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MELISSA MATHEWS,

Plaintiff,

v.

CITY OF BAYONNE; JAMES M. DAVIS,
individually and in his official capacity;
MUNICIPAL EMPLOYEES 1-5, fictitious
names whose actual identities are unknown at this
time; ABC PUBLIC ENTITIES 6-10, fictitious
names whose actual identities are unknown at this
time,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO: ESX-L-8672-25

Civil Part

DEFENDANTS' BRIEF IN SUPPORT OF IN LIMINE MOTIONS

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Of Counsel and On the Brief

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PRELIMINARY STATEMENT

This is an employment action brought by Melissa Mathews (“Plaintiff” or “Mathews”) against the City of Bayonne (the “City”) and former Mayor James Davis (collectively “Defendants”). Plaintiff is the former Business Administrator for the City. She resigned her employment with the City effective June 30, 2022 after learning she would not be reappointed as Business Administrator for the Mayor’s third term which commenced on July 1, 2022. At that time, she also declined to be returned to her previous civil service role. Defendants maintain, and the evidence at trial will abundantly demonstrate, that Plaintiff was not reappointed because she actively opposed and campaigned against the Mayor during the 2022 election and vocally championed his opponent.

In her Amended Complaint (“AC”), Plaintiff asserted claims against the City, Mayor Davis, Law Director John F. Coffey II (“Coffey”), and City Attorney Donna Russo (“Russo”) under the New Jersey Law Against Discrimination (“LAD”) alleging a gender-based hostile work environment (Count I) and LAD retaliation (Count II) for reporting same; under the Conscientious Employee Protection Act (“CEPA”) alleging retaliation and constructive discharge (Count III) for reporting perceived wrongs; and separately asserted a common law *Pierce* claim (Count IV). At the close of discovery, Defendants filed a motion for summary judgment seeking to dismiss the Complaint with prejudice. Defendants’ motion was granted in part, dismissing all claims except Count I (LAD Hostile Work Environment) against the City and Count III (CEPA Retaliation) against the City and Mayor Davis. Additionally, the Court dismissed Defendants Coffey and Russo, as well as the claim for punitive damages and constructive discharge in their entirety with prejudice.

In anticipation of the trial in this matter scheduled to commence on February 9, 2026, Defendants now move to bar certain irrelevant and/or unduly prejudicial evidence and testimony by way of ten (10) in-limine motions. For the reasons set forth below, Defendants urge the Court to grant these motions in their entirety.

LEGAL STANDARD

According to the rules of court, “a motion in limine is defined as an application returnable at trial for a ruling regarding the conduct of the trial, including admissibility of evidence, which motion, if granted, would not have a dispositive impact on a litigant’s case. R. 4:25-8; also see Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461, 470 (App. Div. 2015)(noting that a motion in limine is “[a] pretrial request that certain inadmissible evidence not be referred to or offered at trial”) (citation omitted). Motions in limine “foster[] efficiency for the court and for counsel by preventing needless argument at trial.” Ebenhoech v. Koppers Indus., Inc., 239 F. Supp. 2d 455, 461 (D.N.J. 2002) (citation omitted). They are used to clarify and eliminate issues as a matter of law before trial. Berrie v. Berrie, 252 N.J. Super. 635, 641 (App. Div. 1991); Sculler v. Sculler, 348 N.J. Super. 374, 376 (Ch. Div. 2001).

LEGAL ARGUMENT

FIRST MOTION IN LIMINE

PLAINTIFF MUST BE BARRED FROM INTRODUCING EVIDENCE OR TESTIMONY ABOUT MAYOR DAVIS WHICH TOUCH ON IRRELEVANT TOPICS EXPLORED DURING HIS AND OTHERS' DEPOSITIONS, INCLUDING QUESTIONS ABOUT DRINKING, DRUG USE, AND SEXUAL RELATIONS, WHICH SERVE NO PURPOSE OTHER THAN TO HARASS AND/OR EMBARRASS THE MAYOR AND TARNISH HIS IMAGE BEFORE THE JURY

All relevant evidence is admissible at trial, except as otherwise provided in the Rules of Evidence. N.J.R.E. 402. Relevant evidence means “evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the [causes of] action.” N.J.R.E. 401. Relevant evidence may be excluded “if its probative value is substantially outweighed by the risk of either a) undue prejudice, confusion of issues, or misleading the jury; or b) undue delay, waste of time, or needless presentation of cumulative evidence.” N.J.R.E. 403.

In Count I of the AC (LAD Hostile Work Environment), Plaintiff alleges that she was subjected to a gender-based hostile work environment by the former Director of Municipal Services, Timothy Boyle (“Boyle”), as well as the former Assistant Business Administrator, Mark Bonamo. Exhibit¹ 1 (AC at ¶¶ 11-13), neither of whom is a named Defendant in this Action. In fact, the only Defendant against whom this Count survived is the City. Exhibit 2 (12/2/24 Summary Judgment Order, granting dismissal of Count I as to Davis, Russo, and Coffey).

In Count III of the AC (CEPA Retaliation), surviving only against the City and Mayor Davis, Plaintiff alleges that Defendants stripped her of responsibilities, and ultimately, did not reappoint her as Business Administrator in retaliation for voicing “objections to actions taken by

¹ All exhibits referenced in the brief are attached to the Certification of Boris Shapiro, Esq. dated July 2, 2026.

employees, servants, agents and/or administrators of the [City], which actions Plaintiff reasonably believed were in violation of the [law].” Exhibit 1 (AC) at ¶ 32-33; Exhibit 2 (12/2/24 Summary Judgment Order, granting dismissal of Count III as to Russo and Coffey).

At the conclusion of Mayor Davis’s deposition, the following irrelevant and highly prejudicial questions were asked of the Mayor by Plaintiff’s counsel:

Q1: Mayor Davis, have you ever been given box seats to a New York Jets game by representatives of Suez?

A1: I don’t know.

Q2: Have you ever gone on vacation to Florida with a developer?

A2: No. Not that I remember.

Q3: Have you ever been caught using cocaine at the Vic Tavern?

A3: Never did drugs in my life.

Q4: Have you ever drank in the Mayor’s office during the Saint Patrick’s Day Parade?

A4: I may have.

Q5: Have you ever thrown a party at City Hall with alcohol?

A5: No.

