NO. ALB-22-01

IN THE SUPREME COURT OF THE UNITED STATES

SHANIQUA DAVIS,

PETITIONER

v.

SBK CONSULTING, INC. AND BUBBA R. CHOI,

RESPONDENTS

On Writ of Certiorari
to the United States Court of Appeals for the Fourteenth Circuit

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BRIEF FOR PETITIONER

QUESTIONS PRESENTED

I. Whether the Fourteenth Circuit erred by depriving Petitioner Ms. Davis's opportunity to pursue her Equal Pay Act claim in court by holding that prior pay is always a "factor other than sex."

II. Whether the Fourteenth Circuit erred by allowing a custodian of corporate records to invoke the Fifth Amendment's personal privilege against self-incrimination while holding that the same custodian with the same records could not invoke the same privilege if had he quit earlier.

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On March 30, 2020, Petitioner Shaniqua Davis brought an Equal Pay Act Claim against Respondent SBK Consulting, Inc. ("SBK") in the United States District Court for the District of Albers. [R. 7]. Ms. Davis sought monetary damages, alleging that SBK violated the Equal Pay Act ("EPA") by paying Ms. Davis's colleagues a higher annual salary for the same position. [R. 7].

On April 16, 2020, while Bubba R. Choi was still a senior employee on SBK's Hiring Committee, Ms. Davis filed a subpoena, demanding that Mr. Choi produce a notebook he used to write official memos and plan business affairs. [R. 5, 7]. Mr. Choi refused. [R. 7]. He filed a motion to quash the subpoena, arguing that the act of producing the corporate document would violate his Fifth Amendment privilege against self-incrimination. [R. 7]. The district court granted the motion to quash the subpoena more than eight months after Mr. Choi was served. [R. 1, 5, 7]. Ms. Davis then filed a timely interlocutory appeal with United States Court of Appeals for the Fourteenth Circuit, arguing that Mr. Choi, like other individual custodians of corporate records, could not evade production of a corporate document just because he no longer worked at SBK. [R. 7].

Before the Fourteenth Circuit ruled on Ms. Davis's interlocutory appeal, SBK moved for summary judgment on Ms. Davis's EPA claim. [R. 1]. The district court granted SBK's motion and dismissed Ms. Davis's claim. [R. 7]. Ms. Davis timely appealed that decision [R. 1].

The Fourteenth Circuit consolidated both of Ms. Davis's appeals. [R. 7]. On July 7, 2021, the United States Court of Appeals for the Fourteenth Circuit affirmed the district court's grant of summary judgment for SBK and the district court's grant of Choi's motion to quash. [R. 17].

On January 25, 2022, the Supreme Court of the United States granted Ms. Davis's petition for a writ of certiorari. [R. 18].

CONSTITUTIONAL PROVISIONS

U.S. Const. art. III, § 1, cl. 1.

> The judicial power of the United States, shall be vested in one Supreme Court . . .

U.S. Const. amend. V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself , nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTORY PROVISIONS

Equal Pay Act, 29 U.S.C. 206(d)(1).

(d) Prohibition of sex discrimination

> (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex . . .

STATEMENT OF THE CASE

1. Ms. Davis's qualifications

Respondent SBK Consulting, Inc. ("SBK") specializes in advising technology companies. [R. 2]. In October 2016, SBK posted a job for a fourth Senior IT Risk Specialist. Id.; Appendix B. The job posting demanded a "[b]achelor's degree, with a concentration in computer science, engineering, business, management, finance, or accounting preferred." Appendix B. SBK also sought a minimum of six years of work experience in the information technology field ("IT") or another similar industry. Id.

Petitioner Shaniqua Davis's qualifications exceeded the job posting requirements. See Appendix B. In 2005, Ms. Davis graduated from Stanford University with a Bachelor of Science degree in Computer Science. [R. 2]. By the time she applied to SBK, Ms. Davis had built over eleven years of work experience in the IT sector. See id. She worked in the IT department at Bhumi & Associates for five years and then as a Junior IT Risk Specialist at NESS Consulting for six years. Id. When Ms. Davis left NESS and joined SBK, NESS paid her $90,000 a year. Ms. Davis disclosed that salary to SBK during the job interview process. [R. 2–3].

2. SBK's hiring methods

SBK chose Ms. Davis from a pool of twenty candidates. [R. 2]. They offered her a starting salary of $92,000 and classified her as a Level 5 employee [R. 3]; see also Appendix A. Ms. Davis accepted. [R. 3]. During her time at SBK, Ms. Davis received a standard yearly 2% salary increase. Id. Ms. Davis's salary was $97,631 when she brought her claim. Id.

When hiring employees, SBK pays them according to a company pay scale that consists of seven levels, each with its own range of salaries. [R. 2]; Appendix A. SBK provides each employee with the same benefits packages and does not provide any additional compensation beyond salary. [R. 2 n.2.]. SBK lacks any policies or procedures that justify how the company decides a new employee's salary or level. [R. 2]. Rather, after candidates interview with a Human Resources representative for a half hour, a junior and senior employee (such as Mr. Choi) for one-hour, and have an interview with six employees with different levels of seniority, the Hiring Committee meets to discuss the candidates. [R. 3]. SBK acknowledges that the Hiring Committee considers "all known information about the candidate" when exercising its discretion in determining employees' salaries. [R. 2].

3. Mr. Bubba R. Choi's role at SBK

Bubba R. Choi was a senior employee at SBK until December 2020. [R. 5]. He was a member of the Hiring Committee for ten years. Id. Mr. Choi attended most Hiring Committee internal meetings when the Committee selected candidates and set salary terms. Id. During discovery in this action, Mr. Choi was deposed. Id. During deposition, he testified that he did not attend any internal meetings that discussed Ms. Davis's salary terms. Id. He also shared that when he did attend Hiring Committee meetings, he would take notes in his notebook. Id. Other SBK employees said, and Mr. Choi concedes, that Mr. Choi always carried a notebook with him. Mr. Choi used the notebook to take meeting notes, write daily to-do lists featuring business items, and serve as the basis for official memoranda. [R. 5–6].

While Ms. Davis's civil suit was pending, the Attorney General opened an unrelated consumer protection investigation into SBK's practices. [R. 6]. The Attorney General's office interviewed Mr. Choi for their investigation, but Mr. Choi has not given them any material. Id. Further, the Attorney General's office has not pressed charges against Mr. Choi or other SBK custodians. Id.

