IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	**Civil Action No. 2:16-cv-00225**
v.	)	**Hon. Cathy Bissoon**
SCOTT MEDICAL HEALTH CENTER, P.C.,	)	
Defendant.	)	

PLAINTIFF EEOC'S BRIEF IN SUPPORT OF ITS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the Court's Order of October 30, 2017, Plaintiff U.S. Equal Employment Opportunity Commission, by and through its undersigned counsel, files this Brief in Support of its proposed Findings of Fact and Conclusions of Law.

INTRODUCTION

In the summer of 2013, Dale Massaro,[1] a gay male, was excited about beginning a new chapter in his life. He was in a new relationship with the man who would become his husband. He was making new friends from the Pittsburgh area, where his future husband lived and where he was planning to move. He was healthy and, after a successful effort to lose weight, was feeling a great sense of self-esteem. He had every reason to be happy. All that changed within weeks of moving to what he thought would be a more welcoming city, when he was subjected to egregious anti-gay harassment at his new job at Defendant Scott Medical Health Center.

Massaro should have been enjoying the love present in his new relationships, the comfort

[1] As has been noted at various times in this case, Massaro's legal surname was Baxley at the time he worked for Defendant, which was the name identified in EEOC's Complaint for purposes of providing notice to Defendant of Mr. Massaro's identity.

to be found in his new home, and the potential opportunities offered by a new job. But he was unable to enjoy these pleasures of ordinary life, which were all obscured by Defendant's abusive conduct. At a time in Massaro's life that should have been joyful, Defendant instead subjected him to persistent anti-gay slurs and offensive comments and questions about his sexual intimacy with his future husband. As a result, Massaro became withdrawn, depressed and anxious. He began eating too much, and put on excessive weight in a short period of time. Massaro also sought assistance from a counselor, and later was prescribed an anti-depressant medication that he continues to take to this day. He was out of work for about a month, and when he was able to find another job, he was paid less than what he was earning at Scott Medical.

Massaro would not have suffered as he did if Scott Medical had taken the smallest steps to comply with federal laws prohibiting sex-based harassment. It didn't. When Massaro reported the harassment to Gary Hieronimus, Scott Medical's owner and chief executive office, Hieronimus not only failed to respond with the most basic corrective measures that any rational, responsible employer would deploy, but Hieronimus actually condoned and ratified the sex-based abuse to which Massaro was subjected, thereby occasioning further harassment and leaving Massaro no alternative but to resign his position. Yes, Scott Medical had a written anti-harassment policy, a policy that acknowledged the illegality of harassment, including harassment because of sexual orientation, but Defendant did nothing to enforce that policy. In fact, Massaro was never permitted to read the policy or have a copy, and he received no training whatsoever on what was in the policy or what to do if he was harassed. Defendant's "policy" was just another piece of paper. Nothing more.

Based on the default judgment on liability entered in this case and the evidence offered during the remedies hearing on October 30, 2017, EEOC has proven by preponderance of the

evidence that it is entitled to an award of back pay with pre-judgment interest, non-pecuniary compensatory damages, and punitive damages payable to Dale Massaro for Defendant's violations of his civil rights guaranteed by Title VII of the Civil Rights Act of 1964. EEOC has also demonstrated that a permanent injunction is warranted by the facts of this case, and EEOC therefore requests that the Court enter an order enjoining Scott Medical from engaging in employment practices that discriminate because of sex, including creating or tolerating a hostile work environment because of sex, and requiring Scott Medical to submit detailed reports to EEOC concerning any future complaints of sex harassment in Defendant's workforce.

ARGUMENT[2]

A. Back Pay and Prejudgment Interest.

Title VII authorizes back pay relief to victims of discrimination. 42 U.S.C. §2000e-5(g) (establishing entitlement to back pay less "[i]nterim earnings or amounts earnable with reasonable diligence by the person or person discriminated against"). In determining a back pay award, a district court has wide latitude to "locate 'a just result'" and to further the "make whole remedy of Title VII in light of the circumstances of a particular case." *Taxman v. Board of Educ.*, 91 F.3d 1547, 1565 (3d Cir. 1996) (quoting *Albermarle*). There is a strong presumption in favor of back pay awards where discrimination has been found. *Albermarle*, 422 U.S. at 421 n.12. As such, back pay should be denied "only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination." *Id.*

Prejudgment interest on back pay awards is appropriate to ensure that victims of discrimination are made whole. *West Virginia v. United States*, 479 U.S. 305, 311 n.2 (1987)

[2] EEOC incorporates by reference the facts as set forth in the Proposed Findings of Fact and Conclusions of Law, filed contemporaneously with this Brief in Support.

("Prejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress."). Prejudgment interest "serves to compensate a plaintiff for the loss of the use of money that the plaintiff otherwise would have earned had he not been unjustly discharged." *Booker v. Taylor Milk Co*., 64 F.3d 860, 868 (3d Cir. 1995); *see also Arco Pipeline Co. v. SS Trade Star*, 693 F.2d 280, 281 (3d Cir. 1982) ("The purpose of prejudgment interest is to reimburse the claimant for the loss of the use of its investment or its funds from the time of the loss until judgment is entered."). The Third Circuit has acknowledged that "[a]s with the back pay award, prejudgment interest helps to make victims of discrimination whole." *Booker*, 64 F.3d at 868. Use of the adjusted prime rate, pursuant to 26 U.S.C. §6621, is appropriate in calculating prejudgment interest on back pay awards. *Taxman*, 91 F.3d at 1566.

In this case, Massaro testified that he was paid $11.00 per hour as a telemarketer for Defendant, and that he was scheduled to work between 11:00 a.m. and 7:00 p.m., Monday through Thursday, and 10:00 a.m. to 2:00 p.m. on Fridays. Defendant's payroll records reflect that Massaro took an unpaid half-hour break on his longer days, resulting in an average work week of 38 hours per week. Massaro's last day was August 16, 2017, and he started a new job on September 15, 2017, earning $10.25 per hour. Massaro continued to earn that same hourly wage until December 1, 2015, when he obtained a job earning $11.50 per hour.

EEOC requests that the Court award $5,500.40 in back pay. During the hearing, EEOC provided the Court with its back pay calculation, which made the following assumptions: Massaro would have continued to work 38 hours per week for Scott Medical, earning $418.00 per week, or $5,434.00 per quarter (13 weeks in each quarter). EEOC then subtracted any interim earnings for each relevant quarter. Interest, using the IRS deficiency rates, was

compounded quarterly through the end of the fourth quarter 2017. *See* Declaration of Deborah A. Kane, ¶¶2-8, Exhibits 1 and 2.

B. Compensatory Damages

Compensatory damages are recoverable from a covered entity responsible for violating Title VII. 42 U.S.C. §1981a(a)(2). The compensatory damages available include remuneration for "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." 42 U.S.C. § 1981a(b)(3). A discrimination victim's testimony may be sufficient to justify an award of compensatory damages. *See Shesko v. Coatesville*, 324 F. Supp. 2d 643, 652 (E.D. Pa. 2004) (denying motion for remittitur of a compensatory damages award of $20,000, holding that plaintiff's own testimony about her sadness and depression, and the difficulty of seeing another person promoted to the position she wanted, was sufficient to support the award).

Here, Massaro, his husband and his mother testified about how the harassment affected him. Prior to working at Scott Medical, he was a happy, outgoing person. He enjoyed spending time with friends, including new friends he was making in the Pittsburgh area. He was looking forward to moving to a larger city, which he believed would be more welcoming of his sexual orientation. He was also feeling good about his appearance, having lost a lot of weight following lap-band surgery. He also was in a new relationship with the man who would later become his husband.

The harassment changed all that. When Robert McClendon, Massaro's supervisor, called him "faggot' and 'fucking faggot," it made him feel abused and worthless.[3] Massaro became frustrated, distraught and irritable. He cried when he got home from work. Massaro started

[3] Massaro testified that his father had said similar things to him when he was younger, Tr. at 9:20-24, a fact that would have compounded the emotional distress caused by those slurs.

eating too much, gaining a considerable amount of weight. After he finally quit his job rather than endure more harassment, he slept a lot, or didn't sleep at all. Massaro isolated himself from others, spending hours in his room playing videogames instead of socializing. He felt depressed, and anxious. The change in his personality eventually caused a brief breakup in his relationship with Anthony Massaro, and led to him seeking counseling through his new employer's employee assistance program. Massaro also was prescribed Lexapro, an anti-depressant, and Ativan to help him sleep. He still takes the Lexapro.

