatement § 145(b) (emphasis added). *See Calabotta*, 460 N.J. Super. at 73 (a showing that the “company’s decision to fire him was made or centered in New Jersey...would be a counterweight on the New Jersey side of the scale.”). While the place of injury may play a more important role in cases involving “personal injuries” or “injuries to tangible things” where “the injury occurred in a single, clearly ascertainable state,” this factor is less important in other contexts like this one. Second Restatement § 145(2) cmt. (e). The place of injury “will not play an important role...when the place of injury can be said to be fortuitous or when for other reasons it bears little relation to the occurrence and the parties with respect to the particular issue[.]” *Id.*

Dr. Schulman only worked from New Hampshire because that is where she happened to live when she was hired by Zoetis, which employs pathologists who

estoppel only in very narrow, specific circumstances that are not present here, where: (1) the party took “irreconcilably inconsistent” positions; (2) the party changed their position in bad faith or “in a culpable manner threatening to the court’s authority”; and (3) “the use of judicial estoppel is tailored to address the affront to the court’s authority and integrity.” *Montrose Med. Grp. Participating Sav. Plan v. Bulger*, 243 F.3d 773, 777-78 (3d Cir. 2001). There is nothing “irreconcilably inconsistent” about Dr. Schulman’s conduct in filing a nonjudicial complaint at her local antidiscrimination agency and then later determining that she had claims under New Jersey law. *Id.* The Third Circuit’s high bar for applying judicial estoppel is therefore inapplicable here.

work remotely across the country. Zoetis does not operate an office in New Hampshire and, had Dr. Schulman resided in any other state, Zoetis would most likely have still hired her and subjected her to the same discriminatory pay. Where she was located when she received her paychecks therefore “bears little relation to the occurrence” here and can be properly considered “fortuitous” because no matter where she resided she would have still suffered the exact same injury giving rise to this lawsuit. *See id.* When the place of injury is unclear or unimportant, like here, “the place where the defendant’s conduct occurred will usually be given particular weight in determining the state of the applicable law.” *Id.*; *see 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)).

Dr. Schulman has also alleged other facts that, taken as true, indicate that her employment relationship was centered in New Jersey, even as a remote worker. Second Restatement § 145 (d) (“the place where the relationship, if any, between the parties is centered”). Most significantly, Zoetis has its headquarters, principal place of business, and executive offices in New Jersey. Compl. ¶ 33. Meanwhile her colleagues, who she collaborated with regularly, were located remotely in locations throughout the country. *Id.* ¶¶ 36, 40, 41. Lab samples that she and her

colleagues worked on were processed and uploaded in Kentucky. *Id.* ¶ 37. But, as discussed above, Plaintiff and her colleagues all worked under the same Vice President, Richard Goldstein, who was based in New Jersey. *Id.* ¶¶ 39, 45. And she and her colleagues were subject to personnel and pay decisions determined and/or approved centrally by Zoetis management, who were based in New Jersey. *Id.* ¶¶ 44–45.

Dr. Schulman also plausibly alleges that she “worked using equipment provided by Zoetis, including a computer, monitors, a microphone for dictation, a camera, and other computer accessories,” that was shipped from New Jersey. *Id.* ¶ 34. *See Trevejo v. Legal Cost Control, Inc.*, No. A-1377-16T4, 2018 WL 1569640, at *2 (App. Div. Apr. 2, 2018) (allowing plaintiff’s NJLAD claims to move forward to discovery where the plaintiff alleged she was telecommuting from Massachusetts to New Jersey “through the use of the software connecting her, via a company supplied computer, to [the company’s] network and her use of a company supplied telephone to conduct telephone conferences with other [company] employees”).