4. Ms. Davis's salary as compared to that of her male counterparts

Ms. Davis is the only female Senior IT Risk Specialist at SBK. [R. 3]. The other three Senior IT Risk Specialists are Li Min, Connor Patterson, and Carlos Martinez. Id.

Mr. Min began working at SBK in 2012 as a Junior Risk Specialist. [R. 5]. He graduated from Georgetown University in 2004 with a Bachelor of Science degree in Computer Science. Id. Before working at SBK, Min worked at Mercer Consulting in its IT Department as a Junior Risk Specialist from 2004 to 2012. Id. SBK has not shared how much Mr. Min made at Mercer Consulting. See id. When Mr. Min began working at SBK in 2012, he was initially classified as a Level 5 employee with an annual salary of $100,000. Id. In 2014, Mr. Min was promoted to Senior IT Risk Specialist and SBK increased his salary from $104,040 to $105,000. Id. In 2020, Min held the same job title, was classified as a Level 7 employee, and had an annual salary of $118,247. Id.

SBK hired Mr. Patterson in 2013 as a Junior IT Risk Specialist. [R. 4]. Before coming to SBK, Mr. Patterson received his Bachelor of Science degree in Marking in 2007 and his Master of Science degree in Marketing in 2009 from the University of

Massachusetts Amherst. Id. Mr. Patterson then worked at Shoogle for four years in its marketing department. Id. In 2013, Mr. Patterson earned an annual salary of $95,000 at Shoogle. Id. He revealed this salary to SBK during his interviews. Id. When SBK initially offered Mr. Patterson the Junior IT Risk Specialist position, they offered him salary of $95,000. Id. Mr. Patterson told SBK that he would only leave Shoogle if SBK offered him a higher annual salary, namely $105,000. Id. After negotiating, SBK offered Mr. Patterson a salary of $98,000 and a classification as a Level 5 employee, and he accepted. Id. In 2015, SBK promoted Mr. Patterson to a Senior IT Risk Specialist position and increased his salary from $101,959 to $103,000. Id. In 2020, Mr. Patterson held the same job title as Ms. Davis, was classified as a Level 6 employee, and had a salary of $113,720. Id.

SBK hired Mr. Martinez in 2016 as a Senior IT Risk Specialist. Id. Mr. Martinez received a Bachelor of Science degree in Software Engineering in 2006 and Master of Science degree in Software Engineering in 2008 from Northeastern University. Id. Martinez worked at GooseGooseStop, a mid-sized technology company, from 2008 until 2013. Id. He then worked at Peach, a technology company, from 2013 until 2016. Id. SBK has not shared what Martinez's salary was when he left Peach. See id. When SBK hired Martinez in 2016, he was classified as a Level 6 employee and made $100,000 as his initial salary. Id. In 2020, Martinez held the same job title, was still classified as a Level 6 employee, and his salary was $108,243. [R. 4–5].

While holding the same position as her male coworkers, Ms. Davis's annual salary was $20,616 less than Mr. Min's, $16,089 less than Mr. Patterson's, and $10,612 less than Mr. Martinez's when she initiated the lawsuit. [R. 3–5].

SUMMARY OF ARGUMENT

This is a case about fairness. Ms. Davis's EPA claim is about opening the courthouse doors to women like Ms. Davis, who are paid significantly less than their male counterparts for the same work. Further, if Mr. Choi is able to invoke a personal privilege to block production of corporate documents, corporations will use their individual employees as a shield from accountability. Ms. Davis and other members of the public will lack access to corporate records and lose protections from corporate wrongdoing. This Court need only follow its own precedent to ensure these consequences do not unfold.

First, this Court should ensure that Congress's remedies remain available for Ms. Davis and other women by ruling that prior salary is never a "factor other than sex." Doing so tracks the EPA's plain language because a "factor other than sex" needs to be job-related. Standing alone, prior salary is never job-related. Further, Congress's policy aims in passing the EPA show that prior pay can never be a "factor other than sex." Congress passed the EPA as a broadly remedial statute to end all gender-based wage disparities, overt or not. To further these aims, this Court should construe the EPA's exceptions narrowly to prohibit employers from using seemingly neutral factors to hide gender-based wage differences. Additionally, this Court's precedent dictates that prior pay is never a "factor other than sex." It has explicitly rejected so-called "market force theory" that justifies paying men and women differently simply because women are willing to accept a lower salary. The need for broad remedies persists, especially in male-dominated fields like the

information technology ["IT"] sector where Ms. Davis has built a career. In 2020, IT companies like SBK offered fifty-nine percent of women smaller salaries than their male counterparts.

With these concerns in mind, all federal Courts of Appeal except one have rejected that prior pay alone is a "factor other than sex." Instead, these courts look at whether the employer proved that prior pay was related to job or business factors and scrutinize the facts on a case-by-case basis to ensure that the employer is not relying on "market force theory" to justify lower pay for women.

Under the EPA, this Court, and the overwhelming majority of Courts of Appeals, Ms. Davis's EPA claim prevails. SBK has not proven that they relied on business or job-related factors when determining Ms. Davis's salary. Ms. Davis had more years of IT-related work experience than two of her male colleagues who received a higher salary. Further, SBK has not provided any evidence showing that it *actually relied* on prior pay to make its salary decisions. Even more, SBK has not shared two male employees' prior salaries. Rather, SBK avers that the Hiring Committee has ample discretion in setting their salaries, leaving a gaping hole for SBK to set salaries based on an already-prohibited factor—market forces.

Second, The Fourteenth Circuit erred by allowing Mr. Choi to invoke the Fifth Amendment's persona privilege against self-incrimination while holding that the same custodian with the same records could not invoke the same privilege had he quit earlier.

Rather, this Court's precedent controls. Individual custodians of corporate records hold those items in a representative capacity. This Court thus bars individual custodians from invoking a personal privilege to shield the entity's records. Corporate records do not become personal records just because an employee leaves. And the timing of employment has never controlled the Fifth Amendment's scope. The same principle applies here. The timing of Mr. Choi's employment does not control the scope of his Fifth Amendment privilege. Mr. Choi, like other individual custodians of corporate records, cannot invoke privilege to resist production just because he left SBK.

