No. 18-1206

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

EVANGELINE J. PARKER

Plaintiff-Appellant,

v.

REEMA CONSULTING SERVICES, INC.

Defendant-Appellee.

Appeal From The United States District Court
For The District of Maryland, Greenbelt Division (8:17-cv-01648-RWT)

BRIEF OF APPELLANT EVANGELINE J. PARKER

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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(name of party/amicus)

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Signature: /s/ Tiffany Yang Date: 5/23/2018

Counsel for: Evangeline J. Parker

CERTIFICATE OF SERVICE

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I certify that on May 23, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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INTRODUCTION

At the heart of this case is an exemplary female employee who was subjected to a series of escalating sex-based hostilities in her workplace and who, despite repeated attempts at resolving this harassment, suffered persistent abuse at the hands of male supervisory and subordinate employees before she was terminated based on her sex and in retaliation for bringing sex-discrimination complaints. Plaintiff-Appellant Evangeline Parker quickly rose through the ranks based on her merits in a company where few women advanced, and her earned success inspired envy from her male co-workers. Two weeks after her sixth promotion, which elevated her to a managerial role, one jealous male subordinate sought to impugn the integrity of her excellent workplace performance by concocting and circulating a false rumor that Ms. Parker's advancement relied not on her professional abilities, but on a sexual relationship with a male supervisor. The widespread circulation of this rumor accomplished its intended effect: Ms. Parker was regarded with open resentment and disrespect from subordinates and superiors alike. Indeed, the highest-ranking manager at her workspace helped spread the corrosive rumor before proclaiming he would no longer recommend her for higher-level tasks or allow her to advance any further within the company.

Ms. Parker's attempts to resolve the harassment stemming from this false rumor resulted in further sex-based hostilities: she was screamed at, pushed out of

a mandatory staff meeting, threatened with termination, accused of "huffing and puffing," reprimanded for not staying quiet, and accused of insubordination and poor management. Her various complaints to her supervisors and to Human Resources were largely ignored. Meanwhile, her male colleagues were not treated in this manner. The male superior implicated in the same false rumor faced nothing more than a teasing question from his male supervisor, and the male subordinate who had invented the rumor (without consequence) went on to file a baseless harassment claim against her — one that was immediately resolved in his favor and, without any opportunity for review or response, promptly resulted in the sex-based and retaliatory termination of Ms. Parker.

The allegations in Ms. Parker's complaint illustrate a compelling portrait of the harassment inflicted on Ms. Parker precisely because of her sex. This alleged harassment was impermissibly grounded in sex stereotypes in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. ("Title VII"), and her allegations make clear she held an objectively reasonable belief that the work environment she opposed was unlawful. At this stage in the litigation, Ms. Parker's factual allegations must be treated as true with all reasonable inferences drawn in her favor. However, in dismissing Ms. Parker's well-pled complaint, the district court erred by distorting the nature of her allegations and misconstruing the governing legal principles. Contrary to the district court's flawed conclusions, Ms.

Parker has satisfied her burden at the pleading stage by alleging that: (1) the harassment she suffered was based on her sex, (2) the harassing conduct rose to a sufficiently severe or pervasive level, (3) she was terminated for engaging in activity protected by Title VII, and (4) she adequately invoked her administrative remedies as to her sex-based termination claim. The court further abused its discretion when, without any support or explanation, it dismissed her hostile work environment and retaliation claims *with prejudice* and without any opportunity to amend.

Accordingly, Ms. Parker now asks that this Court reverse the dismissal of her complaint and remand the case for further proceedings.

STATEMENT OF JURISDICTION

The district court's jurisdiction was invoked under 28 U.S.C. § 1331 and 42 U.S.C. § 2000e–5(f)(3), *see* J.A. 7 ¶5, and this Court has jurisdiction under 28 U.S.C. § 1291. The district court entered its order dismissing the complaint on December 7, 2017, J.A. 90, and on January 4, 2018, Ms. Parker timely filed a post-judgment motion pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, J.A. 91. Following the district court's order denying this motion on January 19, 2018, J.A. 195–96, Ms. Parker timely filed a notice of appeal on February 16, 2018, J.A. 197.

STATEMENT OF THE ISSUES

1. Did the district court err when, in determining that Ms. Parker's allegations failed to plead sex-based discrimination under Title VII, it failed to accept her factual allegations as true and draw all reasonable inferences in her favor, failed to consider the entirety of her complaint, and categorically concluded that any allegations of falsified "sleeping to the top" rumors impugning an employee's merited advancement cannot, as a matter of law, constitute sex-based discrimination under Title VII?

2. Did the district court err in determining that a female employee's allegations of serious and frequent harassment over a two-month period could not rise to a severe or pervasive level sufficient to state a claim for a hostile work environment?

3. Did the district court err in determining that an employee who makes a reasonable mistake of law in opposing discrimination is not entitled to the protections of Title VII's anti-retaliation provision?

4. Did the district court err in determining that an employee failed to exhaust administrative remedies when she filed an EEOC charge alleging she was terminated because of her sex, and later provided additional details in support of this claim in her judicial complaint?

5. Did the district court abuse its discretion when, with no legal reasoning or consideration of the relevant factors, it granted the motion to dismiss as to Ms. Parker's claims of hostile work environment and retaliatory termination *with prejudice* without first giving the plaintiff an opportunity to amend?

STATEMENT OF THE CASE

A. Ms. Parker's Hostile Work Environment and Her Retaliatory and Discriminatory Termination[1]

On December 1, 2014, Ms. Parker was hired to work as an inventory control clerk at Defendant-Appellee Reema Consulting Services, Inc.'s ("RCSI") warehouse facility in Sterling, Virginia. J.A. 8 ¶ 7. Over the next fifteen months, Ms. Parker's performance and professionalism earned her six promotions, and her last promotion elevated her to the position of Assistant Operations Manager. *Id.* ¶¶ 9–10. When she began this new role in early March 2016, she was one of the few female employees who had reached the managerial level in several years. *Id.* ¶ 11.

Approximately two weeks after accepting the managerial role, Ms. Parker learned that certain male employees were circulating an unfounded rumor that she

[1] This section incorporates the factual allegations contained in Ms. Parker's complaint, which, at this stage of litigation, must be taken as true with all reasonable inferences construed in her favor. *E.I. du Pont de Nemours & Co. v. Kolon Indus.*, 637 F.3d 435, 440 (4th Cir. 2011).

had engaged in a sexual relationship with Damarcus Pickett, a married and higher-ranking manager at RCSI, to obtain her promotion. J.A. 8–9 ¶ 12. Multiple witnesses confirmed that the rumor originated from Donte Jennings, an employee who began working at RCSI as a clerk — as Ms. Parker had — around the time she joined the company, but who quickly became her subordinate following her various promotions. J.A. 9 ¶¶ 13–14. His jealousy of Ms. Parker's earned success at RCSI, a company where few women reached a managerial level, motivated his fabrication of the rumor. J.A. 8, 10 ¶¶ 11, 25. Larry Moppins, the highest-ranking manager at the warehouse facility, was also among those who spread the false rumor. J.A. 9 ¶ 15.

As the rumor spread, a number of Ms. Parker's supervisors and co-workers, including junior employees that she supervised, began treating her with open resentment and disrespect. *Id.* ¶ 17. In an effort to informally resolve the growing hostility in her workplace, Ms. Parker met with other RCSI employees to denounce the false rumor, and she asked Mr. Jennings to speak with her directly if he had any questions about her work performance. *Id.* ¶ 18. However, her subsequent interactions with her supervisors and RCSI's Human Resources department made clear they had no intention of fairly or appropriately resolving the hostile work environment caused by the rumor. J.A. 11, 12 ¶¶ 28, 29, 34.

On April 21, 2016, Mr. Moppins called for a mandatory full staff meeting that — unbeknownst to Ms. Parker — would discuss the false rumor. J.A. 10 ¶ 19. She and Mr. Pickett were both running a few minutes behind schedule, and they arrived together to the meeting. *Id*. ¶ 20. Mr. Moppins opened the door just enough to let Mr. Pickett into the conference room, but he promptly slammed the door in Ms. Parker's face and proceeded to lock her out, humiliating her in front of all the warehouse employees. *Id*. ¶¶ 20–21.

The following day, Ms. Parker learned from a co-worker that staff had discussed the rumor during the meeting, where she had been denied any opportunity to speak on her own behalf. *Id*. ¶¶ 21–22. She then arranged a meeting with Mr. Moppins to address the situation. *Id*. ¶ 23. At the meeting, which another RCSI manager attended as a witness, Mr. Moppins blamed Ms. Parker for bringing this situation to the workplace. *Id*. ¶¶ 23–24. Mr. Moppins stated he had "great things" planned for Ms. Parker at RCSI but that, due to this rumor, he could no longer recommend her for promotions or higher-level tasks and would not allow her to advance any further in the company. *Id*. ¶ 24. Ms. Parker underscored that the rumor was untrue and had been falsified by a jealous male co-worker, but Mr. Moppins did not listen to or accept Ms. Parker's explanation. *Id*. ¶ 25. Mr. Moppins's harsh comments and deliberate dismissal of Ms. Parker's

account not only aggravated her hostile work environment, but also heightened her fear of losing her job. J.A. 11 ¶ 26.