Q6: Have you ever sent a picture of your genitalia to any City Hall employee?

A6: No, not that I remember. No.

Q7: Have you ever referred to any female employee of the City Bayonne as an old lady?

A7: Yes. As a joke, yes.

Q8: Have you ever told a female employee of the City of Bayonne that you would like to press up against her breasts?

A8: Absolutely not.

Exhibit 3 (Excerpts of Mayor Davis's 3/20/24 Deposition at 88:21-90:15)

Additionally, during Joseph Demarco's deposition, the following irrelevant and highly prejudicial questions were asked by Plaintiff's counsel about the Mayor:

Q9: Are you aware of rumors regarding Mayor Davis having an affair with an individual named Rose Martinez?

A9: I'm aware that some people stupidly believe that that occurred, yes.

Q10: Do you believe that Mayor Davis has a drinking problem?

A10: I don't have an opinion on it one way or the other.

Q11: Are you aware whether Mayor Davis had a relationship with a woman named Aneta Polujanska?

A11: I have no idea who Aneta Polujanska is.

Exhibit 4 (Excerpts of Joseph DeMarco's 5/17/24 Deposition at 70:23-73:11)

First and foremost, these topics of inquiry have absolutely no relevance to whether Boyle and Bonamo allegedly harassed Plaintiff on the basis of her gender, as alleged in Count I. They also have absolutely no relevance to whether she was allegedly stripped of her responsibilities and non-reappointed in retaliation for voicing objections to practices at City Hall which she reasonably believe constituted a violation of law, rule, regulation, or mandate of public policy, as alleged in Count III. In fact, Plaintiff does not, and has not ever, alleged that she voiced objections about any of the above alleged conduct or that same led to any adverse action or her non-reappointment, further buttressing Defendants' position that the line of inquiry is wholly irrelevant to her CEPA cause of action and would be sought to be introduced solely in an effort to harass and embarrass Defendant Davis and/or prejudice the jury against him. Thus, this highly prejudicial line of

questioning and/or any associated evidence which might be sought to be introduced is inadmissible under Rule 402. Moreover, even if the line of questioning was tangentially relevant to Plaintiff's causes of action (which it is not), it would nevertheless need to be barred from the proceedings as unduly prejudicial for the reasons set forth above (tarnishes the Mayor's image and assaults his character), rendering it inadmissible under Rule 403.

For the foregoing reasons, Defendants respectfully request that this Court enter an order barring Plaintiff from introducing evidence or soliciting testimony from any witness pertaining to the above eleven (11) lines of inquiry explored during Mayor Davis's and DeMarco's depositions.

SECOND MOTION IN LIMINE

PLAINTIFF MUST BE BARRED FROM INTRODUCING EVIDENCE OR TESTIMONY ABOUT ALLEGED TEXT MESSAGES EXCHANGED BY A GROUP OF INDIVIDUALS, OF WHICH MAYOR DAVIS WAS AN ALLEGED RECIPIENT, WHEREIN ALLEGEDLY INAPPROPRIATE MEMES WERE SHARED BY SOME MEMBERS.

During Joseph DeMarco's deposition, the following exchange took place between the deponent and counsel for the Plaintiff:

Q: Do you have any knowledge regarding group text messages involving city officials, including Mayor Davis that featured inappropriate language?

A: Yes.

Q: What's your knowledge?

A: I **think** there was a group of people that would text each other. I got included either inadvertently or unwittingly once or twice.

Q: Who are the individuals in this group?

A: I **believe** it was the Mayor, Junior Ferrante, Chief Weaver, the Fire Chief. It could have been one or two other people.

Q: Do you recall anything specifically said in those group text messages that was inappropriate?

A: I recall more memes or pictures or things of that nature.

Q: What types of memes and pictures were shared?

A: Could be something sexual with a woman, it could be something derogatory regarding ethnicity. I just remember receiving something usually associated with, like a holiday or something. So, it could have been, you know, nationality-related memes. Exhibit 4 (Excerpts of DeMarco's 5/17/24 Deposition at 69:23-70:22)(emphasis added).

As was the case with topics addressed within the first in limine motion, the alleged existence of this text message group and/or the alleged contents of the participants' text messages, bear no relevance to Plaintiff's claim that she was subjected to a gender based hostile work environment at City Hall by non-participants Boyle and Bonamo. Further, she did not have any firsthand knowledge about these alleged texts and there is no allegation that they had anything to do with her. The same is true concerning the relevance of Mr. DeMarco's testimony to Plaintiff's CEPA cause of action; that is, there is none. In short, Mr. DeMarco's testimony does not have a "tendency in reason to prove or disprove any fact of consequence to the determination of Plaintiff's cause of action," thereby rendering inadmissible under Rule 402. Instead, again, it would be interposed for no reason other than to harass, embarrass, and/or tarnish the reputation of the Mayor in the eyes of the jury, and/or the public, and has no place in this trial.

However, even if we were to assume, for the sake of argument, that Mr. DeMarco's testimony has some tangential relevance to Plaintiff's causes of action (which it does not), its probative value is substantially outweighed by undue prejudice to the City and Mayor Davis, as it will taint the City's image and besmirch Mayor Davis's character in the eyes of the jury. Introduction of his testimony would be especially prejudicial given that Mr. DeMarco's testimony was speculative at best and he admittedly could not say for sure that 1) there was a text message group; 2) that Mayor Davis was part of the group text; 3) whether Mayor Davis sent any memes; 4) the content of the memes and/or what was inappropriate about the memes sent by some of the

group members. In fact, according to the witness, he “just remember[ed] either receiving something usually associated with, like a holiday or something.” Exhibit 4 (Excerpts of DeMarco’s 5/17/24 Deposition at 69:23-70:22)(emphasis added). Given the witnesses’ hazy recollection of these alleged messages, and coupled with the undue prejudice it will cause to the Mayor and the City, it must be barred, even if tangentially relevant (which again it is not), under Rule 403.

THIRD MOTION IN LIMINE

PLAINTIFF MUST BE BARRED FROM INTRODUCING EVIDENCE OR TESTIMONY ABOUT IRRELEVANT AND UNDULY PREJUDICIAL DEPOSITION TESTIMONY CONCERNING MR. COFFEY’S DISCIPLINE AS AN ATTORNEY.