The courts below followed faded precedent and false premises. The lower courts also opened a loophole that leaves the public defenseless from corporate wrongdoing. The lower courts then suggested alternative means of ensuring production that are entirely unavailable to civil litigants like Ms. Davis. Application of the current rule closes the loophole.

Therefore, this Court should stick to its precedent and reverse the Fourteenth Circuit's affirmance of SBK's motion for summary judgment and Mr. Choi's motion to quash.

ARGUMENT

I. THE LOWER COURT ERRED BECAUSE CONGRESS PASSED THE EQUAL PAY ACT TO END GENDER-BASED WAGE DISCRIMINATION IN THE WORKPLACE BY OPENING THE COURTS TO PLAINTIFFS LIKE MS. DAVIS.

Congress passed the Equal Pay Act ("EPA") to end the "serious and endemic problem of employment discrimination in private industry." Corning Glass Works v. Brennan, 417 U.S. 188, 194 (1974) (citing S. Rep. No. 88-176, at 1 (1963)). Prior to the EPA's passage, wages in "'many segments of American industry [were] based on an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same.'" Corning Glass Works, 417 U.S. at 194 (quoting S. Rep. No. 176, 88th Cong., 1st Ses., 1 (1963)). Today, unequal pay persists, even in the most innovative sectors of the American economy. See Carolina Gonzalez, Men Got Higher Pay Than Women 59% of the Time for the Same Tech Jobs, Bloomberg Equality (May 19, 2021, 12:59 PM), https://www.bloomberg.com/news/articles/2021-05-19/gender-pay-gap-in-tech-male-job-candidates-paid-3-higher-than-women#:~:text=Men%20Got%20Higher%20Pay%20Than,counterparts%2C%20a%20new%20survey%20finds [hereinafter *Men Got Higher Pay Than Women*].

The EPA upholds the principle that "equal work should be rewarded by equal wages." Corning Glass Works, 417 U.S. at 194. To promote wage equalization among genders, the EPA prohibits employers from discriminating:

> between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs

> the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions . . .

29 U.S.C. § 206(d)(1).

Under the EPA, the employee initially needs to prove their prima facie case and show that the employer pays different wages to employees of different sex for jobs that require equal effort, skill, and responsibility. Corning Glass Works, 417 U.S. at 195. To prevail on a sex discrimination claim, employees never need to prove that their employer had discriminatory intent. Washington County v. Gunther, 452 U.S. 161, 166 (1981). Once plaintiffs like Ms. Davis make a prima facie showing, their EPA claim will always prevail unless employers escape liability by making an affirmative defense. Corning Glass Works, 417 U.S. at 195. To do so, employers must prove that the wage discrepancy resulted from one of four narrow exceptions: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a "differential based on any other factor other than sex." 29 U.S.C. § 206(d)(1).

Here, SBK does not dispute that Ms. Davis established her prima facie case. SBK pays different wages to employees of different sexes for equal work that requires equal skill, effort, and responsibility, and is performed under similar working conditions. [R. 8]; Corning Glass Works, 417 U.S. at 195. Yet after conceding they paid Ms. Davis lower wages for the same work, SBK argues they used a "factor other than sex" to set Ms. Davis's lower salary, specifically prior pay [R. 8, 11].

Not so. First, the EPA's text and policy rationale, as well as this Court's precedent, show that prior pay can never be a "factor other than sex." Second, every Court of Appeals except for the Seventh Circuit has held that prior pay alone cannot justify wage differences. And third, this Court should reject the analysis of the single federal Court of Appeals that wrongly perpetuates sex-based wage discrimination by maintaining that prior pay by itself can be a "factor other than sex." Therefore, this Court should reverse the Fourteenth Circuit below, and instead follow the EPA's text, policy impetus, this Court's own precedent, and the overwhelming majority of the federal Courts of Appeals to hold that prior pay can never be a "factor other than sex."

A. Prior pay can never be a "factor other than sex."

This Court should hold that prior salary is never a "factor other than sex." First, doing so follows the EPA's plain language because a "factor other than sex" needs to be job-related. Prior salary alone is never job-related. Second, the EPA's purpose aims broadly to end gender-based wage disparities. Third, this Court's precedent has explicitly rejected paying men and women differently simply because women are willing to work for less.

1. The EPA's plain text shows that prior pay can never be a "factor other than sex."

The EPA's plain text shows that prior pay can never be a "factor other than sex." When interpreting a statute, this Court's "charge" is "to ascertain and follow the original meaning of the law before" it. McGirt v. Oklahoma, 140 S. Ct. 2452, 2468 (2020). The EPA enumerates four affirmative defenses to a discrimination

claim, including: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a "differential based on any other factor other than sex." 29 U.SC § 206(d)(1). Under the *noscitur a sociis* canon of interpretation, reading the fourth exception in conjunction with the prior three defenses, yields a clear result: "any other factor other than sex" is tied to work responsibilities. See Rizo v. Yovino, 950 F.3d 1217, 1232 (9th. Cir. 2020), cert. denied, 141 S. Ct. 189 (2020). After all, the first three defenses relate to the employees' job experience, job performance, and job qualifications. Id. at 1124. Additionally, under the *ejusdem generis* canon, where a general term is understood to include objects similar in nature to those objects included in the words before it, "factor other than sex" would include only job-related factors. Id. at 1225. Here, prior salary is not related to Ms. Choi's job responsibilities at SBK and therefore, cannot be a "factor other than sex." Accordingly, the EPA's fourth exception is not a catch-all exception that allows employers to escape liability, but rather must be related to the employee's job.

2. The policy aims behind the EPA show that prior pay can never be a "factor other than sex."

i. Congress passed the EPA to eradicate gender-based wage discrimination.

Congress passed the EPA to eradicate gender-based wage discrimination. When Congress considered the EPA in 1963, the average American woman received just sixty percent of her male coworker's wage. Id. at 1225–26. This Court thus construed the EPA to be "broadly remedial . . . to fulfill the underlying purposes

which Congress sought to achieve." Corning Glass Works, 417 U.S. at 208. Allowing employers to use prior pay as a "factor other than sex" disturbs the EPA's intent and aggravates gender-based wage disparities. Rizo, 950 F.3d at 1128.

ii. Gender-based wage discrimination persists today.