On or about April 25, 2016, Ms. Parker was called to another meeting with Mr. Moppins, where Mr. Pickett and another manager were present as witnesses. *Id.* ¶ 27. Mr. Moppins again blamed Ms. Parker for disrupting the workplace, and he remarked that he "should have fired her the day before when she came in 'huffing and puffing about this BS rumor.'" *Id.* He lost his temper, began screaming at Ms. Parker, and dismissed her after instructing, "[D]on't let this happen again." *Id.* Following the meeting, it became clear that Mr. Moppins had no intention of resolving the situation or disciplining any of the employees responsible for perpetuating the fabricated rumor. *Id.* ¶ 28. Later that day, Ms. Parker approached Cathy Price, RCSI's Human Resources Manager, to file a sexual harassment complaint against Mr. Moppins and Mr. Jennings. *Id.*

Two days later, Ms. Price organized a meeting with Ms. Parker, Mr. Moppins, and Mr. Pickett. *Id.* ¶ 29. Ms. Price did nothing more than encourage the three managers to apologize to one another and instruct them to place the prior incidents behind them; Mr. Jennings was not present at this meeting, nor did he face any discipline for his actions. *Id.* After the meeting, Ms. Price assured Ms. Parker that her job was not in jeopardy. *Id.* Several days later, Ms. Parker left for a pre-approved vacation from May 11 to May 16, 2016. *Id.* ¶ 30.

On May 12, 2016, Mr. Jennings submitted a complaint alleging that Ms. Parker's conduct had created a hostile work environment against him. *Id.* ¶ 31. When Ms. Parker returned to work on May 17, 2016, she was instructed to have no contact with Mr. Jennings and was provided no opportunity to review or respond to his complaint. *Id.* Ms. Parker had never acted inappropriately towards Mr. Jennings, and when she learned of the contents of his complaint, she denied the allegations to Mr. Moppins. *Id.*

Although the accusations against her were unfounded, Ms. Parker complied with her given instructions and attempted to limit her interactions with Mr. Jennings. J.A. 12 ¶ 33. However, Mr. Jennings was permitted by his supervisor to spend time in Ms. Parker's work area, where he conversed with employees under her supervision during working hours and distracted them from their duties. *Id.* During these conversations, Mr. Jennings directed long stares at Ms. Parker, smirked at her, and laughed at her. *Id.* Ms. Parker's hostile work environment persisted, and although Ms. Parker raised her concerns with her immediate supervisor and RCSI's Human Resources Department, the situation never improved. *Id.* ¶ 34.

On May 18, 2016, Ms. Parker was called to a meeting with Mr. Moppins, Ms. Price, and RCSI's in-house counsel Reema Vora. *Id.* ¶ 35. During this meeting, Mr. Moppins issued two written warnings to Ms. Parker: one warning

stemmed from Mr. Jennings's false allegations against her, and the other accused her of poor management ability and insubordination to Mr. Moppins. *Id.* ¶¶ 36–37. These were the first written warnings Ms. Parker had received while at RCSI, and both were unfounded. *Id.* ¶ 37. At the end of this meeting, Mr. Moppins fired Ms. Parker. *Id.* ¶ 36.

Under RCSI's "three strikes" rule, employees are subject to termination after receiving three written warnings. J.A. 13 ¶ 39. However, this rule was disparately enforced. Male employees remained employed after receiving three or more warnings, but Ms. Parker — like other female employees — was fired upon receiving only two, contemporaneously-issued written warnings. J.A. 12, 13 ¶¶ 36, 37, 39.

B. The Underlying Proceedings

On August 24, 2016, Ms. Parker timely filed a charge with the Equal Employment Opportunity Commission ("EEOC") that included allegations of sex discrimination, retaliation, and sex-based termination. J.A. 13 ¶ 42; J.A. 37–38. The EEOC issued a Notice of Right to Sue on February 18, 2017, J.A. 13 ¶ 43, and on May 15, 2017, Ms. Parker filed a complaint alleging claims for hostile work environment (Count I), retaliatory termination (Count II), and discriminatory termination (Count III), J.A. 6–16.

On December 7, 2017, following a hearing held that same day, the district court granted the Defendant's motion to dismiss, dismissed Ms. Parker's complaint, and ordered the case closed. J.A. 90. The court did not issue a written memorandum opinion, but it explained its reasoning in its ruling from the bench. J.A. 117–170. The court dismissed Count I for two reasons: it concluded that the alleged harassment was not based on Ms. Parker's gender and did not sufficiently rise to a severe or pervasive level. J.A. 149–50. The court also determined that Ms. Parker failed to establish that her beliefs concerning the unlawful practice were objectionably reasonable, and it dismissed Count II of the complaint on this ground alone. J.A. 151–52. Finally, the court determined that Ms. Parker had not yet exhausted her third claim with the EEOC, and it dismissed Count III without prejudice. J.A. 147–48.

Ms. Parker timely moved for reconsideration or, in the alternative, to vacate the judgment and permit the filing of an amended complaint. J.A. 91–114. On January 19, 2018, prior to the deadline for Ms. Parker's reply brief, the district court denied the motion. J.A. 195–96.

This appeal timely followed.

SUMMARY OF ARGUMENT

1. The district court erred in concluding that Ms. Parker failed to allege sex-based harassment in support of her hostile work environment claim (Count I).

As pled in the complaint, Ms. Parker's hostile work environment manifested impermissible sex stereotyping in violation of Title VII. Harassment grounded in the circulation and impact of a false rumor that a woman's earned advancement in the workplace relied not on merit but on a sexual relationship with a male superior reflects "traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior." *Spain v. Gallegos*, 26 F.3d 439, 448 (3d Cir. 1994). As numerous courts have held, allegations of such harassment are sufficiently sex-based for Title VII purposes.

The district court further erred when it truncated its review of Ms. Parker's allegations to consider only those involving the false rumor. As Ms. Parker's allegations make clear, her harassment did not end with the pervasive circulation of this rumor. The disparate treatment that Ms. Parker suffered in the rumor's aftermath and following her attempts to improve her work environment further underscore the sex-stereotypes implicated in her gender-based harassment. Accordingly, in light of Ms. Parker's well-pled allegations, this Court should reverse the premature dismissal of this claim.

2. Ms. Parker's allegations supporting her hostile work environment claim (Count I) also depict harassment that was sufficiently severe or pervasive to survive a motion to dismiss. The frequency as well as the humiliating and threatening nature of the harassing conduct illustrate the adequacy of her

pleadings. Moreover, the various ways in which the harassment unreasonably interfered with Ms. Parker's work performance — including workplace threats resulting from the direct and repeated harassment of the warehouse's highest-ranking manager — create clear allegations of a hostile work environment. In analyzing the sufficiency of this claim, the district court failed to consider the totality of the circumstances (as it must), and it otherwise relied on a single temporal factor that did not warrant the dismissal of Ms. Parker's claim. This Court should therefore reverse the dismissal of this claim.

3. The district court erred in dismissing Ms. Parker's claim for retaliatory termination (Count II). Ms. Parker submits that her hostile work environment claim was adequately pled to survive a motion to dismiss, but even if this were not so, her allegations were more than sufficient to demonstrate an objectively reasonable belief that the alleged harassment was unlawful. Ms. Parker clearly satisfies the lesser pleading standard governing the reasonable belief necessary for a retaliation claim, and contrary to the district court's conclusion, a reasonable mistake of law does not strip a plaintiff of Title VII protection against retaliatory action. *At a minimum*, consistent with circuit precedent, Ms. Parker has pled an objectively reasonable belief she opposed a hostile work environment that was in progress. This Court should therefore reverse the dismissal of this claim.

4. The district court erred in dismissing Ms. Parker's claim for discriminatory termination (Count III). Ms. Parker adequately invoked her administrative remedies when she filed a charge with the EEOC alleging what her suit now alleges: that she was terminated because of her sex. Ms. Parker should not be barred from pursuing her claim simply because she included additional supporting facts in her judicial complaint. This Court should therefore reverse the dismissal of this claim.

5. Finally, the district court abused its discretion when it dismissed Counts I and II of Ms. Parker's original complaint with prejudice. The court did so without first giving the plaintiff any opportunity to amend, without considering any of the relevant factors that would purportedly support such a dismissal, and without providing any reasoning to sustain its conclusion. Such an unsupported dismissal clearly constitutes an abuse of discretion.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *E.I. du Pont de Nemours & Co. v. Kolon Indus.*, 637 F.3d 435, 440 (4th Cir. 2011). In so doing, this Court — like the district court — must assume as true all the factual allegations contained in the complaint, and it must construe all reasonable inferences in the plaintiff's favor. *Id.* (citations omitted). To survive a motion to dismiss, the complaint "must

contain sufficient factual matter . . . 'to state a claim to relief that is plausible on its face.'" *Matherly v. Andrews*, 859 F.3d 264, 274 (4th Cir. 2017) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). Notably, in reviewing a Rule 12(b)(6) dismissal, courts must be "especially solicitous of the wrongs alleged" in a civil rights complaint. *Slade v. Hampton Rds. Re'l Jail*, 407 F.3d 243, 248 (4th Cir. 2005).