Again, Dr. Schulman reported to a virtual office and worked on a virtual team. While Plaintiff may have *physically* been located in New Hampshire while working for her New Jersey-based employer, describing New Hampshire as the place where her employment was “based” or as the place in which she “worked”

does not reflect the reality of the situation. *See generally Calabotta*, 460 N.J. Super. at 74 (recognizing that the “office” where an individual works can be an elusive or non-existent concept these days,” and that “[w]ork is now conducted often via digital means transcending jurisdictional boundaries.”). To the extent that the team’s work could be said to be connected to any one state, it was most plausibly New Jersey, insofar as the team’s pay and personnel decisions were made by management in New Jersey.⁸

Moreover, applying the NJEPA and Section 12(a) to Dr. Schulman’s case would certainly help further the statute’s broad remedial goals of eradicating discrimination and deterring New Jersey companies from discriminating against their employees—a factor that weighs strongly in favor of applying the NJLAD here. Second Restatement § 6(b) (“the relevant policies of the forum”); *Id* § 6(e)

⁸ Defendant’s argument that several other states besides New Jersey and New Hampshire may be involved in this dispute underscores the need, at minimum, for factual development through discovery. Its conclusion that the involvement of other states, including Virginia, Kentucky, and Utah, must mean the employment relationship was “clearly centered in New Hampshire” makes little sense. Def. Mot. at 27. If anything, the fact that employees work from different locations across the country weighs in favor of uniformly applying New Jersey law instead of subjecting Zoetis to the law of whichever state the employee happens to reside in. *See Calabotta*, 460 N.J. Super. at 71 (holding that applying the NJLAD to employment decisions made in New Jersey, regardless of the plaintiff’s residence, best promoted “certainty, predictability, and uniformity”); Second Restatement § 6(2)(f) (requiring courts to consider “certainty, predictability and uniformity of result”); *id.* § 6(2)(g) (“ease in the determination and application of the law to be applied”).

(“the basic policies underlying the particular field of law”). *See* Part I.A., *supra*; *Meade*, 249 N.J. at 327 (NJLAD was enacted with the goal of “nothing less than the eradication of the cancer of discrimination”) (citations omitted); *Nini*, 202 N.J. at 108–09 (“[T]he more broadly [the NJLAD] is applied the greater its antidiscriminatory impact.”) (citations omitted). As the Second Restatement makes clear, “[i]f 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.” Second Restatement § 6 cmt. e.

Taken together, the well-pleaded facts Dr. Schulman alleges in her Complaint, assumed to be true for the purposes of this motion, plausibly allege that New Jersey has the strongest connection to this case.⁹ The highly fact-dependent inquiry required by New Jersey’s choice-of-law rules and the Second Restatement factors belies Defendant’s contention that the state of Dr. Schulman’s residence bars her from the NJLAD’s coverage.

⁹ Again, on a motion to dismiss, the Court need not definitively conclude that New Jersey has the strongest connection to this case; the Court need only find that Plaintiff has alleged sufficient facts to show to *plausibly allege* that New Jersey has the strongest connection to this case. *See Donovan*, 566 F. Supp. 3d at 233 (“[T]o survive a motion to dismiss under Rule 12(b)(6), an out-of-state plaintiff must *allege* that New Jersey has the most significant relationship to his claim [T]he plaintiff need not allege chapter and verse of every choice-of-law factor, but rather, sufficient facts for the court to determine, at the dismissal stage, that the plaintiff may seek relief under the NJLAD. To be clear, this does not preclude a defendant from disputing these allegations at a later stage of the litigation.”) (emphasis added) (citations omitted).

As noted above, Dr. Schulman has pleaded facts sufficient to show that an NJLAD-subject employer, the New Jersey-headquartered Zoetis, Inc. (Compl. ¶¶ 22, 23), paid her, one of its employees who is a member of a protected class due to her gender (*id.* ¶¶ 12, 102), at a rate less than men who were doing the same jobs (*id.* ¶¶ 2, 3, 46–70), and appear to have made these discriminatory pay decisions in New Jersey (*see id.* ¶¶ 35, 45, 77). Dr. Schulman has therefore sufficiently alleged that Defendant violated the NJEPA, *id.* ¶¶ 100–105, and that Defendant discriminated against her with respect to her compensation based on her sex, in violation of Section 12(a). *Id.* ¶¶ 106–111.