Even today, gender-based wage discrimination persists, so there remains an urgent need for this Court and Congress to protect female employees. See U.S. Bureau of Labor Statistics, Rep. 1094, Highlight of women's earnings in 2020 (Sept. 2021) [Hereinafter U.S. Bureau of Labor Statistics]. Permitting prior pay to set prospective wages would widen the sex-based pay gap. Rizo, 950 F.3d at 1222. In 2020, women who worked full-time had median weekly earnings that were only eighty-two percent of their male counterparts. U.S. Bureau of Labor Statistics. Since 2004, this median has not changed, but rather has remained between eighty to eighty-three percent. Id. Gender-based wage disparities exist in information technology ("IT") fields, like Ms. Davis's, as well. See Men Got Higher Pay. In 2020, men in IT received offers higher than their female counterparts for the same job, at the same company, fifty-nine percent of the time. Id. Much of this pay disparity results from employers' lack of transparency and their unwillingness to share their compensation data, which suggests that they rely on "market forces" when deciding these salaries. See Id. Ultimately, the EPA's mandate of "equal pay for equal work" would mean little if employers could explain away pay differentials through factors unrelated to the employees' work responsibilities. See Rizo, 950 F.3d at 1226.

3. This Court's precedent dictates that prior pay can never be a "factor other than sex."

This Court has rejected the notion that employers can pay men and women differently for the same work because of "market force theory." Corning Glass Works, 417 U.S. at 205 (rejecting the premise that employers can pay women less just because they are willing to work for less). "Market force theory" dictates that the labor market's natural flow sometimes demands that employers pay women less than men. Taylor v. White, 321 F.3d 710, 720 (8th Cir. 2003). This Court held that Congress passed the EPA to specifically eradicate the use of "market forces" to justify unequal pay, recognizing that women often have a weaker bargaining position than men. Corning Glass Works, 417 U.S. at 206. Further, this Court asserted that though a company may take advantage of its female employers' willingness to accept lower pay "as a matter of economics," this "nevertheless *became illegal* once Congress enacted into the law the principle of equal pay for equal work." Id. at 205 (emphasis added). Additionally, this Court has refused employers' attempts to use already-existing gender discrimination to justify unequal pay in their own companies. Corning Glass Works, 417 U.S. at 203 (refusing employer's higher pay for male night workers when the difference arose because men would not work for lower wages paid to women); L.A. Dep't of Water & Power v. Manhart, 435 U.S. 702, 712 (1977) (rejecting the notion that longevity was a factor other than sex when employer required female employees to pay more into their pension plan because they live longer). Therefore, this Court should find that

prior salary is never a "factor other than sex," and thus that Ms. Davis's claim prevails.

B. Ms. Davis's EPA claim prevails because every Court of Appeals, except for the Seventh Circuit, understands that prior pay alone cannot justify wage differences.

Prior pay alone cannot justify gender-based wage differences. Accordingly, the overwhelming majority of Courts of Appeals reject prior pay by itself as a "factor other than sex." These courts examine instead whether the employer proved that prior pay was related to other business or job-related factors. Similarly, the Eighth Circuit scrutinizes the facts on a case-by-case basis to determine whether prior pay is a permissible "factor other than sex" and that the employer is not using prior pay to justify "market forces." Under either approach, Ms. Davis's EPA claim prevails.

1. Every Court of Appeals, except the Seventh Circuit, understands that prior pay alone is not enough.

i. The majority of Courts of Appeals only allow prior pay as a "factor other than sex" if the employer provides business or job-related reasons.

The First, Second, Third, Fourth, Fifth, Sixth, Tenth, Eleventh, and District of Columbia Circuits only allow employers to use a "factor other than sex" if they prove that it is business-related or consider it alongside other job-qualifications. These courts recognized that a gender-neutral classification pay system needs to be "rooted in legitimate business-related differences in work responsibilities and qualifications for the particular positions at issue." Riser v. QEP Energy, 776 F.3d 1191, 1198 (10th Cir. 2015). Otherwise, the "factor-other-than sex defense would provide a gaping loophole in the statute through which many pretexts for

discrimination [could] be sanctioned." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 525 (2d Cir. 1992). And this gaping loophole would create space for employers to use "neutral" factors that further perpetuate gender-based wage discrimination. See supra I.A.3.

Accordingly, in these courts, an employers' affirmative defense fails unless the male coworker has greater experience, seniority, performance, training, or creates more business profit. See EEOC v. Md. Ins. Admin, 879 F.3d 114, 123 (4th Cir. 2018) (relying on qualifications, certifications, and employment history); Riser, 776 F.3d at 1199 (pointing to qualifications and experience); Guajacq v. EDF, Inc., 601 F.3d 565, 575 (D.C. Cir. 2010) (identifying meaningful unequal management experience and time on the company's executive committee); Taylor, 321 F.3d at 717 (allowing seniority systems, merit systems, and systems that measure quality of output to justify inequitable pay); Irby v. Bittick, 44 F.3d 949, 955 (11th Cir. 1995) (permitting unequal pay based on coworker's additional experience and time in his role at the organization); Hodgson v. Robert Hall Clothes, Inc., 473 F.2d 589, 597 (3d. Cir. 1973) (allowing different pay because male employees brought in more business profit); Mullinex v. Forsyth Dental Infirmary, 965 F. Supp. 120, 142–43 (D. Mass. 1996) (looking to grant funding, experience, and background).

ii. The Eighth Circuit scrutinizes the facts to ensure that the employer is not relying on "market force theory" as a proxy for discrimination.

The Eighth Circuit adopted a case-by-case approach where it looks closely at the facts to ensure that the employer is not using prior pay to justify "market force

theory" causing lower wages. Taylor, 321 F.3d at 718 (8th Cir. 2003) (citing Corning Glass Works, 417 U.S. at 205)). Accordingly, the Eighth Circuit rejected employers' prior pay defenses where the employer claims that the male employee's skills have a higher "market value," but does not provide information on its employees' education levels, experience, or other qualifications. Drum v. Leeson Elec. Corp., 565 F.3d 1071, 1073 (8th Cir. 2009). Therefore, every Court of Appeals, except for the Seventh Circuit aligns with the EPA's text, purpose, and this Court's precedent in finding that prior pay alone is not sufficient.