This Court reviews the denial of a Rule 60(b) or Rule 59(e) motion for abuse of discretion. *Ingle v. Yelton*, 439 F.3d 191, 197 (4th Cir. 2006); *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 277 (4th Cir. 2008). The district court's decision to dismiss a complaint with prejudice is also reviewed for abuse of discretion. *Matrix Capital Mgmt. Fund, L.P. v. BearingPoint, Inc.*, 576 F.3d 172, 192 (4th Cir. 2009).

ARGUMENT

A. Ms. Parker Adequately Alleged a Claim for Hostile Work Environment Because She Endured Severe or Pervasive Harassment Stemming From a Sex-based Rumor.

The district court's dismissal of Count I rested on its determination that Ms. Parker failed to adequately allege two elements of her Title VII hostile work environment claim: that the harassing conduct was (1) because of her sex, and (2) sufficiently severe or pervasive to alter the conditions of her employment and

create an abusive work environment.[2] J.A. 149–50. However, a review of the complaint demonstrates that Ms. Parker's allegations were more than sufficient to satisfy her pleading requirements at this stage of the litigation.

1. The Complaint Properly Alleges that Ms. Parker's Harassment Was Based on Sex.

The district court erred when it held that Ms. Parker's allegations of harassment was not based on her sex. In reaching this conclusion, the court stated:

> Here, the legal question is whether spreading a rumor or circulating a rumor that somebody's promotion was based upon the providing of sexual favors is not gender-based discrimination. It is conduct based rumor mongering, for the sake of a better word, and it could apply without regard to gender as has happened in other cases that I have had before me.

J.A. 152. However, the court's conclusion rests on flawed ground. The court's analysis disregards the well-pled allegations contained in the complaint, overlooks the corrosive sex stereotypes that stubbornly persist throughout the workplace, and misconstrues the relevant legal standards that govern this claim at the pleading stage.

Title VII requires Ms. Parker's allegations of discrimination to be based on her sex. *See* 42 U.S.C. § 2000e-2(a)(1). An employee experiences harassment because of her sex "if, 'but for' the employee's gender, . . . she would not have

[2] The remaining two elements, that she was subjected to conduct that was unwelcome and imputable to her employer, *see Okoli v. City of Baltimore*, 648 F.3d 216, 220 (4th Cir. 2011), are not at issue on appeal.

been the victim of the discrimination." *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 331 (4th Cir. 2011) (citation omitted). One "critical issue in th[is] 'because of sex' inquiry is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." *Ocheltree v. Scollon Prods*., 335 F.3d 325, 331 (4th Cir. 2003) (en banc) (alteration marks omitted). A plaintiff may demonstrate sex-based discrimination if, for example, she "is the individual target of open hostility because of her sex," even where "she is not subjected to sexual advances or propositions" in the workplace. *Id*. (citation omitted).

Such sex-based hostility is equally unlawful if it is based not just on an employer's general animus towards women, but also towards women who do not fit into an employer's expectation as to how they should act and advance as women in the workplace. The Supreme Court has recognized that, under this framework, an employer's reliance on sex stereotypes can create an actionable sex-based discrimination claim. In *Price Waterhouse v. Hopkins*, the Court determined that the plaintiff's employer denied her a promotion at least in part because of her nonconformity with sex stereotypes: she was described as "macho," "advised to take 'a course in charm school,'" and was instructed to walk, talk, and dress "more femininely." 490 U.S. 228, 235 (1989). In its analysis, the Court confirmed that an employer who acts on the basis of sex stereotypes has indeed "acted on the basis

of gender" for the purposes of Title VII. *Id*. at 250. The Court then emphasized the legal relevance of sex stereotyping under Title VII, reaffirming that "[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." *Id*. at 251 (citation omitted). "This is true of stereotypes about both how the sexes are and how they should be." *Zarda v. Altitude Express Inc*., 883 F.3d 100, 119 (2d Cir. 2018) (en banc) (citing *Price Waterhouse*, 490 U.S. at 250).

As pled in the complaint, the harassment that Ms. Parker suffered was based on her sex because it had the intent and effect of demeaning Ms. Parker's performance as a woman. The rumor originated in a male subordinate's jealousy that Ms. Parker was advancing faster than her male counterparts, and the rumor itself concerned content that was by its very nature related to her sex. The reaction of her superiors to the rumors — namely, the disparate discipline and escalated hostility that resulted — further demonstrated the gender-related nature of the workplace harassment. These allegations assert that the hostile treatment suffered by Ms. Parker was impermissibly grounded in traditional sex stereotypes regarding a woman's advancement and role in the workplace, and this sex stereotyping (as well as the severe and pervasive harm to which it directly led) was clearly pled on the face of the complaint.

Standing on their own, each of these allegations is sufficient for this Court to hold that Ms. Parker adequately pled a hostile work environment because of her sex. The sex-based nature of the harassment is even more apparent when reading the allegations as a whole. However, the district court, in direct contradiction to the legal principles that govern at the pleading stage, failed to accept Ms. Parker's factual allegations as true or construe all reasonable inferences in her favor. *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). The court improperly distorted Ms. Parker's allegations regarding the sexually-explicit rumor, and it improperly disregarded the remaining allegations supporting her claim. Such errors do not merit affirmance in this Circuit. *See, e.g.*, *Stewart v. Pension Trust of Bethlehem Steel Corp.*, 12 F. App'x 174, 175 (4th Cir. 2001).

Moreover, in determining that the alleged rumors did not constitute sex-based discrimination, the district court improperly cloaked a factual determination as a legal conclusion. Contrary to the district court's contention that this inquiry poses a "legal question," J.A. 152, whether any specific acts or statements constitute sex-stereotyping sufficient to make out a claim under Title VII is indeed a question of fact. *Price Waterhouse*, 490 U.S. at 255, 288-89. Given the sufficiency of her allegations that her harassment was indeed based on her sex, Ms. Parker should be permitted to produce evidence at trial, through expert or other testimony, that falsified rumors of "sleeping to the top" and other characterizations

and harassment suffered by her were impermissibly based on sex stereotyping. *Price Waterhouse*, 490 U.S. at 255, 288-89. She need not prove her claim at the pleading stage, and the district court erred when, under the veil of resolving a "legal question," it categorically reduced her well-pled allegations of sex discrimination and sex stereotyping to descriptions of "conduct based rumor mongering." J.A. 152.

a. The Alleged Fabrication and Circulation of the Sexually-Explicit Rumors Adequately Plead Sex-Based Harassment.

When analyzing Ms. Parker's allegations of the rumor, the district court made a series of missteps: it mischaracterized the pleadings, improperly looked beyond the complaint, converted a factual question into a legal conclusion, and failed to accept her factual allegations or construe all reasonable inferences in her favor. However, if these errors are stripped away, what remain are the material allegations of a rumor that, contrary to the district court's flawed conclusion, adequately stated a claim of sex-based discrimination.

As pled in the complaint, the rumor that maliciously targeted and smeared Ms. Parker's professional abilities claimed that her managerial promotion relied not on merit, but on a sexual affair. J.A. 8–9, 10 ¶¶ 12, 25. Here, as in *Spain v. Gallegos* and *Jew v. University of Iowa*, "the crux of the rumors . . . [wa]s that [Ms. Parker], a female, subordinate employee, had a sexual relationship with her male

superior," *Spain*, 26 F.3d at 448, a "false" rumor that "accused [her] of physically using her sex as a tool for gaining favor, influence and power" and "suggested that her professional accomplishments rested on sexual achievements rather than achievements of merit," *Jew*, 749 F. Supp. 946, 958 (S.D. Iowa 1990). That the rumor here was fabricated by a male co-worker, a subordinate employee jealous of Ms. Parker's merited success at a company where very few women advanced, lends an additional gender-based dimension to her allegations. J.A. 8–9, 10 ¶¶ 12, 13, 14, 25. When the false rumor spread throughout the workplace, co-workers began to treat Ms. Parker like an outcast, J.A. 9, 10 ¶¶ 17, 20, she was given negative evaluations for advancement, J.A. 10–11 ¶¶ 24–27, and her male superior perpetuated the rumors and aggravated the hostile work environment, J.A. 9, 10, 11 ¶¶ 15, 20, 24, 27. *Spain*, 26 F.3d at 448. The full contours of Ms. Parker's allegations, which illustrate a concocted rumor that targeted her success as a female employee and resulted in widespread hostility from subordinates and superiors alike, clearly pled harassment that was inflicted on Ms. Parker precisely because of her sex. *See Spain*, 26 F.3d at 448; *Jew*, 749 F. Supp. at 958.

Numerous courts have held that allegations involving the widespread circulation of false rumors regarding an employee's exchange of sexual favors for professional advancement are sex-based for the purposes of Title VII. As the Third Circuit held in *Spain*, such harassment is based on sex in part because

"traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior stubbornly persist in our society," and these entrenched "stereotypes may cause superiors and co-workers to treat women differently from men." *Spain*, 26 F.3d at 448. For these reasons, the Seventh Circuit has likewise determined that "[u]nfounded accusations that a woman worker is a 'whore,' a siren, carrying on with her coworkers, a Circe, 'sleeping her way to the top,' and so forth" are "accusations based on the fact that she is a woman." *McDonnell v. Cisneros*, 84 F.3d 256, 259-60 (7th Cir. 1996).