The facts of this case, specifically the acute emotional damages that Defendant's conduct caused Massaro to suffer and its lingering effects, justify an award of compensatory damages. The evidence shows that Massaro sustained compensatory damages far in excess of the $50,000.00 statutory damages cap set forth at 42 U.S.C. §1981a(b)(3)(A), and applicable here. *See* ECF No. 50, ¶4 (Answer to Complaint, admitting that Defendant had, at all relevant times, 15 or more employees); Trial Transcript at 36:19-37:15. Compensatory damages well above $50,000.00 have been awarded in cases involving similar emotional and physical responses to harassment and discrimination. *See, e.g.*, *Ridley v. Costco Wholesale Corp.*, 217 F. App'x 130, 137 (3d Cir. 2007) (upholding $200,000 emotional distress award in Title VII retaliation case, where plaintiff and his wife testified about his emotional distress, including difficulty sleeping, weight loss, and social isolation); *Gagliardo v. Connaught Labs.*, 311 F.3d 565, 573-74 (3d Cir. 2002) (in disability discrimination case brought under both federal and state law, upholding $2 million compensatory damages award for plaintiff with multiple sclerosis who presented testimony that her discharge transformed her from a happy and confident person to one who was withdrawn and indecisive); *Tureaud v. Grambling State Univ.*, 294 Fed. App'x 909, 916, 2008 WL 4411438, at *7 (5th Cir. 2008) (holding $140,000 compensatory award in Title VII

discharge case not excessive; plaintiff testified to weight gain and feeling depressed and humiliated); *Hall v. Pa. Dep't of Corrections*, No. 3V-02-1255, 2006 WL 2772551, at *20-23 (M.D. Pa. Sept. 25, 2006) ($75,000 compensatory award, reduced from $300,000, where sole damages evidence was plaintiff's testimony that she felt "embarrassed" by verbal harassment, but continued working; no evidence of need for counseling or other treatment or that plaintiff's relationships had been affected by hostile work environment); *see also Bolden v. SEPTA*, 21 F.3d 29, 33-34 (3d Cir. 1994) (affirming award of $250,000 for compensatory damages in a Section 1983 claim, where the plaintiff, his wife and daughter testified about how he had changed after being discharged following an unconstitutional drug test). Therefore, EEOC requests that the Court award compensatory damages in the amount of $50,000.00, the maximum non-pecuniary compensatory damages award authorized by the Civil Rights Act of 1991.

C. Punitive Damages

Punitive damages may be awarded upon a showing that the covered entity has "engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual." 42 U.S.C. §1981a(b)(1). "The employer's conduct need not be independently 'egregious' to satisfy §1981a's requirements for a punitive damages award, although evidence of egregious misconduct may be used to meet the plaintiff's burden of proof." *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 546 (1999). Moreover, punitive damages may be awarded in the absence of an award for compensatory or other damages. An employer may be vicariously liable for the discrimination of its employee if the employee was serving in a "managerial capacity" and committed the wrong while "acting in the scope of his employment." *Kolstad*, 527 U.S. at 542-44, 45.

Here, punitive damages are warranted. Defendant's sex discriminatory conduct in this

case was egregious. The evidence is uncontroverted that Defendant was well aware of the Title VII prohibition of sex harassment. Despite this, and despite having anti-harassment policies, Defendant did nothing when it received complaints of harassment from Massaro. Instead, Gary Hieronimus, the owner and CEO, said that the harasser, telemarketing manager Robert McClendon, was "just doing his job," thereby explicitly condoning and ratifying McClendon's harassing conduct. Clearly, then, Defendant put its bottom-line ahead of its legal obligation to protect its employees from sexual harassment. In addition, Hieronimus put McClendon in charge of the telemarketing department, including training employees on company policies, without bothering to ensure that McClendon himself was trained on those policies. Defendant acted with reckless indifference to Massaro's federal rights under Title VII, and there is no evidence to support a defense to an award of punitive damages. EEOC requests that the Court make findings on punitive damages, including the appropriate amount that should be awarded, without regard to the effect of the statutory damages cap, and thereafter reduce that award in conformity with the damages cap set forth at 42 U.S.C. §1981a(b)(3)(A) so that the sum of non-pecuniary compensatory damages and punitive damages does not exceed $50,000.00. Though the Court may have to reduce a punitive damages award by operation of the cap, perhaps even to zero dollars, EEOC believes that the general deterrence objectives of Title VII would be best served by the Court make full findings on punitive damages first and then reducing the award as required by law.

D. Injunctive Relief

The standard for awarding injunctive relief is set out clearly in Title VII:

> If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate,

> which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate.