2. SBK has not proven that Ms. Davis's salary difference resulted from anything other than prior pay.

Here, SBK has not proven that Ms. Davis's pay resulted from a "factor other than sex." Mr. Martinez, Mr. Patterson, Mr. Min, and Ms. Davis all hold the same position at SBK. See [R. 3, 4, 5]. While holding the same position as her male coworkers, Ms. Davis's annual salary was $20,616 less than Mr. Min's, $16,089 less than Mr. Patterson's, and $10,612 less than Mr. Martinez's when she initiated the lawsuit. [R. 3–5]. SBK has not proven the Mr. Martinez, Mr. Patterson, and Mr. Min have greater qualifications, certificates, and experience than Ms. Davis. See Md. Ins. Admin, 879 F.3d at 123; Riser, 776 F.3d at 1199; Drum, 565 F.3d at 1073. Although Mr. Martinez and Mr. Patterson both have graduate degrees, Ms. Davis has three and four more years of work experience than either of them, respectively. See [R. 3, 4, 5]. Further, she has eight more years of IT-related experience than Mr. Patterson, and Mr. Patterson's additional degree was in a non-IT related field. See [R. 2, 4]. Additionally, Ms. Davis only has one less year of work experience than Mr.

Min, but her salary is over $20,000 less than his. See [R. 2, 5]. Although SBK named "prior pay" as one of the reasons for the coworkers' pay differentials, SBK has only provided the court with Mr. Patterson's prior pay. See [R. 4]. Finally, SBK does not have a seniority system, merit system, or system that measures employees' output. See Irby, 44 F.3d at 955; Hodgson, 473 F.2d at 597. Rather, SBK's Hiring Committee uses its discretion to arbitrarily assign employees when they are hired to different "levels" and "salaries" based-off of what the Hiring Committee "knows" about them. See [R. 2]. This level of discretion exemplifies the "gaping loophole[s]" that permit employers to use prior pay as a pretext for gender-based discrimination. See Aldrich, 963 F.2d at 525.

C. This Court should reject the analysis of the single federal Court of Appeals that wrongly perpetuates sex-based wage discrimination by maintaining that prior pay by itself can be a "factor other than sex."

Without justifying its decision, the Fourteenth Circuit adopted the Seventh Circuit's rule that prior pay alone can be a factor other than sex. This Court should reject the Seventh Circuit's rule because it perpetuates unlawful gender-based discrimination and is inconsistent with the EPA, this Court's precedent, and every other Court of Appeals. See supra I.A, I.B. In allowing prior pay alone to be a "factor other than sex," the Seventh Circuit permits employers to use prior pay and other seemingly "neutral factors" to justify discriminatory wage differences. See Wersing v. Dep't of Hum. Servs., 427 F.3d 466, 470 (7th Cir. 2005); Covington v. S. Ill. Univ., 816 F.2d 317 (7th Cir. 1987).

The Seventh Circuit contradicts this Court's precedent and the EPA's purpose. See supra I.A.2–3. Its rule explicitly supports "market force theory" by perpetuating old age tropes about women's role in the household. See Wersing, 427 F.3d at 470 (acknowledging that women's wages are less than men's on average but conjecturing that women on average earn less than men because they spend more time child-rearing); see also Glenn v. Gen. Motors Corp., 841 F.2d 1567, 1571 (11th Cir. 1988) ("The flaws of the Covington decision are that the Seventh Circuit implicitly *used the market force theory to justify the pay disparity* and that the Seventh Circuit *ignored congressional intent* as to what is a 'factor other than sex.'") (emphasis added). Therefore, this Court should reject the Seventh Circuit's rule because it will perpetuate gender-based discrimination and directly conflict with both the EPA and this Court's precedent.

For the foregoing reasons, this Court should reverse the Fourteenth Circuit's affirmance of the district court's grant of summary judgment in SBK's favor.

II. THE FOURTEENTH CIRCUIT ERRED BECAUSE THE FIFTH AMENDMENT'S SCOPE DOES NOT TURN ON THE TIMING OF EMPLOYMENT.

The court below erred in affirming the trial court's grant of Mr. Choi's motion to quash because an employee's departure cannot create a Fifth Amendment privilege that shields their employer's records. The Fifth Amendment states that no person "shall be compelled in any criminal case to be witness against himself." U.S.

Const. amend. V. This privilege against self-incrimination applies to statements that are: (1) compelled by the government; (2) testimonial; and (3) incriminating. Fisher v. United States, 425 U.S. 391, 410 (1976). The privilege applies to both the content of records and the act of producing records. Id. This Court has long held that the privilege applies to individuals, not corporations. Braswell v. United States, 487 U.S. 99, 104 (1988). Because individual custodians hold corporate documents in a representative capacity, individuals "cannot rely upon the privilege to avoid producing" business records. Id. at 111 n.4 (quoting Bellis v. United States, 417 U.S. 85, 88 (1974)).

So too should this Court bar Respondent from using individual privilege to avoid producing corporate records. As a preliminary matter, the Fourteenth Circuit and district court correctly found that Mr. Choi's notebook was a corporate document. See [R. 14]. The timing of employment has never controlled the Fifth Amendment's scope. Nor should it here. First, rather than relying on faded precedent and false premises like the Fourteenth Circuit below, this Court should follow its own precedent and rule that the timing of Mr. Choi's employment cannot control the scope of his Fourth Amendment privilege. Second, this Court should follow its own precedent because doing otherwise leaves the public defenseless from corporate wrongdoing. Therefore, this Court should reverse the United States Court of Appeals for the Fourteenth Circuit.

A. Mr. Choi's notebook falls outside the Fifth Amendment's historic scope.

As a threshold matter, Mr. Choi's notebook was a corporate document, and thus falls outside the historic scope of the privilege against self-incrimination. The Fifth Amendment privilege protects individuals only "from compulsory incrimination through his . . . *personal* records." Bellis, 417 U.S. at 85 (quoting United States v. White, 322 U.S. 694, 701 (1944)) (emphasis added). Courts examine a document's function to determine that a given document is corporate, rather than personal. Wilson v. United States, 221 U.S. 361, 380 (1911) (privilege unavailable depending on "the nature of the documents and the capacity in which they are held."). Private diaries and desk calendars fall outside the privilege's scope when they serve as records of official business. See In re Grand Jury Proc., 55 F.3d 1012, 1014–15 (5th Cir. 1995); see also United States v. MacKey, 647 F.2d 898, 901 (9th Cir. 1981).