When confronted with similar allegations of rumors smearing an employee's advancement by binding her promotion with a sexual affair, district courts have followed suit and acknowledged that where the "accusation[] [is] that the female participant in the purported affair was using sex to advance her career . . . [the rumors] are no longer gender neutral." *Dube v. Hadco Corp*., No. 97-554-SD, 1999 U.S. Dist. LEXIS 21184, at *16 (D.N.H. Feb. 4, 1999); *see also Gillen v. Borough of Manhattan Community College*, No. 97 Civ. 3431 (DAB), 1999 U.S. Dist. LEXIS 4862, at *14 (S.D.N.Y. Apr. 14, 1999) (satisfied plaintiff adequately alleged sex-based discrimination where "the essence of the rumors is that Plaintiff's job achievement was based not on merit, but rather on her sexual relationship with her male superior."); *Bystry v. Verizon Servs. Corp*., 2005 U.S.

Dist. LEXIS 5634, at *36 n.25 (D. Md. Mar. 31, 2005) (observing that comments a female employee was "'sleeping her way to the top' does reflect antiquated gender stereotypes"); *Allen v. TV One, LLC*, 2016 U.S. Dist. LEXIS 9919, at *22-23 (D. Md. Jan. 28, 2016) (satisfied that plaintiff adequately pled sex-discrimination where, in part, she alleged the circulation of false workplace rumors that she was hired only because of a sexual relationship with her male supervisor).

The district court determined that Ms. Parker's allegations failed to state a claim for sex-based discrimination because the fabricated rumor was based "upon her alleged conduct" rather than "her gender," J.A. 149, but this characterization improperly distorts the unique contours of Ms. Parker's allegations. Remarkably, the district court appears to categorically conclude that *any* allegations of falsified sexually-explicit rumors impugning an employee's merited advancement cannot, as a matter of law, constitute sex-based discrimination under Title VII. J.A. 149, 152. The district court claimed that "this same type of a rumor could be made in a variety of other context[s] involving people of the same gender or different genders alleged to have had some kind of sexual activity leading to a promotion," J.A. 149, and it notes that such "conduct based rumor mongering . . . could apply without regard to gender as has happened in other cases that I have had before me," J.A. 152. The court's reasoning and conclusion are flawed for multiple independent reasons.

First, it is axiomatic that when addressing a 12(b)(6) motion to dismiss, the district court cannot look outside the pleadings and must "consider[] only the face of the complaint." *E.I. du Pont*, 637 F.3d at 449. The district court considered allegations, facts, or inferences arising from "other cases that [the court] had before [it]" in dismissing Ms. Parker's claim, J.A. 152, and it substituted its own experiences for Ms. Parker's factual allegations — rather than taking those allegations as true and drawing all reasonable inferences in her favor, as it must — when weighing the sufficiency of her claim. This conduct clearly constitutes error. *See E.I. du Pont*, 637 F.3d at 449-50.

Second, the line that the district court attempts to draw between sex and conduct is entirely untenable in this case. Even when accepting the district court's unsupported characterization of the rumor's conduct-based harassment, it is indisputable that the purported conduct at issue — the exchange of sexual favors for workplace advancement or continued employment — itself constitutes actionable sex-based discrimination under Title VII. *See, e.g.*, *Hartsell v. Duplex Prods.*, 123 F.3d 766, 771 n.3 (4th Cir. 1997) (noting that the Fourth Circuit "ha[s] made clear" that "*quid pro quo* harassment, in which an employer requires sexual favors of an employee in exchange for the benefits of employment," has "been held to constitute discrimination 'because of' one's sex" (citation omitted)). Surely, then, a maliciously fabricated rumor about a female employee's *quid pro*

quo exchange of sexual favors, a rumor that if true would violate Title VII, must also constitute discrimination "because of" the female employee's sex.

Third, contrary to the district court's analysis, the mere possibility that the same rumor in question could have happened to a "man who gets promoted by a female supervisor" or "a male who gets promoted by [someone of the] same sex," J.A. 135, does not move it beyond Title VII's prohibitions. Title VII broadly protects everyone from women and men to whites and blacks. It would be no less unlawful race discrimination for a person of color to get turned away from a job due to racial animus simply because a white person could also suffer the same ill-treatment. Here then, that a man could potentially suffer a rumor that he advanced in his career only because of sexual favors does not render the harassment gender-neutral. To be sure, a male employee cannot invoke the same reality of sex stereotypes that has continued to plague female employees in the workplace, but depending on the nature and context of the allegations, an employer could be just as liable under Title VII for creating a hostile environment stemming from a "sleeping to the top" rumor about a male employee. The conduct and context at the heart of the rumor here cannot be easily separated from gender simply because it could possibly, *in a scenario not before this Court*, impact a man,[3] and the

[3] In analogous circumstances, courts have made clear that characterizing status-based animus as prohibitions of conduct are semantic constructs that cannot

district court erred when it invoked an inapposite hypothetical to distract from and disregard Ms. Parker's well-pled allegations of sex-based discrimination.

Accordingly, the district court's unfounded "conduct-based" distinction cannot support the dismissal of Ms. Parker's claim. This Court must look instead to the face of Ms. Parker's pleadings, which — for the reasons asserted above — adequately alleges that she would not have been subjected to a hostile work environment but for her status as a successful woman in the workplace.

b. The District Court Erred When It Disregarded the Remaining Allegations in Support of Ms. Parker's Sex-Based Hostile Environment Claim.

The district court committed another fundamental error when it failed to "consider the complaint in its entirety," as it must. *Matrix Capital*, 576 F.3d at 176 (citation omitted). As Ms. Parker alleges in her complaint, her harassment began *but did not end* with the pervasive circulation of the fabricated rumor; the adverse treatment she suffered when she objected to her ordeal, hostile treatment that was again directed at her because of her sex (in reliance on sex stereotypes), continued

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shield unlawful discrimination from liability. For example, courts have rejected attempts to distinguish discrimination against "homosexual conduct" from discrimination on the basis of sexual orientation. *See, e.g.*, *Lawrence v. Texas*, 539 U.S. 558, 583 (2003) (O'Connor, J., concurring); *Karouni v. Gonzales*, 399 F.3d 1163, 1173 (9th Cir. 2005) ("[W]e see no appreciable difference between an individual . . . being persecuted for being a homosexual and being persecuted for engaging in homosexual acts").

to escalate her harassment. Ms. Parker's complaint also included allegations of the disparate treatment she suffered in contrast to the experiences of her male colleagues. In its analysis of the sufficiency of this claim, however, the district court ignored these additional allegations and focused solely on the rumor smearing Ms. Parker's professional achievements. J.A. 148–50, 152. This failure to consider the full breadth of Ms. Parker's allegations provides an independent basis for reversing and remanding her claim.

To begin, the district court improperly disregarded allegations of the harassment Ms. Parker suffered when she voiced an objection to her abusive work environment, hostility that impermissibly relied on sex stereotypes regarding a woman's submissive and overly emotional nature. When Ms. Parker asserted her desire to be free of harassment through the normal grievance procedures available to her at RCSI, she was repeatedly ignored, verbally harassed and screamed at, accused of "huffing and puffing" about her harassment, repeatedly blamed for disrupting the workplace, threatened with termination for refusing to stay silent, instructed to never "let this happen again," and accused of "insubordination" and being a "poor manage[r]." J.A. 10–11, 12 ¶¶ 20–22, 25–27, 37. She was humiliatingly and forcibly excluded from a mandatory staff meeting that, without providing her any opportunity to speak on her own behalf, discussed the rumor amongst all the warehouse staff, and RCSI failed to resolve any of her repeated

complaints with any tangible action or discipline. J.A. 10, 11, 12. ¶¶ 19–22, 29, 34.[4]

In sum, Ms. Parker's allegations illustrate that when she asserted herself in the workplace and opposed her sex-based harassment, she was further harassed for rejecting the traditionally submissive female role. Indeed, her objections were either ignored or dismissed as insubordinate or overly emotional "huffing and puffing," which constitute clear sex-based harassment. *See, e.g.*, *Kaye v. Storm King Sch.*, 11 CV 3369, 2015 U.S. Dist. LEXIS 127508, at *16 (S.D.N.Y, June 8, 2015) (finding that referring to women in the office as "dramatic," "hysterical," and "overemotional" could lead a reasonable jury to conclude that plaintiffs were faced with comments "based on their gender, which is sufficient to create a hostile work environment" (citation omitted)).

The district court erred in ignoring these additional allegations of sex-based harassment. Courts have consistently held that "hostile or paternalistic acts based on perceptions about womanhood or manhood are sex-based or 'gender-based'" under Title VII, *Durham Life Ins. Co. v. Evans*, 166 F.3d 139, 148 (3d Cir. 1999), and it is well-established that harassment rooted in antipathy toward a woman's decision to reject the typically submissive female role in the workplace is improper

[4] The district court attempted to diminish the impact of the treatment received by Ms. Parker by referring to Ms. Parker's treatment as "slights" in direct contradiction to the well-pled facts and inferences that flow from them. J.A. 150.

sex stereotyping well within the ambit of Title VII, *see, e.g.*, *Price Waterhouse*, 490 U.S. at 250 (noting that an employer "who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender."). In this instance, Ms. Parker's allegations echo the recurring refrain of "the all too familiar complaints about assertive, strong women who speak up for themselves: 'difficult,' 'negative attitude,' 'not a team player,' 'problematic.'" *Stegall v. Citadel Broad. Co.*, 350 F.3d 1061, 1072 (9th Cir. 2003) (noting the "history of discrimination against women in the workplace"). These decisions reflect what empirical research has long confirmed: that the passive, submissive, and emotional stereotypes of women, which are indeed rooted in their sex, have persistently burdened women in the workplace.