42 U.S.C. § 2000e-5(g)(1). In *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), the Supreme Court held that Section 706(g)(1) not only permits the issuance of injunctions, but in fact imposes upon district courts a "duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Id.* at 418 (emphasis added). The Third Circuit has recognized this duty to issue appropriate injunctive relief in order to advance the twin goals of Title VII, remediation and prevention. *See Mardell v. Harleysville Life Insurance Co.*, 31 F.3d 1221 (3d Cir. 1994), *amended on other grounds*, 65 F.3d 1072 (3d Cir. 1995).

The only prerequisite for obtaining injunctive relief under Title VII is a finding of liability – that a covered entity has violated the Act. *See EEOC v. Novartis*, Case No. 2:05-cv-404, 2007 U.S. Dist. LEXIS 72831, *12-13 (W.D. Pa. Sept. 28, 2007) ("The only *essential prerequisite* for the entry of injunctive relief . . . is a finding by the Court that [defendant] has intentionally engaged in, or is intentionally engaging in, an unlawful employment practice") (emphasis in original); *NAACP v. North Hudson Regional Fire & Rescue*, 665 F.3d 464, 484-86 (3d Cir. 2011) ("Once a court identifies . . . discrimination, it must order relief that will remedy past discrimination and curb the potential for future discrimination") (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975)). It is not necessary for a plaintiff to prove ongoing discrimination, or a pattern or practice of discrimination, to justify injunctive relief. *See EEOC v. Frank's Nursery & Crafts, Inc.*, 177 F.3d 448, 468 (6th Cir. 1999) ("It is clear that the EEOC may obtain relief that protects a class of persons from unlawful employment discrimination without citing numerous instances of such discrimination. While the right to such relief is not

absolute, and the power to order it rests in the hands of the lower courts, the EEOC may seek it upon proof even of just one instance of discrimination that violates Title VII. In seeking such relief, the EEOC need not identify a class or its numbers, or even identify a pattern or practice of discrimination"); *United States v. Gregory*, 871 F.2d 1239, 1246 (4th Cir. 1989) ("Under federal law, Title VII remedies have not been limited to correcting only ongoing discriminatory policies. District courts clearly have the authority and should exercise the power to grant injunctive relief even after apparent discontinuance of unlawful practices."). Rather, in exercising its discretion to determine the extent of injunctive relief warranted the district court must be guided by the purposes of Title VII, a primary purpose being prophylaxis, i.e., deterrence of future violations of law. See, e.g., *North Hudson Regional Fire & Rescue*, 665 F.3d at 86; *Evans v. Harnett Cty. Bd. of Educ.*, 684 F.2d 304, 306 (4th Cir. 1982) (citing *Albemarle Paper*, holding district court erred by not enjoining unlawful practices, and stating, "[Plaintiff] and other black applicants are entitled to be considered for future appointments free of the taint of the invidious discrimination that the district court found"); *EEOC v. Conn-X, LLC*, Civil Case No. L-09-2881, 2012 WL 456870, at *1-2 (D. Md., Feb. 9, 2012) (citing preventive purpose of Title VII and the public interest in preventing future discrimination, enjoining defendant from any further religious harassment or discrimination though victims no longer employed).

To avoid injunctive relief after a finding of a Title VII violation, the burden is on the employer to demonstrate that the type of violation at issue is unlikely to recur under the circumstances. *See, e.g., EEOC v. Service Temps, Inc.*, 679 F.3d 323, 338 (5th Cir. 2012) (holding injunction presumptively appropriate upon finding Title VII violation and disregarding defendant's argument that EEOC failed to adduce evidence showing need for injunction); *EEOC v. Goodyear Aerospace Corporation*, 813 F.2d 1539, 1544-1545 (9th Cir. 1987) ("If the EEOC

proves its case, and [the defendant] fails to prove the violation will likely not recur, the EEOC will be entitled to an injunction); *EEOC v. Massey Yardley Chrysler Plymouth, Inc.*, 117 F.3d 1244, 1253-54 (11th Cir. 1997) (reversing district court denial of injunction as abuse of discretion and remanding case to enable court to grant such relief unless it "finds persuasive reasons to deny particular items of relief"). Upon a finding that an injunction is warranted, the terms of that injunction should be formulated so as to be no broader or more burdensome than are necessary to achieve its objectives and secure complete relief. *See, e.g., Milliken v. Bradley*, 433 U.S. 267, 279-80 (1977).