Here, Mr. Choi's notebook served a business function. Mr. Choi wrote SBK meeting notes in his notebook. [R. 14]. He then used those notes to write official memoranda and meeting minutes for his colleagues. [R. 14]; see also MacKey, 647 F.2d at 901 (private diary was a corporate document because it held meeting minutes). Mr. Choi also used the notebook to calendar and plan corporate responsibilities. [R. 5–6, 6 n.2]; see also In re Grand Jury Proc., 55 F.3d at 1014–15 (private calendars were corporate documents because they contained meeting summaries and notes on employee compensation). Thus, whether the diary was otherwise private or not, Mr. Choi's notebook falls outside the privilege's historic

scope because he used it to carry out corporate affairs. Bellis, 417 U.S. at 85; White, 322 U.S. at 701; In re Grand Jury Proc., 55 F.3d at 1014–15; MacKey, 647 F.2d at 901. Therefore, this Court should defer to the Fourteenth Circuit and district court's finding that Mr. Choi's notebook was a corporate document.

B. This Court's precedent controls, not the timing of Mr. Choi's departure.

1. Custodians of corporate records hold those items in a representative capacity.

Corporations do not enjoy the Fifth Amendment privilege that individuals do. Braswell, 487 U.S. at 104 (documenting the "lengthy and distinguished pedigree" of the collective entity doctrine); Hale v. Henkel, 201 U.S. 43, 74–75 (1906) (a corporation has more limited rights than persons because its rights are "only preserved . . . so long as it obeys the laws of its creation"). Although Fisher expanded the Fifth Amendment's privilege to include acts of production, 425 U.S. at 410, "the agency rationale undergirding the collective entity . . . survives." Braswell, 487 U.S. at 109 (Fisher did not "render[] the collective entity rule obsolete."). That rationale dictates that "the custodian's act of production is not deemed a personal act, but rather an act of the corporation" because "artificial entities . . . may act only through their agents." Braswell, 487 U.S. at 109–10 (citing Bellis, 417 U.S. at 90); Fisher, 425 U.S. 391, 429–30 (1976) (Brennan, J., concurring) ("[O]ne in control of the records of an artificial organization undertakes an obligation with respect to those records foreclosing any exercise of his privilege."); White, 322 U.S. at 699 (individual custodians "assume the rights, duties and privileges of the artificial entity . . . of which they are agents.").

This Court thus bars individual custodians from invoking the Fifth Amendment's privilege against self-incrimination to resist production of corporate records. Braswell, 487 U.S. at 109–10. Because business records do not become personal when an employee leaves, "a custodian of corporate records continues to hold them in a representative capacity even after his employment is terminated." In re Grand Jury Subpoena Dated November 12, 1991, FGJ 91-5 (MIA), 957 F.2d 807, 811 (11th Cir. 1992) [hereinafter In re Grand Jury 1991]; see also In re Sealed Case (Gov't Recs.), 950 F.2d 736, 740 (D.C. Cir. 1991) [hereinafter In re Sealed Case 1991] (Ginsburg, J.) ("[C]orporate records belong to the corporation and are held for the entity by the custodian only in an agency capacity").

2. The timing of employment has never controlled the Fifth Amendment's scope.

The Supreme Court has never held that the termination of employment ends an individual custodian's obligation to produce corporate records in response to a subpoena. Braswell, 487 U.S. at 118–19; Bellis, 417 U.S. at 88–90 (rejecting an individual custodian of corporate records' attempts to invoke privilege even after he dissolved his law office); Wheeler v. United States, 226 U.S. 478, 490–91 (1913) (refusing corporate custodians' attempts to invoke privilege even after their corporation became defunct so they could no longer be officers); Grant v. United States, 227 U.S. 74, 79–80 (1913) (barring holder of corporate records from invoking privilege even when he lacked individual title in the records sought and the corporation had ceased all business). Indeed, the Braswell Court never used the word "employee," "employer," or "employment" to set the scope of privilege. See

Braswell, 487 U.S. at 110–19. Instead, this Court refused to create a new Fifth Amendment privilege for "individuals" and "custodians" holding corporate documents. Id. Such reasoning reflects this Court's longstanding rule that a corporate entity's dissolution is "immaterial" to an individual custodian's Fifth Amendment privilege. Wheeler, 226 U.S. at 488–89 (refusing to let law partner resist production just because his firm folded); see also Bellis, 417 U.S. at 97 ("[D]issolution of a corporation does not give the custodian of the corporate records any greater claim to the Fifth Amendment privilege.").

After Braswell, several lower courts have refused to allow former employees to invoke privilege where none exists for other individual custodians. See In re Grand Jury 1991, 957 F.2d at 810–11; see also In re Sealed Case 1991, 950 F.2d at 740; Gloves, Inc. v. Berger, 198 F.R.D. 6, 10 (D. Mass. 2000) (refusing to extend privilege to corporate custodians resisting production in a civil suit after their employment ended); Thomas v. Tyler, 841 F. Supp. 1119, 1129–30 (D. Kan. 1993) (same); Jung Chul Park v. Cangen Corp., 7 A.3d 520, 527 (Md. 2010) (refusing to extend privilege to a former employee in civil proceedings even after he "removed [corporate records] in an unauthorized fashion from corporate premises").

3. The Fourteenth Circuit followed faded precedent and false premises from the lower courts.

This Court's decisions trump faded precedent and false premises in the lower courts. To justify splitting formerly- and currently-employed custodians into different categories for Fifth Amendment purposes, the Fourteenth Circuit asserted

that a "plurality of courts" did the same. See [R. at 15]. This plurality is on weak footing indeed.

Prior to Braswell, the Second Circuit allowed a former corporate employee to invoke the privilege against self-incrimination to quash a subpoena issued while he still worked at the company. In re Grand Jury Subpoenas Duces Tecum Dated June 13, 1983 and June 22, 1983, 722 F.2d 981, 983 (2d Cir. 1983) [hereinafter In re Grand Jury 1983]. The Second Circuit acknowledged the "uncertain backdrop" on which their decision relied, namely whether the collective-entity doctrine applied to acts of production. In re Grand Jury 1983, 722 F.2d at 986. The Braswell Court had resolved the same uncertainty the Second Circuit had confronted before. Braswell, 487 U.S. at 109-10, 111; see also In re Three Grand Jury 1999, 191 F.3d 173, 186 (2d Cir. 1999) (Cabranes, J., dissenting) (stating that Braswell directly overruled In re Grand Jury 1983). But rather than follow the collective entity rule, the Second Circuit relied on their own uncertain, and previously overruled, precedent. In re Three Grand Jury 1999, 191 F.3d at 181.