Accordingly, Dr. Schulman has plausibly alleged that she is entitled to relief under the NJEPA and Section 12(a), and Defendant’s motion to dismiss Dr. Schulman’s NJEPA and Section 12(a) Causes of Action must be denied.

II. Further Discovery Is Needed to Definitively Resolve the Choice-of-Law Question.

Defendant’s motion should also be denied because no discovery has yet taken place on the questions at issue, making it inappropriate to dismiss Dr. Schulman’s New Jersey claims at this early stage of the litigation. Even if the Court is not yet convinced that Dr. Schulman has alleged sufficient facts to *definitively* show she is entitled to relief under the NJEPA and Section 12(a), the Court should conclude that she has alleged sufficient facts to plausibly show that entitlement to relief, and thus allow Dr. Schulman to proceed to discovery and

determine this question at a later time on a more fully developed record. “Because [the choice-of-law] analysis is fact intensive, it can be inappropriate or impossible for a court to conduct that analysis at the motion to dismiss stage when little or no discovery has taken place.” *Buckley v. Power Windows & Sidings, Inc.*, Civ. A. No. 09-3162 (JAP), 2010 WL 3981978, at *3 (D. N.J. 2010); *see also Rampersad*, 2020 WL 529212, at *4 (finding that a “more fully developed factual record is necessary to determine whether the *Calabotta* choice-of-law principles justify applying the NJLAD to Plaintiff’s claims.”).

Discovery will undoubtedly reveal information to clarify any outstanding questions, as Defendant is in the sole possession of evidence pertinent to this analysis, including information about precisely how and where the discrimination Dr. Schulman alleges occurred. Defendant should not be allowed to simultaneously claim that Dr. Schulman’s claims are too “speculative” while also escaping discovery that could easily prove the veracity of her allegations.

Accordingly, even if the Court believes that additional facts are necessary for definitively deciding the choice-of-law issue, Dr. Schulman should be permitted to discover and present those additional facts at a later point in this litigation. Thus, the Court should deny this motion to dismiss and permit full discovery on the issue.

III. Defendant’s Motion Improperly Relies on Facts and Documents Beyond the Complaint, Which the Court Should Ignore.

Defendant's improper reliance on facts and documents beyond the Complaint is yet another reason that Defendant's motion to dismiss must be denied. A district court ruling on a motion to dismiss "generally may not consider matters extraneous to the pleadings" unless the documents are "*integral to or explicitly relied upon* in the complaint." *Red Hawk Fire & Sec.*, 449 F. Supp. 3d at 461 (citing *In re Burlington*, 114 F.3d at 1426) (emphasis added). The affidavits and other documents Defendant attempts to offer this Court do not fall within any of these limited categories and should not be considered on a motion to dismiss.

Consideration of the statements made in the two declarations that Defendant submitted would be wholly improper, as those affidavits are obviously neither referenced nor relied upon in the Complaint, nor are they integral to Plaintiff's claims. *See Schmidt v. Skolas*, 770 F.3d 241, 250 (3d Cir. 2014) ("[A]n affidavit from a defendant may not be considered in deciding a motion to dismiss.") (citation omitted). Defendant improperly relies on these declarations to bolster its flawed motion.¹⁰ *See* Def.'s Mem. at 4–6, 11, 23–28.