The district court's analysis suffered from another glaring oversight: it also failed to consider Ms. Parker's allegations of the disparate treatment experienced by Mr. Pickett and Ms. Parker following the rumor's circulation, as well as the disparate treatment of Mr. Jennings and Ms. Parker after they raised similar complaints in RCSI's normal grievance process. According to the complaint, Ms. Parker and Mr. Pickett were the subject of the same sexually-explicit rumor; but while Mr. Pickett suffered nothing more than a teasing question from Mr. Moppins, Ms. Parker experienced additional sex-based harassment that culminated in her termination. J.A. 8–13 ¶¶ 12, 16, 17–38. The false rumor was not meant to

"get[] an embarrassed reaction" from Mr. Pickett and was not "calculated to generate [harassment] at [his] expense"; it targeted Ms. Parker and Ms. Parker alone. *See Ocheltree*, 335 F.3d at 332. Indeed, when Mr. Pickett and Ms. Parker arrived together to a mandatory staff meeting that would discuss the false rumor, Mr. Pickett was allowed inside while Ms. Parker had the door slammed in her face, humiliating her in front of the entire staff. J.A. 10 ¶¶ 19-21.

Ms. Parker's multiple complaints to Mr. Moppins, RCSI's Human Resources Manager, her immediate supervisor, and RCSI's Human Resources Department resulted in no discipline or changes to the actions of those responsible for her harassment — indeed, RCSI's response to her complaints was to trivialize her harm and depict her as equally responsible for the harassment she suffered, or to ignore them altogether. J.A. 10, 11, 12 ¶¶ 25, 27–29, 34. But when Mr. Jennings filed a *false* hostile environment claim against her through the same grievance process, his claim was immediately resolved in his favor without a chance for Ms. Parker to review or respond to the allegations. J.A. 11–12 ¶¶ 31–33. Ms. Parker was forbidden from having any contact with him, and he faced no adverse consequences, in stark contrast to the negative and pervasive harassment that Ms. Parker suffered. In fact, Mr. Jennings was provided wide discretion to improperly linger in Ms. Parker's work area, where he openly mocked and taunted her. J.A. 12 ¶ 33.

These allegations provide another layer to Ms. Parker's pleadings and, in demonstrating that "[s]imilarly situated males were not so harassed," *Jew*, 749 F. Supp. at 958, they identify relevant facts in support of her claim that she was discriminated against on the basis of sex. *See also Zarda*, 883 F.3d at 120 (noting the "question of whether there has been an improper reliance on sex stereotypes" can be answered by considering "whether the behavior or trait at issue would have been viewed more or less favorably if the employee were of a different sex."). Here, too, Ms. Parker's complaint adequately alleges that "if [she] had been a man she would not have been treated in the same manner," *Spain*, 26 F.3d at 448, yet the district court failed entirely to consider these factual allegations when addressing the sufficiency of Ms. Parker's claim.[5]

When viewed in its totality, Ms. Parker's well-pled complaint demonstrates what other courts have already concluded: that allegations of harassment grounded in impermissible sex stereotypes and in fabricated rumors of using sex to advance in the workplace adequately state a claim for sex-based discrimination. Dismissal of Ms. Parker's hostile environment claim should therefore be reversed.

[5] There is, of course, no *requirement* that a plaintiff produce evidence "that males in a similar position were treated differently" to pursue a claim for a sex-based hostile environment. *See, e.g., Spain*, 26 F.3d at 448. However, these allegations provide further support to the sufficiency of Ms. Parker's claim.

2. The Complaint Properly Alleges that Ms. Parker's Hostile Work Environment Was Severe or Pervasive.

Upon review, the district court's second justification for dismissing Ms. Parker's hostile environment claim does not pass muster at the pleading stage. During the hearing, despite acknowledging Ms. Parker's allegations that the harassment was "frequent" in nature, the court stated "the temporal element" of the rumor's circulation was "very short" and spanned "[j]ust a matter of a few weeks," and that "a few slights that [Ms. Parker] referenced here do not rise up to the level that would suffice for it being severe and [pervasive]."[6] J.A. 150. The court thereby concluded that Ms. Parker failed to allege harassment that was sufficiently severe or pervasive to create an abusive environment. *Id*. A plain reading of the complaint, however, compels the opposite conclusion.

Workplace harassment must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" to constitute a hostile work environment claim. *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21 (1993). This determination contains both subjective and objective components, with the latter being "judged from the perspective of a

[6] "[The Fourth Circuit's] precedent makes clear . . . that the element is properly viewed in the disjunctive, requiring only that a plaintiff prove the harassment was severe *or* pervasive." *Harris v. Mayor of Baltimore*, 429 F. App'x 195, 201 n.7 (4th Cir. 2011) (citing *Ocheltree v. Scollon Prods*., 335 F.3d 325, 331 (4th Cir. 2003)).

reasonable person in the plaintiff's position." *Boyer-Liberto v. Fontainbleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015) (en banc) (citation omitted). In the Fourth Circuit, the question of whether the harassing conduct is sufficiently severe or pervasive "is quintessentially a question of fact." *Mosby-Grant v. City of Hagerstown*, 630 F.3d 326, 335 (4th Cir. 2010) (citation omitted). When engaging in this analysis, courts must consider "all the circumstances," including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Boyer-Liberto*, 786 F.3d at 277 (citing *Harris*, 510 U.S. at 23). This inquiry "is not, and by its nature cannot be, a mathematically precise test." *Harris*, 510 U.S. at 22. Generally, however, "simple teasing, offhand comments, and isolated incidents . . . will not amount to discriminatory changes in the terms and conditions of employment." *Pryor v. United Air Lines, Inc.*, 791 F.3d 488, 496 (4th Cir. 2015) (citation omitted).

The district court below failed to accurately analyze the breadth and weight of Ms. Parker's allegations. For example, the court failed to consider "the totality of the circumstances," as it must. *Okoli v. City of Baltimore*, 648 F.3d 216, 220 (4th Cir. 2011) (citation omitted). The court supported its dismissal in part by reasoning that "a few slights" alleged by Ms. Parker did not rise to a severe or

pervasive level, J.A. 150, but the relevant inquiry does not require each incident to independently satisfy a severe or pervasive test. *See Okoli*, 648 F.3d at 220. The district court's analysis contravened established legal principles when it parsed through Ms. Parker's allegations and isolated a few allegations that, standing alone, purportedly failed to illustrate the requisite degree of severity. Here, the frequent, severe, humiliating, and threatening nature of the harassing conduct — as well as its unreasonable and repeated interference with Ms. Parker's work performance — collectively demonstrate harassment that, as alleged, was sufficiently severe and pervasive to create a hostile work environment.

To begin, despite its flawed analysis and conclusion, the district court correctly observed that the harassment alleged in the complaint was "frequent." J.A. 150. "[R]umors have been found severe and pervasive enough to create a hostile work environment when they have been accompanied by insults and accusations that the subject of the rumors used the relationship to gain power and [when they] contributed to an adverse employment action," *Dube*, 1999 U.S. Dist. LEXIS 21184 at *14, as has been alleged in this case. Moreover, the alleged harassment — which began with but extended well beyond the rumor — was neither isolated nor sporadic. Rather, it "is particularly relevant that the alleged harassment began just one to two weeks after [Ms. Parker] began [her new managerial role] and continued throughout the duration of [this] employment, a

period of approximately two months." *Brenneman v. Famous Dave's of Am., Inc.*, 410 F. Supp. 2d 828, 840 (S.D. Iowa 2006).

During the months of March and April, the rumor was maliciously designed by a jealous male subordinate employee, it was actively spread by multiple employees — including the highest-ranking manager — and it permeated throughout her workplace, such that "[s]he was treated with open resentment and disrespect *from a number of her co-workers*." J.A. 8–9 ¶¶ 11–17 (emphasis added). The number of harassing "incidents" encompassed in these allegations is numerous, especially considering the allegations that the rumors were "spread[ing]" and "circulating within RCSI" to other employees. *See Walker v. Mod-U-Kraf Homes, LLC,* 775 F.3d 202, 209 (4th Cir. 2014) (considering comments made to co-workers because "[t]he totality of the circumstances includes conduct directed not at the plaintiff" (citation omitted)). Ms. Parker then alleges that, following the pervasive circulation of the rumors, multiple incidents occurred within a four-week span: her humiliation on April 21, the two threatening encounters she suffered on April 22 and 25, the false complaint of harassment filed against her on May 12 by the jealous subordinate who fabricated the rumor on May 12 (while she was away), the unwarranted reprimand she received on May 17 when she returned to the office, the permitted lurking of the same jealous subordinate in her workspace, and the two unfounded warnings she received on

May 18 before her termination. J.A. 10–12 ¶¶ 19-22, 23-26, 27, 31-33, 36-37. When considering the complaint as a whole, the frequency and range of these incidents supports the adequacy of Ms. Parker's allegations at this stage in the litigation because courts have allowed similar frequencies to move forward, even at the summary judgment stage. *See, e.g.*, *Brown-Baumbach*, 437 F. App'x 129,134 (3d Cir. 2011) (ten incidents in a four-month span sufficient to survive summary judgment); *Okoli*, 648 F.3d at 220 (twelve incidents in four-month span sufficient to survive summary judgment); *Santos v. J.W. Grand, Inc.*, 2015 U.S. Dist. LEXIS 69923, at *29-30 (M.D. La. 2015) (approximately eleven incidents in two-month span sufficient to survive summary judgment); *Gross-Jones v. Mercy Med.*, 874 F. Supp. 2d 1319, 1333 (S.D. Al. 2012) ("The Eleventh Circuit considers an incident a week to be sufficiently frequent to bolster a plaintiff's case . . . .").