In ignoring Braswell, the Second Circuit also relied on distinguishable facts. In 1983, the Second Circuit addressed the invocation of privilege to protect against incrimination through a document's contents. In re Grand Jury 1983, 722 F.2d at 987. The Braswell and In re Three Grand Jury 1999 courts instead analyzed the scope of privilege to protect against the mere act of production. See Braswell, 487 U.S. at 100; see also In re Three Grand Jury 1999, 191 F.3d at 183–84.

Nor do the other cases in the circuit split mandate otherwise. Without providing any reasoning or legal analysis, the Ninth Circuit "follow[ed] the Second Circuit's decision in [In re Grand Jury 1983]." In re Grand Jury Proc., 71 F.3d 723, 724 (9th Cir. 1995). In so doing, the Ninth Circuit portended the Second Circuit's later and equally erroneous adherence to overruled lower court precedent. See id., see also In re Three Grand Jury 1999, 191 F.3d at 183–84; supra. Additionally, a single Third Circuit decision's footnoted dictum indicated that former employees are "obviously not within the scope of the Braswell rule." United States v. McLaughlin, 126 F.3d 130, 133 n.2 (3d Cir. 1997).

4. The timing of Mr. Choi's employment does not control the scope of his Fifth Amendment privilege.

The timing of Mr. Choi's employment does not control the scope of his Fifth Amendment privilege. Here, as elsewhere, neither inapposite decisions from the lower courts nor their dicta trump this Court's precedent. See U.S. Const. Art III § 1 ("The judicial power of the United States, shall be vested in one Supreme Court."); see also Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 379 (1994) ("It is to the holdings of . . . cases, rather than their dicta, that we must attend."). Instead, because the timing does not control here, Mr. Choi, like other individual custodians of corporate records, cannot invoke privilege to resist production just because he left SBK. See Braswell, 487 U.S. at 118–19; Bellis, 417 U.S. at 88–90; Wheeler, 226 U.S. at 490–91; Grant, 227 U.S. at 79–80. That principle confirms numerous decisions in the lower courts that already follow this Court's precedent. See In re Grand Jury 1991, 957 F.2d at 810–11; In re Sealed Case 1991, 950 F.2d at 740; Gloves, 198

F.R.D. at 10; Thomas, 841 F. Supp. at 1129–30; Jung Chul Park, 7 A.3d at 527. By confirming the logic of those courts, this Court would also explicitly reject the Second and Ninth Circuit's use of faded precedent, and the Third Circuit's reliance on passing dicta, to create new constitutional protections where this Court has held that none exist. Cf. In re Grand Jury 1999, 191 F.3d at 186; In re Grand Jury 1995, 71 F.3d at 724; McLaughlin, 126 F.3d at 133 n.2. Therefore, this Court should follow its own precedent and reverse the Fourteenth Circuit below

C. This Court should follow its precedent to protect all Americans—corporate custodians and members of the public alike.

White-collar crime poses "one of the most serious problems confronting law enforcement authorities." Braswell, 487 U.S. at 115; see also H.R. REP. 117-79, at 102 (2021) ("The Committee continues to have concerns over the threats to economic growth, financial stability, and national security posed by white-collar crimes and directs . . . the Department of Justice to prioritize Federal prosecution of white-collar criminals."). Efforts to fight this problem would be "embarrassed, if not wholly defeated," if courts brought corporate records under the Fifth Amendment's scope. Wilson, 221 U.S. at 385; see also Braswell, 487 U.S. at 115-16 (relying on white-collar crime-fighting rationale to hold production of corporate records outside the scope of the privilege against self-incrimination); Bellis, 417 U.S. at 91 (same); White, 322 U.S. at 700 (same); Wheeler, 226 U.S. at 488 (same).

This Court should not embarrass or defeat efforts to hold corporations accountable. First, the Braswell rule already protects both individual custodians and the public. Second, by abandoning Braswell, lower courts created a loophole

that shields corporate records from ever being produced and left the public defenseless from corporate wrongdoing. Instead, this Court should reverse the Fourteenth Circuit below and follow its precedent.

1. The current rule already protects both individual custodians and the public.

This Court's precedent shields individual custodians while protecting the public's need for corporate accountability. Because those custodians produce corporate records in a representative capacity, the government "may make no evidentiary use of the 'individual act'" of production against custodians in criminal proceedings. Braswell, 487 U.S. at 118. Accordingly, the government may never introduce evidence to a jury that a subpoena was served on, or that corporate records were produced by, a particular individual. Id.; see also In re Custodian of Recs. of Variety Distrib., Inc., 927 F.2d 244, 251 (6th Cir. 1991) (excluding an individual custodian's testimony that he produced business records in response to a grand jury subpoena).

Here, this Court need not reach hypothetical uses of Mr. Choi's act of production in criminal proceedings. The Attorney General of the States of Albers has not filed any criminal complaints against Mr. Choi or any other SBK associates. See [R. 6]. Even if the Attorney General charged Mr. Choi, following this Court's precedent is not "likely to infringe on individuals' liberty," contrary to the Fourteenth Circuit's reasoning below. See [R. 16] (citing In re Three Grand Jury 1999, 191 F.3d at 181, 183). After all, in a made-up future prosecution, the government could "make no evidentiary use of [Mr. Choi's] individual act" of

production to incriminate him. Braswell, 487 U.S. at 118. If Mr. Choi is prosecuted, the government would be unable to introduce evidence that Ms. Davis served Mr. Choi with a subpoena, or that Mr. Choi produced corporate records in response. Id.; see also In re Custodian of Recs. of Variety Distrib., Inc., 927 F.2d at 251. Therefore, this Court need not overturn precedent that already respects Mr. Choi and other custodians' concern for privilege against self-incrimination.

2. This Court should affirm the current rule to close a loophole in the lower courts that leaves the public defenseless from corporate wrongdoing.