During Mr. Coffey’s deposition, the following exchange took place between the deponent and counsel for the Plaintiff:

Q: Have you ever been disciplined as an attorney from the Court?

A: Yes.

Q: How many times have you been disciplined?

A: I think it’s two times.

Q: When was the first time that you faced discipline?

A: I don’t recall. Early 90’s.

Q: What was the discipline for?

A: For not staying in contact with a client.

Q: What was the nature of the discipline?

A: I had to go to a CLE class.

Q: When was the second occasion that you were disciplined?

A: I think in 2010 was the actual finding, but it started in 2008.

Q: And why were you disciplined on that occasion?

A: Same type of thing. My mother had died, I had had a brain tumor, my dad was sick, and I wasn’t keeping in contact with clients.

Q: What type of discipline did you face for that?

A: It was an admonition.

Exhibit 5 (Excerpts of Jay Coffey's 3/13/24 Deposition at 10:9-11:13)(emphasis added).

Mr. Coffey's testimony concerning his discipline for failing to maintain contact with his clients does not prove or disprove any fact of consequence to the determination of Plaintiff's causes of action, and as such Plaintiff should be barred from eliciting this line of testimony pursuant to Rule 402 (relevance). Moreover, this line of questioning would not serve any purpose other than to harass the witness and to attempt to embarrass him and/or taint his image in the eyes of the jury, rendering it inadmissible pursuant to Rule 403 (unduly prejudicial).

FOURTH MOTION IN LIMINE

PLAINTIFF MUST BE BARRED FROM INTRODUCING IRRELEVANT AND UNDULY PREJUDICIAL EVIDENCE AND TESTIMONY FROM ANY WITNESS ABOUT MR. BOYLE, MR. BONAMO, OR MAYOR DAVIS MAKING DEROGATORY COMMENTS ABOUT HER OR ANY OTHER WOMAN, PROVIDED THOSE STATEMENTS WERE MADE OUTSIDE OF HER PRESENCE.

During the course of discovery, during various depositions, including that of the Plaintiff, Plaintiff's counsel inquired whether they had heard (or heard about) Mr. Bonamo, Mr. Boyle, and/or Mayor Davis use the words 'b*tch' or 'c*nt'. Some of the witnesses responded in the affirmative. However, it is undisputed, and Plaintiff admitted, that she did not hear Mr. Boyle, Mr. Bonamo, or Mayor Davis direct derogatory comments at her or any other woman, while in her presence. For example, the following exchange took place between counsel for Defendants and Plaintiff:

Q: Do you make a distinction between the "F" word and the "C" word; in other words, one is appropriate and one is inappropriate in the work place or are they both inappropriate in the workplace?

A: They might-they're probably both inappropriate in the workplace, but the "C" word in my opinion is much more derogatory. It's directly related to a gender, originally. I guess you could use it about anybody, but yes, I do make a distinction.

Q: Did you ever actually hear someone use the “C” word personally in the workplace?

A: **Personally, I did not hear it.** I’ve been told by multiple people about it.

Q: But you never personally heard anyone use that word?

A: No, no.

Exhibit 6 (Excerpts of Plaintiff’s 11/29/23 Deposition at 727:19-728:11)(emphasis added). In fact, Ms. Mathews did not learn that Mr. Boyle allegedly used the “C” word until after she left the employ of the City. Exhibit 7 (Excerpts of Dierdre Healy’s 12/9/23 Deposition at 123:1-8).

The law regarding the introduction of evidence and testimony of other employees using derogatory/offensive language outside the presence of the Plaintiff in a hostile work environment case is clear. The Appellate Division explained that, as noted by our Supreme Court, “**a hostile work environment cannot be based upon statements made outside the presence of a plaintiff.**” Shockley v. Coll of New Jersey, A-3212-10T4, 2012 WL 996621, *10 (N.J. Sup. Ct. App. Div. Marc. 27, 2012)(Exhibit 8) (emphasis added)(plaintiffs conceded that they never heard any racial slurs; this conduct was identified only through rumors) citing Cutler v. Dorn, 196 NJ 419, 430 (2008)(in hostile work environment cases, “the inquiry is whether a reasonable [woman] would consider the acts and **comments made to, or in the presence of, plaintiff** to be sufficiently severe or pervasive to alter the conditions of employment and create a hostile work environment.”)(emphasis added); see also, Godfrey v. Princeton Theological Seminary, 196 N.J. 178, 201 (2008) (“[t]o satisfy the severe-or-pervasive element of a hostile work environment claim, a plaintiff must marshal evidence of bad conduct of which **[he or] she has firsthand knowledge**”)(emphasis added); Fitzgerald v. Stanley Roberts, Inc., 186 N.J. 286, 319 (2006) (holding that gossip evidence is inadmissible to prove a hostile work environment claim). Thus,

“comments not ‘made to, or in the presence of’ plaintiff, are **irrelevant to performing an objective analysis of a hostile work environment claim.**” Schockley, *supra* at *12.

Given that Plaintiff has never heard Boyle, Bonamo, or Mayor Davis² refer to anyone as a ‘c*nt’ or ‘b*tch’, whether they said it (and at whom it was directed) is entirely irrelevant to her hostile work environment claim, and as such, Plaintiff should be precluded from introducing evidence or testimony from any witness on the subject matter. In fact, it is undisputed that Plaintiff did not learn about that such language allegedly being used in the workplace until after she had left the City. Finally, since Mayor Davis is not alleged to have subjected Plaintiff to a hostile work environment, anything he allegedly said about another employee is insulated by an extra layer of irrelevance, requiring it to be excluded pursuant to Rule 402.

Defendants do not dispute that the term ‘c*nt’ is quite vulgar. However, it is worth noting that Plaintiff conceded that while it was originally a derogatory term for a woman, in today’s age “you could use it about anybody.” (Exhibit 6). The same is true for calling someone a ‘b*tch,’ ‘p*ssy,’ or a ‘d*ck’, which is an opinion on their character, rather than their gender. As such, even if the use of the word “c*nt” (outside Plaintiff’s presence) had any tangential relevance to her causes of action (which it does not), its probative weight would be far outweighed by its potential to shock the jury and taint their image of the speaker, thereby leading to a very real possibility that the jury may look to punish the speaker for using the word, even though it has no objective relevance to whether Plaintiff was subjected to a hostile work environment by Boyle or Bonamo.