The harassment was also physically threatening[7] and humiliating. Mr. Moppins "slam[med]" a door in Ms. Parker's face, humiliated her in front of all the warehouse employees, screamed at her, threatened her job prospects, and helped circulate a fabricated and disruptive rumor that he then blamed Ms. Parker for disputing. J.A. 9–11 ¶¶ 15, 20, 24, 27. Mr. Jennings also engaged in abusive and

[7] There is, of course, no requirement of physical threats in a hostile work environment claim. *See EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 318 (4th Cir. 2008).

threatening behavior; he contrived a false rumor that pointedly used Ms. Parker's gender to impugn her work performance, deliberately circulated the false rumor throughout her workplace, filed a false harassment claim against her, and repeatedly lurked in her workspace, where he openly mocked and stared at her. J.A. 9, 11–12 ¶¶ 13, 31–33.

Moreover, the ways in which the harassment unreasonably interfered with Ms. Parker's work performance create clear allegations of an abusive work environment. The false rumor, which seeped into Ms. Parker's workplace and bred open resentment and disrespect, undermined her authority and ability to supervise her subordinates. J.A. 9 ¶ 17. Her demeaning exclusion from the mandatory staff meeting that discussed the rumor, as well as Mr. Jennings' taunts and distraction in her workspace, again eroded her ability to manage her employees. J.A. 10, 12 ¶¶ 21, 33–34.

The most straightforward example of this interference is the harassment forged by Mr. Moppins, whose conduct altered the conditions of Ms. Parker's employment and repeatedly threatened her with adverse employment consequences. He "blamed Ms. Parker for bringing the situation to the workplace," and despite acknowledging that he "had 'great things' planned for [her] at RCSI," asserted that he "could no longer recommend her for promotions or higher-level tasks because of the rumor" and that he "would not allow her to

advance any further in the company." J.A. 10 ¶ 24. Even when he acknowledged that the rumor was "BS," he blamed her — rather than those responsible for concocting or circulating the false rumor, as he had done — for disrupting the workplace and stated that "he should have fired her" for not staying quiet about the rumor and its resulting harassment. J.A. 11 ¶ 27. He dismissed her after demanding that she not "let this happen again," and he ultimately terminated her after simultaneously issuing two written warnings that accused her of "poor management ability and insubordination." J.A. 11, 12 ¶¶ 27, 37.

As alleged in the complaint, Mr. Moppins — the highest-ranking manager at the warehouse — had clear control over Ms. Parker's continued job prospects. J.A. 9–13 ¶¶ 15, 24, 27, 36–38. His direct and repeated role in Ms. Parker's harassment further supports the severity and pervasiveness of her hostile work environment. The harasser's status can become a "significant factor" when measuring the severity of harassing conduct, given that a supervisor's misconduct generally "'impacts the work environment far more severely than [that] by co-equals.'" *Boyer-Liberto*, 786 F.3d at 278 (citation omitted). "Simply put, 'a supervisor's power and authority invests his or her harassing conduct with a particular threatening character,'" *id.* (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 763 (1998)), which is well illustrated throughout Ms. Parker's complaint. Here, too, the fabricated rumors "pertain[ed] to and [we]re perpetuated by a

supervisor," *Bogoly v. Easton Publ'g Co*., 2001 U.S. Dist. LEXIS 24160, at *17 (E.D. Pa. 2001), and numerous incidents of harassment stemming from and following the circulation of this rumor were "instigated by [a] supervisor, increasing the probability that the situation would be an intimidating one," *Brenneman*, 410 F. Supp. 2d at 840. In sum, the hostile work environment that Ms. Parker alleges, which was further exacerbated by the direct and repeated harassment of the warehouse's highest-ranking manager, was sufficiently severe and pervasive to survive a motion to dismiss.

The district court's remaining justification for its dismissal — the relative time period of Ms. Parker's alleged harassment — also fails to support the court's conclusion. To begin, the court's measurements were off; as alleged in the complaint, Ms. Parker's hostile work environment began with the rumor in early March 2016 and culminated with her termination in mid-May 2016. J.A. 8–13 ¶¶ 11–38. Her allegations therefore spanned at least a few months, and the district court erred in compressing the relevant time period to "[j]ust a matter of a few weeks." *See* J.A. 150. More importantly, however, dismissing any claim because of an isolated purview of the duration of the alleged harassment constitutes clear error. The duration of the harassing conduct is but one factor to consider in this inquiry, and it must be weighed in its appropriate context. *See Okoli*, 648 F.3d at 220; *EEOC v. Cent. Wholesalers, Inc*., 573 F.3d 167, 176 (4th Cir. 2009) (noting

that "'[n]o single factor' is dispositive" in this inquiry (citations and alteration marks omitted)); *Beard v. Flying J, Inc.*, 266 F.3d 792, 798 (8th Cir. 2001) (upholding jury verdict where plaintiff's superior subjected her to numerous incidents of sexual harassment over a three-week period). This Court should also "emphatically reject" the implication that a female employee must "subject herself to an extended period of demeaning and degrading provocation before being entitled to seek the remedies provided under Title VII." *Carrero v. New York City Housing Auth*., 890 F.2d 569, 578 (2d Cir. 1989), *superseded by statute on other grounds*, 42 U.S.C. § 2000e, *et seq*.

Contrary to the district court's conclusory assertion, the fact that so many incidents of harassment occurred in such a brief amount of time would illustrate a high frequency and severity of the alleged misconduct. *See, e.g*., *Brenneman*, 410 F. Supp. 2d at 839-40 (observing that the alleged harassment, which spanned the plaintiff's two-month employment, was sufficiently severe or pervasive to survive a motion for summary judgment but those same allegations may have been insufficient if "spread over a long period of time"). Indeed, excusing an employer's misconduct because it unreasonably terminated an employee shortly after she opposed her hostile work environment would only further empower retaliation in the workplace.

Collectively, the frequency of this threatening and humiliating conduct and the resulting workplace interference of Ms. Parker's harassment clearly allege a hostile work environment that unlawfully altered the terms and conditions of Ms. Parker's employment. Here, the complaint pleads "an environment in which [the plaintiff's] co-workers treated her as an outcast and in which her supervisor[] evaluated her negatively for advancement," allegations that reach well beyond the mere dislike of fellow employees. *See Spain*, 26 F.3d at 449–50 (finding that such injuries raised a question of fact sufficient to survive summary judgment). Ms. Parker's alleged harassment is far removed from the mere teasing or off-hand comments that courts have found insufficient to foment a hostile environment; the complaint in this case alleges harassment that rises well above "'rude treatment by coworkers,' 'callous behavior by one's superiors,' or 'a routine difference of opinion and personality conflict with one's supervisor.'" *See EEOC v. Sunbelt Rentals, Inc*., 521 F.3d 306, 315–16 (4th Cir. 2008) (citations and alteration marks omitted).

Accordingly, Ms. Parker's allegations reflected an abusive environment that was sufficiently severe or pervasive to survive a motion to dismiss. It bears emphasis that at this stage in the litigation, Ms. Parker need not prove any element of her claim. Given the sufficiency of her allegations, she is entitled to engage in the discovery process and collect evidence to establish the complete picture of the

sex-based harassment she suffered. Dismissal of her hostile environment claim should therefore be reversed.

B. The Complaint Properly Alleges that Ms. Parker Engaged in Protected Activity When She Opposed a Hostile Work Environment She Reasonably Believed to Exist

In dismissing Ms. Parker's retaliatory termination claim, the district court failed to properly analyze the facts under applicable law. The court reasoned that Ms. Parker must "be right on the law" to support a reasonable belief, J.A. 134, and referencing its earlier conclusion that the alleged harassment did not constitute sex-based discrimination sufficient to state a claim under Title VII, the court held that Ms. Parker's belief could not be objectively reasonable, J.A. 152. This was the district court's sole basis for dismissing Ms. Parker's claim for retaliatory termination, *id*., but it reflects a misunderstanding of the relevant legal principles.

To satisfy the first element of a retaliation claim under Title VII, Ms. Parker must adequately allege that she engaged in a protected activity.[8] *EEOC v. Navy Fed. Credit Union*, 424 F.3d 397, 405-06 (4th Cir. 2005) (citation omitted). "[A] 'protected activity' may fall into two categories, opposition and participation," *id*., and "[e]mployees engage in protected oppositional activity when, *inter alia*, they

[8] To establish a prima facie case of retaliation, a plaintiff must also prove that (1) her employer took an adverse employment action against her, and (2) there was a causal link between the two events. *EEOC v. Navy Fed. Credit Union*, 424 F.3d 397, 405-06 (4th Cir. 2005) (citation omitted). These two elements are not at issue in this appeal.