EEOC has proven that an injunction against Defendant is warranted. The likelihood of future violations may be inferred from past unlawful conduct, *see, e.g., United States v. Rx Depot, Inc.*, 290 F. Supp.2d 1238, 1247 (N.D. Okla. 2003) (citing authorities). Defendant committed an intentional violation of Title VII by subjecting Massaro to a hostile work environment because of his sex and constructively discharging him as a result of its refusal to take action to stop the harassment and correct the work environment.

Furthermore, an injunction is warranted where individuals who were involved in the discrimination (whether through direct participation in the unlawful conduct or by condoning or tolerating the conduct) remain employed by the defendant and in positions of authority. *See, e.g., EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1579 (7th Cir. 1996) (affirming injunction where decision-makers regarding unlawful denial of religious accommodation remained primary decision-makers regarding accommodations); *Bundy v. Jackson*, 641 F.2d 934, 946 n.13 (D.C. Cir. 1981 (reversing denial of injunctive relief in a sexual harassment case in part on the grounds that the individuals who perpetrated the violations remained employed); *EEOC v. Red River Beverage Co.*, No. Civ. A. 3:99-CV-1685, 2003 WL 21317861, at *1 (N.D. Tex., Mar. 7, 2003)

(noting manager who terminated aggrieved person remained employed and was promoted by defendant; ordering three-year injunction); *Sherman v. Kasotakis*, 314 F. Supp. 2d 843, 879 (N.D. Iowa 2004) (issuing permanent injunction in Title II public accommodations case, where plaintiffs were subjected to racist statements by restaurant server, server was known to make such statements in the past, supervisor took no action, and defendant took unyielding position at trial that its actions were reasonable, all evidence to the contrary); *Sanchez v. Miami Beach*, 720 F. Supp. 974, 982 (S.D. Fla. 1989) (issuing permanent injunction in favor of plaintiff female police officer in sexual harassment case, where current police officers testified at trial that they believed objectively offensive pictures and posters were just "jokes," and defendant city implicitly condoned the conduct by taking no disciplinary action against the perpetrators). *See also EEOC v. KarenKim, Inc.*, 698 F.3d 92, 100-01 (2d Cir. 2012) (holding district court abused discretion by not issuing injunction barring defendant from reemploying terminated harasser and barring defendant from allowing him on premises; noting continuing ability of harasser to have access to store).

In this case, the testimony demonstrates that Gary Hieronimus, Defendant's owner and chief executive officer, not only tolerated but in fact *ratified* the violations of Title VII, and Hieronimus remains the owner and chief executive of Defendant, thus presenting a significant risk of recurring violations of the type at issue in this case.

Finally, there is no evidence that Defendant has subsequently undertaken any training, policies or programs geared specifically to preventing the violations that occurred in this case from recurring. *See, e.g., Bundy*, 641 F.2d at 946, n.13 (reversing denial of injunctive relief in a sexual harassment case on the grounds the evidence showed that the employer had demonstrated no action taken to prevent recurrence of the Title VII violations).

Therefore, EEOC requests that the Court permanently enjoin Defendant from engaging in any employment practice that discriminates because of sex, including creating or tolerating a hostile work environment because of sex. EEOC also requests that the Court enter an order requiring Defendant, for a period of three years, to report to EEOC if it receives any claims of sex harassment. EEOC believes the reporting is necessary to ensure that Defendant complies with Title VII and enforces its anti-harassment policies.

CONCLUSION

For the foregoing reasons, EEOC requests that the Court award back pay in the amount of $5,500.40, as well as compensatory and punitive damages. EEOC also requests that the Court enter an appropriate permanent injunction, as stated more fully in the Proposed Findings of Fact and Conclusions of Law.

Respectfully submitted,

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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Certificate of Service

I, Deborah A. Kane, do hereby certify that I forwarded, via certified and regular United States mail, EEOC's Brief in Support of its Proposed Findings of Fact and Conclusions of Law, on November 13, 2017, to the following:

Gary T. Hieronimus
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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	**Case No. 2:16-cv-00225**
v.	)	**Hon. Cathy Bissoon**
SCOTT MEDICAL HEALTH CENTER, P.C.,	)	
Defendant.	)	

DECLARATION OF DEBORAH A. KANE IN SUPPORT OF EEOC'S BRIEF IN SUPPORT OF ITS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I, Deborah A. Kane, declare the following:

1. I am employed as a Senior Trial Attorney with the U.S. Equal Employment Opportunity Commission, Pittsburgh Area Office. I state the following facts based on my personal knowledge, in support of EEOC's Brief In Support of EEOC's Proposed Findings of Fact and Conclusions of Law.