For the foregoing reasons, Plaintiff must be precluded from eliciting any evidence or testimony about Boyle, Bonamo, or Davis referring to anyone as a ‘b*tch’, ‘c*nt’ or a similarly derogatory term. This should include, but not be limited to inquiries about whether Bonamo,

² There is no evidence in the record that Bonamo or Mayor Davis allegedly referred to Plaintiff by a derogatory term.

Boyle, Davis or anyone else used these or other derogatory words when speaking to or about a woman, or made any derogatory comments to or about a woman, in the workplace.

FIFTH MOTION IN LIMINE

PLAINTIFF MUST BE BARRED FROM ELICITING IRRELEVANT AND UNDULY PREJUDICIAL TESTIMONY THAT BOYLE TOLD A FEMALE EMPLOYEE THAT “NOT ANY OLD BLONDE” CAN DO HER JOB.

During depositions, Plaintiff’s counsel elicited testimony concerning Mr. Boyle jokingly saying to another female employee (Ann Novak) that “not any old blonde” can do her job. According to Mr. Boyle, it was intended to be a compliment to Ms. Ann Nowak. Exhibit 9 (Excerpt of Tim Boyle’s 5/17/24 deposition transcript at 42:22-43:11). Although the comment was brought to Ms. Mathews’ attention after the fact, it is undisputed that the comment was not made about Ms. Mathews, nor was it made in her presence, thereby making it irrelevant to her causes of action. Exhibit 6 (Excerpt of Ms. Mathews Deposition on 9/6/23 at 147:22-148:8). Accordingly, all evidence or testimony concerning this statement must be precluded by operation of Rule 402. Even if, for the sake of argument, we were to assume that the comment had some tangential relevance to her hostile work environment claim (which it does not), its relevance would be substantially outweighed by its effect of unduly prejudicing the City in defending against Plaintiff’s hostile work environment claim, which must be based on evidence of severe or pervasive misconduct directed towards Plaintiff. For this additional reason, exclusion of the evidence is required under Rule 403.

SIXTH MOTION IN LIMINE

PLAINTIFF MUST BE BARRED FROM ELICITING IRRELEVANT AND UNDULY PREJUDICIAL TESTIMONY FROM SHARON NADROWSKI CONCERNING THE ALLEGED REASONS MAYOR DAVIS HIRED MELISSA MATHEWS AS ADMINISTRATOR.

During Sharon Nadrowski's deposition, Plaintiff's counsel elicited testimony from the former Council-President concerning her alleged conversation with Mayor Davis regarding his decision to recommend Ms. Mathews to be hired as the Business Administrator. Specifically, the following exchange took place between counsel and Ms. Nadrowski:

Q: Did the Mayor express to you any rationale for his decision to place Ms. Mathews in this position?

A: His words to me were [. . .] It's a no brainer. Look at her husband and her kids. No one can complain about this pick.

Q: Did you have an understanding as to what the Mayor meant by that statement?

A: Yes, absolutely.

Q: What did you understand?

A: That his political adversaries couldn't complain about him picking a woman who was married to an African American and has biracial children.

Exhibit 10 (Excerpts of Sharon Nadrowski's 5/10/24 Deposition at 28:16-29:5).

First and foremost, Mayor Davis's alleged statement, which he adamantly denies making, must be barred because it is irrelevant to Plaintiff's causes of action. It has absolutely no relevance to her allegation that Boyle and Bonamo allegedly harassed her on the basis of her gender while she was the Business Administrator, as alleged in Count I. It also has absolutely no relevance to her allegation that she was stripped of her responsibilities and non-reappointed in retaliation for

voicing objections to practices at City Hall, as alleged in Count III. As such, it must be excluded for lack of relevance.

However, even if we were to assume, for the sake of argument, that the alleged statement had some tangential relevance to this matter, eliciting testimony about same would be highly prejudicial to Mayor Davis and in turn the City, to the extent some jurors would find such a selection criteria to be offensive, thereby affecting their ability to be impartial towards Defendants. For all the foregoing reasons, Ms. Nadrowski should be barred from testifying on this topic.

SEVENTH MOTION IN LIMINE

THE COURT SHOULD BAR THE TESTIMONY OF PLAINTIFF'S PSYCHIATRIC EXPERT, DR. JARRETT N. TOSK, ON THE BASIS THAT HIS REPORT AND THE OPINIONS/CONCLUSIONS THEREIN ARE INADMISSIBLE NET OPINIONS.

New Jersey Rules of Evidence 702 and 703 govern the admissibility of expert testimony. The party offering the expert testimony has the burden of proof to establish its admissibility. Hisenaj v. Kuehner, 194 N.J. 6, 15 (2008). Rule 702 provides that “if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.” N.J.R.E. 702. Meanwhile, Rule 703 provides that an expert’s opinion must be supported by facts or data known to the expert “at or before the proceeding.” N.J.R.E. 703.

According to Supreme Court:

an expert’s bare opinion that has **no support in factual evidence or similar data** is a mere net opinion which is not admissible and may not be considered. The admissibility rule has been aptly described as requiring that the expert “give the why and wherefore” that supports the opinion, “rather than a mere conclusion.” . . . Applying these standards, our Appellate Division has concluded that a trial court may not rely on expert testimony that **lacks an appropriate factual foundation**

and fails to establish the existence of any standard about which the expert testified.

Pomerantz Paper v. New Comm. Corp., 207 N.J. 344, 372-73 (2011)(emphasis added).

Specifically, “the net opinion rule mandates that experts be able to **identify the factual bases** for their conclusions, **explain their methodology**, and **demonstrate that both the factual bases and the methodology are reliable.**” Townsend v. Pierre, 221 N.J. 36, 55 (2015)(emphasis added); also see, Landrigan v. Celotex Corp., 127 N.J. 404, 414 (1992) (“the key to admission of the opinion is the validity of the expert’s reasoning and methodology.”); Bucklelew v. Grossbard, 87 N.J. 512, 524 (1981)(An expert must “explain a causal connection between the act or incident complained of and the injury or damages allegedly resulting therefrom.”). The rule requires an expert to “give the why and wherefore” of his opinion, rather than a mere conclusion. An expert offers inadmissible net opinion if he “**cannot offer objective support for his or her opinions, but testifies only to a view about a standard that is personal.**” Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 410-11 (2014)(emphasis added). In short, the net opinion rule is “a prohibition against speculative testimony.” Harte v. Hand, 433 N.J. Super. 457, 465 (App. Div. 2013); see also Grzanka v. Pfeifer, 301 N.J. Super. 563, 580 (App. Div. 1997)(An expert’s conclusion “is excluded if it is based merely on unfounded speculation and unquantified possibilities.”)