'complain to their superiors about suspected violations of Title VII,'" *Boyer-Liberto*, 786 F.3d at 281 (citation omitted). The Fourth Circuit has recognized that an employee is protected from retaliation when she opposes "employment actions she reasonably believes to be unlawful" as well as actions "actually unlawful under Title VII." *Id*. at 282 (quoting *Navy Fed*., 424 F.3d at 406). The suspected violation "may be complete, or it may be in progress" and not yet "fully formed." *Id*. (citing *Navy Fed*., 424 F.3d at 406-07).

It bears emphasis that, contrary to the district court's contention and as discussed in Section I.A *supra*, Ms. Parker was indeed "right on the law," J.A. 134, and she sufficiently stated a claim for sex-based discrimination under Title VII. The court's dismissal of her retaliatory termination claim should therefore be reversed on this basis.

However, even if this were not so, the facts support an objectively reasonable belief that the harassment she faced constituted sex-based discrimination proscribed by Title VII.[9] As detailed above, the rumor's sex-based

[9] At a minimum, Ms. Parker has adequately pled an objectively reasonable belief that she "oppose[d] a hostile work environment that, although not fully formed, [wa]s [nonetheless] in progress." *See Boyer-Liberto*, 786 F.3d at 282. Notably, to fall within the ambit of Title VII's protections, a plaintiff is not required to plead "additional [facts] that a plan is in motion to create [a hostile work] environment or that such an environment is likely to occur." *Id*. at 284. Ms. Parker's complaint identified multiple and continued incidents of harassment, which — as a whole —were adequately pervasive, threatening, humiliating, and

content, its genesis in a male subordinate co-worker's jealousy of her success as a woman, and the belittling and disparate treatment she suffered when she attempted to resolve her harassment collectively indicate that the hostile work environment she experienced was because of her sex. Ample case law supports this understanding.

Even where, unlike here, a plaintiff fails to state a claim for discrimination under Title VII, the claim's failure does not automatically preclude any related retaliatory discharge claim. A court's conclusion that a plaintiff has no Title VII discrimination or harassment claim "is not . . . controlling of the question whether [s]he has a Title VII retaliatory discharge or 'opposition clause' claim." *Benekritis v. Johnson*, 882 F. Supp. 521, 526 (D.S.C. 1995) (citations omitted). Indeed, in this Circuit, "[a]n underlying discrimination charge need not be meritorious for a plaintiff to prevail on a claim of retaliation or opposition to the perceived discrimination." *Ross v. Comms. Satellite Corp.*, 759 F.2d 355, 357 n.1 (4th Cir.

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disruptive to allege a reasonable belief that her opposed hostile work environment was both because of her sex and "in progress." *See id.* at 284–85. After all, the anti-retaliation protections under Title VII were shaped "with the hope and expectation that employees will report harassment early, *before* it rises to the level of a hostile environment," and interpretations of this anti-retaliation provision must "encourage the early reporting vital to achieving Title VII's goal of avoiding harm." *Id.* at 282–83 (emphasis added). Given that Ms. Parker "did exactly what Title VII hopes and expects" when she opposed her experienced harassment, she too "merit[s] protection from retaliation." *See id.* at 283.

1985), *overruled in part on other grounds by Price Waterhouse*, 490 U.S. 228 (1989).

The district court's conclusion rested, in part, on a flawed determination that a mistake of law (no matter how reasonable) is fatal to a plaintiff's retaliation claim. J.A. 134, 152. Critically, all of this Court's sister circuits that have confronted this issue have held that "a reasonable mistake" under this standard "may be one of fact or law." *Moyo v. Gomez*, 40 F.3d 982, 985 (9th Cir. 1994), *cert. denied*, 513 U.S. 1081 (1995) (emphasis omitted); *Parker v. Baltimore & O.R. Co.*, 652 F.2d 1012, 1020 (D.C. Cir. 1981) (holding that a distinction between a plaintiff's mistake "of fact" and mistake "of law" "irrelevant to the purposes of [Title VII's anti-retaliation provision]" and in either instance, "[o]pposition based on reasonable belief should be protected from retaliation"); *Berg v. La Crosse Cooler Co.*, 612 F.2d 1041, 1045 (7th Cir. 1980) (holding that plaintiff had an objectively reasonable belief even though the Supreme Court, following plaintiff's discharge, interpreted Title VII such that her employer's alleged misconduct would not have been "unlawful 'at any time'").

Likewise, the majority of district court opinions on this issue favor a broad retaliation standard. *Compare Lamberson v. Six West Retail Acquisition, Inc.*, 122 F. Supp. 2d 502, 512 (S.D.N.Y. 2000); *Hopkins v. Baltimore Gas & Elec. Co.*, 871 F. Supp. 822, 835 (D. Md. 1994), *aff'd*, 77 F.3d 745 (4th Cir. 1996); *Benekritis*,

882 F. Supp. at 526; *Rice v. Central Dupage Hosp.*, No. 96 C 2405, 1999 U.S. Dist. LEXIS 4732, at *12 (N.D. Ill. Mar. 31, 1999); *with McGruder v. Epilepsy Found. of Am., Inc.*, No. 11-cv-02310-AW, 2012 U.S. Dist. LEXIS 31807, at *15–16 (D. Md. Mar. 9, 2012).

Accordingly, a mistake of law should not categorically preclude a retaliation claim under Title VII; only an *unreasonable* mistake of law should bar the plaintiff's claim. In conducting this reasonableness inquiry, however, plaintiffs should not be unduly charged with a high degree of legal sophistication. This determination must of course "be assessed according to an objective standard," but it must also "make[] due allowance . . . for the limited knowledge possessed by most Title VII plaintiffs about the factual and legal bases of their claims." *Moyo*, 40 F.3d at 985. As numerous courts have reasoned, "[a] layperson should not be burdened with the 'sometimes impossible task' of correctly anticipating how a given court will interpret a particular statute." *Parker*, 652 F.2d at 1020 (quoting *Berg*, 612 F.2d at 1045–46).

Notably, even where a plaintiff's belief is measured against existing caselaw, her mistake of law is deemed unreasonable only where binding and persuasive precedent are both unambiguous and unanimous in determining that the employer's alleged misconduct is not unlawful. A plaintiff's belief is entirely reasonable where the law under Title VII is "in an 'unsettled state,'" *King v.*

Jackson, 487 F.3d 970, 973 (D.C. Cir. 2007) (citation omitted), where there is "conflicting authority (in different circuits)," *Drinkwater v. Union Carbide Corp.*, 904 F.2d 853, 866 (3d Cir. 1990), or a decision of the Court of Appeals or the Supreme Court has called a binding "precedent into question or undermined its reasoning," *Butler v. Ala. Dep't of Transp.*, 536 F.3d 1209, 1214 (11th Cir. 2008).

On the other hand, a plaintiff's belief is unreasonable where, "by contrast, *nothing* is unsettled" and the "legal principles at issue . . . are *entirely unambiguous*," *King*, 487 F.3d at 973 (emphasis added). *See also Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1388 (11th Cir. 1998) (plaintiff's belief was objectively unreasonable because "[e]very other circuit to have considered the issue," as well as the EEOC, "reached the same conclusion" as the Eleventh Circuit in an earlier decision regarding the non-discriminatory nature of the employer practice at issue); *Mayo v. Kiwest Corp.*, 1996 U.S. App. LEXIS 20445, at *14 (4th Cir. 1996) (unpublished) (plaintiff's belief was objectively unreasonable because at the time of the plaintiff's complaints, "no court had held" the plaintiff's claim actionable under Title VII and there was an utter "lack of conflicting authority").

In other words, when an employee opposes conduct that has been clearly established to not run afoul of Title VII or has no rational relationship to Title VII, her belief in the illegality of the employer's alleged misconduct may be deemed unreasonable. However, as made clear in Section I.A *supra*, Ms. Parker's belief

was entirely reasonable. Her claim is neither contrary to binding circuit precedent nor inimical to a resounding unanimity of out-of-circuit authority; rather, her claim is both bolstered by well-pled allegations and supported by existing caselaw. In such instances, the plaintiff's belief must be deemed reasonable. To do otherwise and affirm the district court in this case would not only place too high a burden on laypersons and their reporting obligations under Title VII, but would also contravene "Supreme Court decisions directing that Title VII's antiretaliation provision be interpreted 'to provide broad protection from retaliation.'" *Boyer-Liberto*, 786 F.3d at 283 (citations omitted). As the *Boyer-Liberto en banc* majority noted, "Title VII must be read 'to provide broader protection for victims of retaliation than for even victims of race-based, ethnic-based, religion-based, or gender-based discrimination,' because 'effective enforcement could . . . only be expected if employees felt free to approach officials with their grievances.'" *Id.* (citation omitted).

For this reason, to satisfy this first element of a retaliation claim, a plaintiff that complains of a suspected hostile work environment is held to a "lesser showing" standard than a plaintiff filing a hostile work environment claim. *Boyer-Liberto*, 786 F.3d at 285 (underscoring that "a jury would be entitled to simultaneously reject the hostile work environment claims . . . but award relief on

the retaliation claims"). Ms. Parker clearly satisfies this lesser standard in this instance.