2. EEOC utilizes a computer program called PayCalc to calculate back pay damages, including interest. Information about the program may be found at https://www.eeostat.com/eeostat/paycalc/.

3. I calculated back pay damages for Dale Massaro. Attached as Exhibit A is a true and correct copy of the results of that calculation.

4. In performing the calculation, I used the following assumptions: that Mr. Massaro, if he continued working for Defendant, would average 38 hours per week at $11.00 per hour, earning $418.00 per week, or $5,434.00 per quarter.

5. Mr. Massaro was scheduled to work 40 hours per week, but took unpaid half-hour

breaks Mondays through Thursdays, resulting in 38 hours of paid work. *See* ECF No. 75 (Supplement – payroll records).

6. Using Mr. Massaro's W-2s from subsequent employment, I calculated his quarterly earnings between September 15, 2013, when he began working, and December 1, 2015, when he obtained a job earning more than $11.00 per hour.

7. The PayCalc program automatically calculates the prejudgment interest, using the rates as set forth in 26 U.S.C. §6621, on either a quarterly or monthly basis. Exhibit B is a true and correct copy of the relevant rates used by the PayCalc program, obtained from the website. I selected a calculation based on quarterly interest.

8. The first column of Exhibit A reflects the relevant quarter in which interim earnings were earned. The second column reflects the earnings that would be expected had Mr. Massaro continued working for Defendant. The third column reflects interim earnings for that quarter. The fourth column reflects the difference between expected and interim earnings. Finally, the fifth column reflects the amount of interest for that quarter, compounded quarterly through the third quarter of 2017.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and recollection, this 13th day of November 2017.

Deborah A. Kane

Certificate of Service

I, Deborah A. Kane, do hereby certify that I forwarded, via certified and regular United States mail, Declaration of Deborah A. Kane in support of EEOC's Brief in Support of its Proposed Findings of Fact and Conclusions of Law, on November 13, 2017, to the following:

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EXHIBIT A

Dale Massaro Back Pay Calculation

Interest Due at End of 3Q 2017, calculated quarterly

Date	Backpay	Earnings	Net	Interest
07/2013	$2,508.00	$779.00	$1,729.00	$248.76
10/2013	$5,434.00	$5,063.50	$370.50	$50.15
01/2014	$5,434.00	$5,063.50	$370.50	$47.02
04/2014	$5,434.00	$5,063.50	$370.50	$43.91
07/2014	$5,434.00	$5,063.50	$370.50	$40.83
10/2014	$5,434.00	$5,063.50	$370.50	$37.76
01/2015	$5,434.00	$5,063.50	$370.50	$34.73
04/2015	$5,434.00	$5,063.50	$370.50	$31.71
07/2015	$5,434.00	$5,063.50	$370.50	$28.71
10/2015	$3,344.00	$3,116.00	$228.00	$15.84
			$4,921.00	$579.43
				$5,500.43
			$4,921.00	$579.43
				$5,500.43

Calculation assumptions

- Earning weekly wage of $418 at Scott ($11 per hour at 38 hours per week)
- Began working at next job on September 15, 2013, earning $10.25 (used 38 hour week earnings of $389.50)
- Began new job on December 1, 2015, making $11.50 per hour, full time

EXHIBIT B

EEOSTAT
FOR EEO COMPLIANCE

paycalc: Interest Rates

- Interest Rates (rates.rte)
- IRS Publication

IRS Interest Rates

Start	End	Rate
04/2016	**12/2017**	**0.04**
10/2011	03/2016	0.03
04/2011	09/2011	0.04
01/2011	03/2011	0.03
04/2009	12/2010	0.04
01/2009	03/2009	0.05
10/2008	12/2008	0.06
07/2008	09/2008	0.05
04/2008	06/2008	0.06
01/2008	03/2008	0.07

IRS Interest Rate, cont. (Open)

The interest rates used by **paycalc** are the rates established by the IRS (*see* 26 U.S.C. §6621) for calculating interest on unpaid taxes. These rates have been adopted for use in employment cases by the EEOC, NLRB, and numerous courts. Since the IRS rates change every three months, you must update this file four times a year for **paycalc** to work properly.

The latest rates are posted here. You can update these rates automatically within the **EEOSTAT** software by selecting the menu item **File / Update Rates from Web...**; this will download the latest rates file.