An expert’s failure to refer to any recognized resource for his opinions/conclusions renders the expert’s testimony nothing more than a personal view and a net opinion. See Taylor v. DeLosso, 319 N.J. Super. 174 (App. Div. 1999)(holding that total absence in architectural expert’s testimony of a reference to any textbook, treatise, standard, custom, or recognized practice renders the expert’s testimony a net opinion and nothing more than his personal view). As the Appellate Division noted, when an expert speculates, “he ceases to be an aid to the trier of fact and becomes nothing more than an additional juror.” Jimenez v. GNOC, Corp., 286 N.J. Super 533, 540 (App.

Div. 1996). Given the weight that a jury may accord expert testimony, a trial court must ensure that an expert is “not permitted to express speculative opinions or personal views” that are unfounded in the record. Townsend, supra, 221 N.J. 36, 55; State v. Olenowski, 255 N.J. 259, 586 (2023)(The net opinion doctrine “weeds out experts who base their opinions on purely personal standards or rules of thumb.”)

Ms. Mathews served as the Business Administrator for the City of Bayonne from May 1, 2020 to June 30, 2022. Exhibit 1 (AC at ¶¶1, 35). She alleges that while employed she was subjected to harassment, bullying, and retaliation, which has caused her to suffer emotional distress manifested by symptoms, including but not limited to panic attacks, depression, and anxiety. Exhibit 11 at p.3 (3/15/24 expert report prepared by Plaintiff’s expert, Dr. Jarrett N. Tosk).

On March 15, 2024, Plaintiff’s expert, Dr. Jarrett Tosk, prepared a report of his psychiatric evaluation of Ms. Mathews, which included a psychiatric interview dated August 29, 2023 and review of [REDACTED] records. Id. at 1-2. As it concerns Ms. Mathews’ [REDACTED], during his deposition, Dr. Tosk acknowledged that he dedicated a total three lines of text to Ms. Mathews’ [REDACTED]. Exhibit 11 at 3 (Review of Records); Exhibit 12 at 50:10-24 (Excerpts from the transcript of Dr. Jarrett N. Tosk’s deposition dated September 12, 2025). He also admitted that he failed to note anywhere in the report that Ms. Mathews reported to [REDACTED]. Id. at 56:8-57:2. In fact, records reflect, that Ms. Mathews [REDACTED]

[REDACTED]. Exhibit 11 at p. 7 ([REDACTED]
[REDACTED]).

Dr. Tosk interviewed Ms. Mathews, who he diagnosed as suffering from generalized anxiety disorder and panic disorder. Dr. Tosk opined that Ms. Mathews [REDACTED]
[REDACTED]
[REDACTED] Id. at p. 8-9 (Clinical Diagnostic Impressions) (emphasis added). His net opinion, however, is not supported by medical records, which reflect that as of March 6, 2023, a mere five months prior to her psychiatric interview, Ms. Mathews [REDACTED]
[REDACTED] Id. at p. 4 (emphasis added); Exhibit 12 at 110:16-113:4. This was Ms. Mathews' [REDACTED]
[REDACTED] prior to her August 29 evaluation. Dr. Tosk could not recall asking Ms. Mathews what, if anything, occurred between March 6 and August 29 (the date of the interview) that negatively affected [REDACTED]. Id. at 116:10-117:15.

During 2023, Ms. Mathews [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Id. at 85:24-91:8. In fact, when counsel forwarded a request [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Exhibit 12 at 105:13-110:11.

In sum, Dr. Tosk’s opinion that Ms. Mathews presented in August 2023 with significant psychiatric impairment that was causally related to alleged workplace harassment was not supported, and in fact contradicted, [REDACTED]. As such, his testimony on causation must be barred in whole. To the extent that Dr. Tosk relied on Plaintiff’s subjective complaints during the interview to render this conclusion,³ that was wholly improper. In fact, he conceded that he took Ms. Mathews’ complaints at face value. Id. at 39:6-40:22. Pomerantz, supra, 207 N.J. 344, 372 (“an expert’s bare opinion that has **no support in factual evidence or similar data** is a mere net opinion which is not admissible and may not be considered.”); Rubanick v. Wico Chem. Corp., 242 N.J. Super. 36, 49 (explaining the “need for supporting data and a factual basis for the expert’s opinion is especially important when the opinion is seeking to establish a cause and effect relationship.”); also see, e.g. Burley v. Larsen, 2017 WL 1436182, at *5 (App. Div. Apr. 24, 2017)(Barring medical expert’s testimony that was “wholly dependent on plaintiff’s subjective responses.”)(Exhibit 13).

Next, when discussing Ms. Mathews’ current symptomatology, Dr. Tosk attributed [REDACTED]

Exhibit 11 at p. 9; Exhibit 12 at 92:18-24. In his

report, however, he provides no analysis for his allocations of percentages. See Sargentelli v. Singh, 2005 WL 2445975, *2 (App. Div. Sept. 22, 2005)(“There is no analysis for his allocations

³ In the report, Dr. Tosk noted that Ms. Mathews was “tearful” while describing “the sequence of events that transpired since 2020.” During his deposition, however, he had no recollection of what events she was describing which brought her to tears. Exhibit 12 at 46:15-23. He also only had a “vague recollection” of what information she related to him regarding her alleged harassment. Id. at 48:22-49:8. When asked if there was anything that could refresh his recollection, he said no. When asked if he took notes during the interview, he stated, “not that I recall” but surmised that if he did, he destroyed them. Id. at 37:11-38:2.

of percentages. In short it is a net opinion[.]”)(Exhibit 14). Nor did he explain the methodology he used to reach these percentages. During his deposition, Dr. Tosk conceded that there was no “formula” he used or guidance materials he referenced to reach his conclusion; instead, he came up with this split based on his personal knowledge, training, and experience; i.e. a standard personal to him. Exhibit 12 at 180:2-182:2. State v. Olenowski, 255 N.J. 259, 586 (2023)(The net opinion doctrine “weeds out experts who base their opinions on purely personal standards[.]”); Riley v. Keenan, 406 N.J. Super. 281, 296 (App. Div. 2009)(explaining experts “must be able to point to generally accepted, objective standards of practice and not merely standards personal to them.”); Suanez v. Egeland, 353 N.J. Super. 191, 195 (App. Div. 2002)(An expert’s conclusions must “derive[] from a reliable methodology supported by some expert consensus.”) In the absence of a methodology that is objective, that is, separate from the expert’s own opinion, the testimony is both unhelpful to the jury and constitutes an impermissible net opinion. Pomerantz, supra, 207 N.J. at 372. As such, his testimony must be barred for this additional reason.