Accordingly, dismissal of her retaliation claim should be reversed.

C. Ms. Parker Adequately Exhausted her Administrative Remedies as to her Discriminatory Termination Claim

In dismissing Ms. Parker's sex-based termination claim, the district court held that Ms. Parker had failed to sufficiently exhaust her administrative remedies. J.A. 146–48. Specifically, it determined that allegations of a disparately-enforced three strikes policy, which appeared in her judicial complaint, were absent in her charging document. J.A. 147. In so doing, however, the district court failed to conduct the appropriate analysis and ignored the fact that Ms. Parker's administrative charge explicitly identified her sex-based termination claim.

Before bringing suit under Title VII, a plaintiff must first invoke her administrative remedies by filing a charge with the EEOC. *Smith v. First Nat'l Union Bank*, 202 F.3d 234, 247 (4th Cir. 2000) (citation omitted). The charge must be "sufficiently precise to identify the parties, and to describe generally the action or practices complained of," 29 C.F.R. § 1601.12(b), such that a claimant's "employer is put on notice of the alleged violations," *Miles v. Dell, Inc.*, 429 F.3d 480, 491 (4th Cir. 2005). Critically, "[a]n administrative charge of discrimination does not strictly limit a Title VII suit which may follow." *Chisholm v. U.S. Postal Serv.*, 665 F.2d 482, 491 (4th Cir. 1981) (citations omitted). "If a plaintiff's claims

in her judicial complaint are reasonably related to her EEOC charge and can be expected to follow from a reasonable administrative investigation, the plaintiff may advance such claims in her subsequent civil suit." *Smith*, 202 F.3d at 247–48 (citing *Chisholm*, 665 F.2d at 491).

This Circuit has acknowledged that the "exhaustion requirement should not become a tripwire for hapless plaintiffs" given that "'Title VII . . . sets up a remedial scheme in which laypersons, rather than lawyers, are expected to initiate the process.'" *Sydnor v. Fairfax Cty.*, 681 F.3d 591, 594 (4th Cir. 2012) (quoting *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 402 (2008)) (alteration marks in original). "[R]equiring untrained parties to provide a detailed essay to the EEOC" would "be inconsistent with this framework." *Id.* Accordingly, to avoid "erect[ing] insurmountable barriers to litigation out of overly technical concerns," this Circuit has adopted the Supreme Court's mandate that "'documents filed by an employee with the EEOC . . . be construed, to the extent consistent with permissible rules of interpretation, to protect the employee's rights and statutory remedies.'" *Id.* (quoting *Holowecki*, 552 U.S. at 406). For example, this Circuit has found exhaustion where the allegations contained in the charging document and the formal complaint involved different aspects of the employer's promotional system, *Chisholm*, 665 F.2d at 491, identified different retaliatory conduct by the

same actor, *Smith*, 202 F.3d at 247, and raised different accommodations for the same physical disability, *Sydnor*, 681 F.3d at 595.

The facts here present a stronger case of administrative exhaustion. In her charging document, Ms. Parker checked the boxes for discrimination based on "sex," "retaliation," and "other," and she alleged she was "subjected to different terms and conditions of her employment," "discriminated, retaliated, *and discharge[d]* due to [her] sex." J.A. 37–38 (emphasis added). The circulated rumor she identifies was just one "example" of this disparate treatment, *see* J.A. 37, rather than the "entire[] premise[]" of her charge, J.A. 147. Although the three-strikes policy itself does not appear on the face of Ms. Parker's charging document, it is clear that "her charge claims what her suit now claims" — that she had been unlawfully terminated on the basis of sex. *See Sydnor*, 681 F.3d at 594; J.A. 14 ¶¶ 51-52.

This is not a case where the charging document "allege[d] discrimination on one basis, such as race, and the formal litigation claim alleges discrimination on a separate basis, such as gender." *See Jones v. Calvert Grp., Ltd.*, 551 F.3d 297, 300 (4th Cir. 2009) (citations omitted). Rather, the claim and type of prohibited action remained consistent throughout, and this consistency weighs in favor of finding administrative exhaustion. *Sydnor*, 681 F.3d at 595; *Smith*, 202 F.3d at 248. Ms. Parker's complaint does not seek to pursue any class allegation about the three

strikes policy; she is instead expanding on the general allegation in her charge that she was terminated because of her sex, and she should not be barred from pursuing her claim simply because she included additional supporting details about the sex-based termination in her judicial complaint.

Indeed, administrative investigations of termination policies, like the three-strikes policy, "could reasonably be expected to occur" in light of Ms. Parker's EEOC charge of unlawful discharge. *See Chisholm*, 665 F.2d at 491. An allegation that the employer unlawfully fired an employee on the basis of gender sufficed to put the employer on notice that its termination system would be investigated, "including aspects of the system such as [termination policies] that were not specifically enumerated in the [administrative] complaint." *Id.* Requiring each factual allegation in support of a plaintiff's claim to mirror the narrative contained in her charging document would clearly violate "[t]he touchstone" of the exhaustion inquiry, which asks "whether plaintiff's administrative and judicial claims are 'reasonably related,' *not precisely the same*." *Sydnor*, 681 F.3d at 595 (quoting *Smith*, 202 F.3d at 247) (emphasis added).

Moreover, the allegations in Ms. Parker's charging document and formal complaint involve the same place of work, actors, and time-period. Ms. Parker's case against her employer "did not involve shifting sets and a rotating cast of characters that would have deprived her former employer of notice of the

allegations against it," *Sydnor*, 681 F.3d at 595, nor did her judicial complaint deal with entirely "different time frames, actors, [or] conduct," *Chacko v. Patuxent Inst.*, 429 F.3d 505, 511 (4th Cir. 2005). Rather, the identical allegation of sex-based discharge set forth in both Ms. Parker's "administrative and judicial narratives make clear that [RCSI] was afforded ample notice of the allegations against it." *Sydnor*, 681 F.3d at 595.

Ms. Parker has thus sufficiently exhausted her administrative remedies for this claim. Accordingly, the dismissal of her discriminatory termination claim should be reversed.

D. The District Court Abused its Discretion in Dismissing Counts I and II of the Original Complaint With Prejudice

Finally, the district court abused its discretion in "dismiss[ing] [Counts I and II of] the complaint with prejudice without permitting [Ms. Parker] an opportunity to amend." *Ostrzenski v. Seigel*, 177 F.3d 245, 252 (4th Cir. 1999). Generally, a plaintiff must "be given every opportunity to cure a formal defect in h[er] pleading," and courts are instructed to "allow at least one amendment regardless of how unpromising the initial pleading appears except in unusual circumstances" where such amendment would be futile. *Id.* at 252–53 (quoting 5A Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 360–67 (2d ed. 1990)). This is because Rule 15(a) of the Federal Rules of Civil Procedure, a "liberal rule," "directs that leave to amend 'shall be freely given when justice so

requires.'" *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (en banc) (quoting Fed. R. Civ. P. 15(a)).

Notably, the complaint at issue was the *first* complaint filed by Ms. Parker in this case. A district court wields discretion to grant a motion to dismiss with or without prejudice, *Carter v. Norfolk Community Hospital Assoc*., 761 F.2d 970, 974 (4th Cir. 1985), and a court abuses this discretion when it dismisses a claim with prejudice without first giving the plaintiff an opportunity to amend, *Ostrzenski*, 177 F.3d at 252-53, or if it does so without providing any support or reasoning for the purported dismissal, *see Matrix Capital Mgmt. Fund*, 576 F.3d 172, 194 (4th Cir. 2009) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). At a minimum, the district court was required to justify its determination by weighing the relevant factors. *See id*. at 193 (noting that leave to amend should not be given where there is a sufficient showing of prejudice, bad faith, or futility of amendment). Indeed, the district court here failed entirely to consider whether "the allegation of other facts consistent with the challenged pleading could . . . possibly cure the [purported] deficiency." *Id.* (citation omitted).

When Ms. Parker later moved for reconsideration or, in the alternative, to permit the filing of an amended complaint, the district court summarily concluded that her proposed amendments were "conclusory and futile" and would not "alter the Court's analysis in a subsequent motion to dismiss." J.A. 196. However, the

district court gave no explanation for why it initially dismissed these claims with prejudice, nor did it clarify what comprised its underlying "analysis." It is also well understood that the pleading stage reflects an "early stage" of litigation, *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 513 (4th Cir. 2015), contrary to the district court's contention, J.A. 196 (describing the case as in a "late stage [of] the litigation").

Such an unsupported dismissal clearly constitutes an abuse of discretion.

CONCLUSION

For the foregoing reasons, the district court's dismissal of Counts I, II, and III of the complaint should be reversed.

REQUEST FOR ORAL ARGUMENT

Ms. Parker respectfully requests that this Court hear oral argument in this case. This appeal raises important questions regarding an employee's rights and protections under Title VII against sex discrimination and retaliation, and oral argument would assist the Court's consideration of these critical issues.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-face requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-volume limitations of Rule 32(a)(7)(B). The brief contains 12,997 words, exclusive of those portions exempted by Rule 32(f), and it has been prepared using Microsoft Word software in 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2018, a copy of the foregoing brief was served on counsel of record by this Court's CM/ECF system to:

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