By abandoning Braswell's collective entity rule, lower courts opened a loophole that leaves the public defenseless from corporate wrongdoing. In the Second, Third, and Ninth Circuits, where a custodian's privilege begins when his employment ends, individuals have a "perverse incentive" to leave their jobs with documents they know "contain evidence of wrongdoing and then resist production of those documents by asserting a claim of privilege." See In re Three Grand Jury 1999, 191 F.3d at 187 (Cabranes, J., dissenting); see also McLaughlin, 126 F.3d at 133 n.2; In re Grand Jury Proc., 71 F.3d at 724. The Eleventh Circuit refused to allow such maneuvering several years prior, when an individual custodian copied corporate records, kept them when he quit, and held onto them to shield himself from liability. In re Grand Jury 1991, 957 F.2d at 811. Exempting that custodian just because he was no longer employed would "create an obvious haven for those who seek to frustrate the legitimate demands for the production of relevant corporate records." Id. at 810. So, the Eleventh Circuit, like the D.C. Circuit before

it, applied the collective entity rule to all custodians, regardless of their employment status. Id. at 811; see also In re Sealed Case 1991, 950 F.2d at 740. The Fourteenth Circuit dismissed that consequence by observing that the "government retains other options that are less likely to infringe on individuals' liberty" without specifying what viable options remain to protect Ms. Davis and the public. See [R. 16] (citing In re Three Grand Jury 1999, 191 F.3d at 181, 183).

Not so. Alternative modes of gathering corporate records fail, especially for civil litigants like Ms. Davis. The availability of warrants and statutory immunity fails to ensure production of corporate documents. Further, civil litigants like Ms. Davis can never use these governmental tools to ensure production. Therefore, this Court should reverse the court below to close a loophole that leaves Americans in the Second, Third, Ninth, and Fourteenth Circuit defenseless from corporate wrongdoing.

i. Warrants do not ensure production of corporate documents.

Lower courts have suggested that the government get a search warrant to seize documents that custodians refuse to produce. Three Grand Jury 1999, 191 F.3d at 183. To obtain a warrant, the government would need to overcome the constitutional requirement that the description of the items to be seized leaves "nothing . . . to the discretion of the officer executing the warrant." Stanford v. Texas, 379 U.S. 476, 485 (1965). Courts reject warrants that make a broad request for business records unless the affiant shows the pervasiveness of suspected illegal activity. See Andresen v. Maryland, 427 U.S. 463, 481 n.10 (1972) (allowing warrant

for many corporate records only because law enforcement sought evidence of a "complex real estate scheme whose existence could be proved only by piecing together many bits of evidence"). Warrants that fail to distinguish between personal and business records may be unconstitutionally broad. See United States v. Riccardi, 405 F.3d 852, 862 (10th Cir. 2005) (rejecting warrant that failed to distinguish personal and business files).

Here, as elsewhere, warrants fail to ensure production. Because corporate records come in diverse forms, supra II.A, and can be stored by both entities and individuals, the particularity requirement raises an insurmountable hurdle when the government seek corporate records. Stanford, 379 U.S. at 485. The government would thus need to submit broad warrants. These warrants might well fail to reach the high bar the Constitution sets for particularity. See Riccardi, 405 F.3d at 862. Warrants might fail to ensure production of whole swathes of documents when, as may be true here, the government cannot show the pervasiveness of suspected illegal activity. Andresen, 427 U.S. at 481 n.10. Further, only the government can obtain and access warrants—civil litigants like Ms. Davis lack such power, and will thus lack corporate records they need to meet their evidentiary burden.

ii. This Court has already rejected the use of statutory immunity to ensure production.

Lower courts have suggested that the government grant statutory immunity to former employees in return for production. In re Three Grand Jury 1999, 191 F.3d at 180. Yet this Court already rejected the "heavy burden" that statutory immunity imposes. Braswell, 487 U.S. at 116–17. That burden weighs heavier today

than when Braswell was decided because this Court has since expanded statutory immunity. See United States v. Hubbell, 120 S. Ct. 2037, 2040–44 (2000) (expanding a statute's act-of-production immunity provision to preclude white-collar prosecution of defendant employee). Even if the government could offer statutory immunity to encourage production of corporate documents, that incentive fails the public. With no such carrot to dangle in front of custodians, civil litigants like Ms. Davis will be incapable of ensuring production, and thus powerless to pursue their otherwise-meritorious claims in court.

For the foregoing reasons, this Court should reverse the Fourteenth Circuit's affirmance of the district court's grant of Respondent Bubba R. Choi's motion to quash.

CONCLUSION

For the foregoing reasons, Petitioner respectfully seeks reversal of the Fourteenth Circuit's affirmance of the district court's grant of Respondent SBK Consulting, Inc.'s, motion for summary judgment and Respondent Bubba R. Choi's motion to quash.

Respectfully submitted,

Ms. Shaniqua Davis

By her attorneys

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Attorney 1

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Attorney 2

Appendix A

SBK Consulting, Inc. Pay Scale for Employee Annual Salaries

Level 1 Range = $50,000 to $65,000
Level 2 Range = $60,000 to $75,000
Level 3 Range = $70,000 to $85,000
Level 4 Range = $80,000 to $95,000
Level 5 Range = $90,000 to $105,000
Level 6 Range = $100,000 to $115,000
Level 7 Range = $110,000 to $125,000

Appendix B
Senior Information Technology Risk Specialist
SBK Consulting, Inc.

Job Description:
SBK Consulting is seeking a passionate and experienced professional to join its Information Technology team. As a Senior Information Technology Risk Specialist, you will support our technology programs, manage risk strategies and protocols, and monitor the company's software systems.

Responsibilities:
- Repairing client environments, taking forensic images, containing threats, and restoring services both on-site and remotely.
- Managing our client networks, servers, and endpoints on-site and remotely.
- Monitoring for issues and improvements, auditing, and documenting frequently.
- Provide support for Mac and Windows integrated with Cloud technologies from Microsoft Azure, Dropbox, Office 365, Google, and many more.

Education and Experience:
- A Bachelor's degree is required, with a concentration in computer science, engineering, business management, finance, or accounting preferred.
- Minimum of 6 years of experience in the information technology industry or other similar industry.

Desirable Knowledge and Skills:
- Advanced knowledge of risk management programs, measurement tools, models, control frameworks, and risk indicators used to make decisions on operational or enterprise risks for an organization.
- Capabilities to evaluate a broad range of an institutions' operational framework, including: risk management and compliance programs, payment processing activities, custody services, investment management and servicing utilities, and resiliency of operations.
- Experience leading information technology risk strategies and briefing senior management on findings and recommendations.
- Proficient technical knowledge of IMAP, LDAP, Microsoft ActiveSync, Active Directory and group policies, data recovery tools, Microsoft Exchange, WINS, DHCP, DNS, and TCP/IP.