His methodology for allocating fault was not only based on a personal standard, it was also inherently unreliable. In fact, he admitted that these percentages were “estimates,” conceding that “it might be 70/30, it might be 80/20.” Exhibit 12 at 180:2-182:2. In his own words, it “will never be exact.” Id. By conceding that his percentages were estimates, Dr. Tosk was admitting that his methodology was unreliable. Townsend, supra 221 N.J. 36, 55 (an expert must be able to “demonstrate that both the factual bases and **the methodology are reliable**.”)(emphasis added); see also, Harte v. Hand, 433 N.J. Super. 457, 465 (App. Div. 2013)(the net opinion rule is “a prohibition against speculative testimony.”) Moreover, his percentages are not supported by factual data (i.e. [REDACTED] he reviewed), which reflect that [REDACTED]

[REDACTED]. This is a third reason to bar his testimony.

Finally, Dr. Tosk acknowledged that in apportioning [REDACTED] of Ms. Mathews' current symptomatology to her alleged workplace harassment, he included therein litigation-related stress from the instant matter as well as stress related to her various interactions with state and federal law enforcement agencies relative to her claims over the past four (4) years.⁴ Exhibit 12 at 126:24-128:24; 148:15-17. Moreover, when asked if he could break down the 75% between workplace harassment and litigation-related stress, he confirmed that he could not. According to Dr. Tosk, the two are "almost inseparable." *Id.* Litigation-related stress, however, is not-compensable and precluded from being considered as part of a Plaintiff's damages for emotional distress. Picogna v. Bd. of Educ. of Twp. of Cherry Hill, 143 N.J. 391, 399 (1996)(holding that "plaintiff may not recover for litigation-induced distress as a separate component of damages.") Accordingly, Dr. Tosk's apportionment of percentages is fundamentally flawed, will not assist the jury, and must be barred as a net-opinion for this final reason.

EIGHTH MOTION IN LIMINE

PLAINTIFF MUST BE BARRED FROM INTRODUCING EVIDENCE OR TESTIMONY OF LOST WAGES GIVEN THAT SHE FAILED TO MITIGATE HER DAMAGES BY MAKING REASONABLE EFFORTS TO FIND COMPARABLE EMPLOYMENT, AS EVIDENCED BY THE FACT THAT SHE REMAINS UNEMPLOYED TO DATE, MORE THAN FOUR YEARS AFTER SHE LEFT THE CITY.

It is well settled that an employee making a claim for lost wages due to an allegedly wrongful discharge has a duty to mitigate damages by using reasonable and diligent efforts to find comparable employment. Goodman v. London Metals Exchange, Inc., 86 N.J. 19, 41 (1981);

⁴ Dr. Tosk also included within this basket stress Ms. Mathews attributed to being an 'informant' to the Department of Justice, who according to her, is allegedly investigating her 'grandiose' complaints that Bayonne is run by the Mafia. Exhibit 12 at 126:24-128:24 and 193:24-194:14.

Booker v. Taylor Mile Co., Inc., 64 F3d 860, 866 (3rd Cir. 1995); Mason v. Mastrobattista v. Essex County Park Comm’n., 46 N.J. 138, 143 (1965); Mason v. Civil Service Commission, 51 N.J. 115, 130 (1968). Where the evidence of record demonstrates that the “Plaintiff was uninterested in fulltime employment,” Plaintiff is “precluded from making any further lost wage claim.” Gilchrist v. Board of Ed. Of Borough of Haddonfield, Camden County, 155 N.J. Super. 358, 364 (App. Div. 1978).

Plaintiff resigned from her position as the Business Administrator effective June 30, 2022. On December 19, 2022, Defendants served Plaintiff with interrogatories, therein requesting information pertaining to Plaintiff’s job search efforts and mitigations of damages. Exhibit 15 (Defendants’ second set of interrogatories dated 12/19/22). In relevant part, interrogatories one and two requested that Plaintiff identify and describe in detail all her efforts to locate and obtain employment during and subsequent to her employment with Defendant City of Bayonne, including all applications submitted for employment. On February 23, 2023, Plaintiff provided responses to Defendants’ interrogatories. Exhibit 16 (Plaintiff’s 2/23/23 responses to Defendants’ second set of interrogatories). Therein, Plaintiff shed light on the fact that she had submitted only a total of six (6) applications since June 30, 2022; i.e. an **eight-month period**, and that the first application was not submitted until January 2023; i.e. **after** Defendants demanded information concerning her job search efforts. Id. at interrogatories 1 and 2. Moreover, notwithstanding that Plaintiff signed and dated the responses on February 23, the most recent application was sent out in “early February,” shedding light on the fact that no job search efforts were made in the two weeks leading up to February 23. Id. Plaintiff attached to her answers to interrogatories the six (6) job applications, the most recent dated February 10. Exhibit 17 (Documents bates stamped ROGS 04-08).

On December 29, 2022, shortly after receiving Defendants' interrogatories, Plaintiff advised [REDACTED] Exhibit 18 ([REDACTED]). During her [REDACTED] [REDACTED] [REDACTED] Exhibit 18 ([REDACTED]) (emphasis added).