¹⁰ Defendant cites *Bausch Health Ir. Ltd. v. Mylan Labs.*, No. 21-10403 (SRC)(JSA), 2022 WL 683084, (D.N.J. Mar. 8, 2022), implying in a parenthetical that the court in that case considered a "certification submitted by the defendant in support of a motion to dismiss because it was 'integral to' and 'explicitly relied upon' in the plaintiff's complaint." Def.'s Mem. at 4 n.4. But the "certifications" considered by the court in that case were a "paragraph IV certification" submitted pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV), and a "paragraph III certification"

Defendant attempts to use these improper declarations to put documents before the Court that are neither referenced nor relied upon in the Complaint, and which are not integral to Plaintiff's claims. For example, the declaration of Ivelisse Williams is used to introduce employment forms which are then cited as facts in Defendant's memorandum—despite the fact that neither of these documents are relied upon nor referenced in the Complaint. *See* Cert. of I. Williams, ECF No. 14-2, Exs. A & B.

Similarly, Defendant uses the improper declaration of David Gardiner to introduce an offer letter, *see* Cert. of D. Gardiner, ECF No. 14-3, Ex. A, despite the fact that Dr. Schulman's Complaint neither "explicitly relied" on the offer letter, nor was the offer letter "integral to" the Complaint. *In Re Burlington*, 114 F.3d at 1426. Defendant's only argument on this point (in a footnote) is the incorrect assertion that the Complaint references the offer letter in "paragraphs 31-33." Def.'s Mem. at 4 n.4. But the offer letter submitted by Defendant simply serves as evidence of some of the terms of Plaintiff's job offer. Paragraphs 31 to 33 of the Complaint provide only general information about the job offer extended to Plaintiff and does not even mention a letter. *See* Compl. ¶¶ 31–33. Additionally,

submitted pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(III), that the plaintiffs alleged were submitted as part of an Food and Drug Administration drug approval process—not declarations from witnesses characterized as "certifications"—and which it appears the plaintiffs in that case did not attach to their Complaint. *See Bausch Health Ir. Ltd.*, 2022 WL 683084, at *1–2 & n.2.

that Paragraph 32 of the Complaint highlights terms that were not stated in the offer letter further shows that Plaintiff was not describing the specific letter Defendant sent her, but the terms of the overall job offer. *See* Compl. ¶ 32. Plaintiff’s disclosure of general contextual information regarding her employment offer should therefore not be construed as “unambiguous reference” to her offer letter from Zoetis.¹¹ *See In Re Burlington*, 114 F.3d at 1426.

While the offer letter submitted by Defendant is not dispositive of any of the issue this motion presents, Dr. Schulman must be provided the opportunity to conduct discovery regarding this letter before this Court may consider any limited group of select and self-serving extraneous documents.¹² Such documentation should be produced and evaluated during discovery, not offered improperly on a

¹¹ Nor could the offer letter be said to be “integral to” Dr. Schulman’s claims—i.e., Plaintiff’s claims are not “based on” the offer letter. *See In re Burlington*, 114 F.3d at 1426 (finding plaintiff’s claims unquestionably arose from data in a document it failed to attach or explicitly cite). Dr. Schulman’s claims are based on Defendant’s decision to pay her less than men doing the same job, in violation of federal and New Jersey law, not the offer letter.

¹² Even if the Court were to conclude that Dr. Schulman’s Complaint does reference the offer letter, that document is not dispositive of the choice-of-law analysis for Plaintiff’s New Jersey claims. In addition, this motion to dismiss should not be converted to a motion for summary judgment in light of the very early stage of this case, as there has been no initial conference and no discovery, and thus Dr. Schulman would have no opportunity to access documents or testimony she may need to rebut Defendant’s position. *See Kurdyla v. Pinkerton Sec.*, 197 F.R.D. 128, 131 (D.N.J. 2000) (“A court should not convert a motion...when little or no discovery has occurred.”).

motion to dismiss, where Plaintiff has not had an opportunity to depose the declarants or discover countering evidence. Fundamental fairness requires that this motion not be decided on the basis of one-sided documents.

For all of these reasons, the Court should exclude all additional materials submitted by Defendant, including the declarations and the exhibits attached to them, in considering this motion.

CONCLUSION

For the reasons set forth above, the Court should deny Defendant's motion to dismiss Dr. Schulman's New Jersey claims in its entirety.

Dated: Red Bank, New Jersey
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