Within the instructions section of Defendants' interrogatories, it was set forth that "these interrogatories are continuous in nature and as such, if, at any time after service of answers and prior to trial, Plaintiff or her representatives (including counsel) obtains additional responsive information or discover that information given in Plaintiff's answers is erroneous, Plaintiff shall promptly submit supplemental or amended answers. Such supplemental or amended answers may be filed from time-to-time, but not later than fifteen (15) days after such information is received." Exhibit 15. On October 4, 2023, 8 months after her initial interrogatory responses, Plaintiff supplemented her interrogatory responses to include, inter alia, additional job search documents. These included two (2) applications made on June 27 (for entry level positions of executive assistant and receptionist), three (3) applications made on July 27 (for entry level positions of executive and administrative assistants) and sixteen (16) applications made in September 2023 (mostly for entry level positions such as a receptionist and assistant). Exhibit 19 (10/4/23 cover letter and supplemental job search documents). There are four takeaways: 1) Between "early February" and June 27, over four months had passed without her submitting a single job application; 2) in the months of June and July, she looked for a job on two days; i.e. June 27 and

July 27; 3) between June and September, the vast majority of the jobs she applied for were for entry level positions such as receptionist and administrative assistant; and 4) the vast majority of her job applications were submitted on or after September 5, the date she was deposed and asked questions regarding her job efforts to date. Exhibit 6 (Excerpts of Plaintiff's 9/5/23 Deposition) at 134:10-14, 153:16-22, 156:11-14). This flurry of job applications after being deposed, all but one of which were for entry level positions, was certainly not done in good faith.

On October 23, 2023, [REDACTED]

[REDACTED] Exhibit 18 ([REDACTED]
[REDACTED]). To date, Plaintiff has not supplemented her discovery responses to provide additional information concerning her job-search-efforts, if any, and/or to advise Defendants that she has found a job, as required. To date, more than four years after she resigned from her employment with the Bayonne, she remains unemployed. Defendants' expert has concluded that Ms. Mathews has not made a good faith effort to find work. He opined that "had Ms. Mathews conducted a reasonable and diligent job search she would have found a comparable senior administrative, senior executive assistant position, or chief of staff position within 6-9 months, a position matching her background, credentials, and experience." Exhibit 20 (3/29/24 report prepared by Dr. Charles L. Sodikoff, PhD).

Given Plaintiff's complete disregard for her responsibility to mitigate damages, Plaintiff must be barred from introducing any and all evidence or testimony (both lay and expert⁵)

⁵ Ms. Mathews has retained Mr. Royal A. Bunin, a forensic economist, to calculate the economic value of her back pay, front pay, and lost fringe benefits. Mr. Bunin testified that he did not review the report of Dr. Sodikoff, nor did he need to, claiming that "I had all the information I need to prepare my report." See Exhibit 21 (3/25/24 expert report prepared by Mr. Royal A. Bunin); also see, Exhibit 22 (Excerpts from Mr. Bunin's deposition testimony dated 10/3/25) at 37. He also confirmed that he did not review her deposition testimony, claiming that "I was told they were nine days long and there wasn't a lot there about her earnings and I didn't already have from the information sent me and what was available online to crunch the numbers." Exhibit 22 at 38. He also confirmed that he did not interview Ms. Mathews, and when asked

concerning lost wages and benefits. That is to say, this court should dismiss her claim for back and front pay in its entirety. In the alternative, Plaintiff must be barred from introducing any evidence or testimony of alleged lost wages and benefits beyond 6-9 months from her separation; i.e. December 30, 2022 - March 30, 2023, the time within which she could have secured comparable employment, if she had made a good faith attempt to find a job. That is to say, this Court should bar all front pay and issue a jury instruction limiting back pay, if any, to March 30, 2023. In the second alternative, Plaintiff must be barred from introducing testimony or evidence of lost wages and benefits beyond September 30, 2023, having failed to provide Defendants with any proof of her job efforts in the past almost three years, as required by her discovery obligations. That is to say, this Court should bar all front pay and issue a jury instruction limiting back pay.

NINTH MOTION IN LIMINE

IN THE ALTERNATIVE, PLAINTIFF'S FORENSIC ECONOMICS EXPERT MUST BE BARRED FROM OFFERING SPECULATIVE TESTIMONY REGARDING LOST PERS BENEFITS.

Ms. Mathews has retained Mr. Royal A. Bunin, a forensic economist, to calculate the economic value of her backpay, front pay, and lost fringe benefits. He prepared an expert report, which was the subject of his deposition testimony. See Exhibit 21 and Exhibit 22. In the report, Mr. Bunin calculated past lost earnings (i.e. economic damages from date of her resignation through the date of his report); present value of future lost earnings for 5 years (calculated at five years from the date of his report), 10 years, 15 years, and to age 65, as well as the present value of

why, again replied “[d]idn’t need to. I have the information I needed to prepare my analysis.” Finally, Mr. Bunin confirmed that he did not review any documents related to her job search efforts and did not render any opinions as to whether she mitigated her damages, stating “that’s not my job.” See Exhibit 22 at 78-79, 89 (emphasis added); also see Exhibit 21. When asked whether he knew what, if anything, she was doing to find work, Mr. Bunin responded, “[n]o. It’s something that would be beyond my expertise.” Exhibit 22 at 78.

the future lost PERS benefits in the amount of \$417,707, which is the subject of this motion. Exhibit 20 at p. 8.

Mr. Bunin must be precluded from testifying regarding Ms. Mathews' future lost PERS benefits because by his own admission, her entitlement to it is based on (faulty) assumptions and (impermissible) speculation. Exhibit 22 at 138-145, 171-172, 183-184, 195. Mr. Bunin explained that Ms. Mathews' entitlement to recover for lost pension benefits assumes that she would have continued to work as a Business Administrator in Bayonne until she was 65 years old, at which time she would have been able to retire with a maximum benefit, which paid out through the end of her life would have amounted to \$417,707. Mr. Bunin agreed that he was "assuming" and "speculating" that she would have continued to work in Bayonne as a Business Administrator for 21 years until the age of 65 (never mind working at all for that long). Id. at 138-141, 171-172. He agreed that a number of things could have happened in those 21 years, including but not limited to her deciding to find another job or "a myriad of other reasons why somebody may leave a job, including possibly moving out of state." Id. at 138-141. Mr. Bunin also admitted that he did not know how many administrators, including Ms. Mathews, had worked for Bayonne in the 10 years leading up to her non-renewal (i.e. 4, thus averaging 2.5 years per Administrator over that time period), whether the position is a political appointment (yes, it is), whether an administrator obtains tenure in the position (no), or when it expires (at the conclusion of the Mayor's term). Id. at 141-145.

Elsewhere in his report, Mr. Bunin states that "given that PERS pension is unique to public employees in the State of New Jersey, Ms. Mathews is unlikely to replicate such benefits, and therefore unlikely to mitigate the loss of such benefits." Id. at 185-189. Mr. Bunin went on to concede that there is nothing prohibiting her from obtaining public employment in New Jersey

(with the State, County, Municipality, etc.), and in so doing she would be eligible for PERS benefits. Id. at 186-188. He also agreed that there is “quite a number of opportunities for her to retain those benefits,” entirely undermine his premise and assumption. Id. at 186-187. Mr. Bunin went on to concede that “if she gets another job with the state, so then that would mitigate this and then it would just be probably nothing if her final average salary at the time she retires, if she did get another job, is the same as what the final average salary would be here.” Id. at 186. He went on to state that if she was able to obtain employment in a PERS-eligible position, “I would then have to make a whole another calculation.” Id. at 189.

To reiterate, Mr. Bunin’s conclusion that Ms. Mathews is entitled to \$417,707 for “future lost PERS benefits” is based on faulty assumptions and impermissible speculation, which renders this aspect of his report and any testimony an impermissible net opinion. As such, Mr. Bunin must be barred from testifying as to future lost PERS benefits. Harte v. Hand, 433 N.J. Super. 457, 465 (App. Div. 2013)(The net opinion rule is “a prohibition against speculative testimony.”); see also Grzanka v. Pfeifer, 301 N.J. Super. 563, 580 (App. Div. 1997)(An expert’s conclusion “is excluded if it is based merely on unfounded speculation and unquantified possibilities.”)

TENTH MOTION IN LIMINE

IN THE ALTERNATIVE, PLAINTIFF’S FORENSIC ECONOMICS EXPERT MUST ALSO BE BARRED FROM OFFERING SPECULATIVE TESTIMONY AS TO FUTURE LOST EARNINGS.

Dr. Bunin opined that the present value of future lost earnings is \$662,859 for 5 years (measured from the date of his 3/25/24 report), \$1,254,086 for 10 years, \$1,786,399 for 15 years, and \$2,362,075 to age 65 (i.e. end of her life work expectancy). Exhibit 21 at 8. Mr. Bunin admitted that these calculations are based on the assumption (i.e. speculation) that she would be unable to obtain employment for 5 years, 10 years, 15 years, and until age 65, respectively. Exhibit

22 at 190-191. Mr. Bunin goes on to note in his report that “it should be indicated, to the extent Ms. Mathews is able to return to the labor market and sustain gainful employment, such earnings would need to be deducted from the calculations presented herein.” Exhibit 21 at 7; Exhibit 22 at 81-87, 114-120.

Although admittedly not a psychiatric expert, but rather a “lay-person” as he described himself, he nevertheless took the opportunity to expand on Dr. Tosk’s report to buttress his own assumptions and conclusions. On p. 3 of Mr. Bunin’s report, he notes that “in his psychiatric report, Dr. Tosk indicated that Ms. Mathews experienced harassment bullying, and retaliation in the workplace which caused her to suffer from emotional distress [. . .] what has had a profound and devastating effect on her overall quality of life, both on a personal level and a professional level including her inability to function in her occupational role.” Exhibit 21 at 3. He then goes on to state that “this inability to function in her occupational role is the foundation for the economic losses characterized herein as front pay.” Id. at p.4. He concludes his analysis by noting that “she has not worked since the date of termination and, according to the psychiatric evaluation presented by Dr. Tosk, she may not be able to return to the labor market in the foreseeable future.” Ibid.

When asked to expand on the statement that “this inability to function in her occupational role is the foundation for the economic losses characterized herein as front pay, Mr. Bunin explained that “when a person has an employment case, it is typical to calculate the losses for three to five years unless there’s a reason to calculate it for longer period until the end of their working lifetime.” Exhibit 22 at 81. He went on to state, “[h]ere, however, my understanding is that the events described in the Complaint has resulted in her inability to work. Id. at 81-82. When pressed for the basis for his understanding, he responded, “the report of Dr. Tosk.” Id. at 82. When asked to confirm that Ms. Mathews had, in fact, worked from January 2021 (when she returned from a

leave of absence) until June 2022, the date of her non-renewal, Mr. Bunin responded, “my understanding is yes.” Id. at p. 83. Given this fact, Mr. Bunin was asked to clarify what exactly is her alleged inability to function in her occupational role, to which he responded that “I’m not a medical doctor, so I can’t answer that,” and directed counsel to speak with Dr. Tosk. Ibid.

Mr. Bunin was next asked to go through Dr. Tosk’s report and identify where Dr. Tosk states that Ms. Mathews is not capable of working for the foreseeable future (which was the “foundation” for the economic losses characterized as future lost earnings beyond 5 years), as claimed in his report. Id. at 114-120. Mr. Bunin was evasive and reluctant to admit his error, making such statements as the report “doesn’t have those words but it’s my understanding from reading the report that’s what he is saying.” Id. at 116. When asked what language in particular he relied upon in reaching this understanding, he responded “the whole thing.” Id. When asked whether it is fair to say that nowhere in the report does Dr. Tosk opine or conclude that she may not be able to return to the work force for the foreseeable future, Mr. Bunin responded, “those exact words no. But that was my interpretation of his report. I’m a lay person so I can only go with how I interpreted his report.” Id. at 120.

In sum, Mr. Bunin’s calculation of future lost earnings was based on the faulty premise that Dr. Tosk concluded in his report that Ms. Mathews would be unable to return to the labor market for the foreseeable future due to alleged harassment she claims during her employment with Bayonne. However, no such conclusion was reached by Dr. Tosk. Exhibit 11. In fact, she worked without restrictions as the Business Administrator for the City from January 2021 until June 30, 2022, when she preemptively resigned in response to written notice that she was being

non-renewed, effective July 1.⁶ As such, Mr. Bunin must be precluded from testifying as to future lost earnings due to an alleged inability to work.

CONCLUSION

For the reasons set forth herein, Defendants respectfully request that an Order be entered granting Defendants' in-limine motions.

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Dated: July 17, 2026

⁶ Upon being advised of her non-reappointment, effective July 1, 2022. Plaintiff submitted a letter of resignation, effective June 30, 2022. At her deposition when asked "other than your non-reappointment was there any other reason why you selected June 30th as the date to resign?" Plaintiff responded, "no." Exhibit 6 (Excerpts of Plaintiff's September 5 deposition testimony) at 134.