

No. 25-13156

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Hireana Johnson,
Plaintiff-Appellant,
v.
International Longshoreman Association, Local 1414,
Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the Southern District of Georgia
Savannah Division
Case No. 4:24-cv-00143, Hon. J. Randal Hall

**OPENING BRIEF FOR PLAINTIFF-APPELLANT
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October 16, 2025

No. 25-13156

Hireana Johnson, Plaintiff-Appellant

v.

International Longshoreman Association, Local 1414, Defendant-
Appellee

Certificate of Interested Persons

Under this Court's Rule 26.1-1, plaintiff-appellant Hireana Johnson states that the following people and entities have an interest in the outcome of this appeal:

Bignault & Carter LLC

Bignault, W. Paschal

Carter, Lori

Epps, Hon. Brian K., U.S. Magistrate Judge

Hall, Hon. J. Randal, U.S. District Court Judge

Hayes, Veronica

Herman, Charles

Hollenbeck, Jakob

International Longshoreman Association, Local 1414

Johnson, Hireana

Kelly, Jesse

Khan, Natasha

Steinberg, Becca

Wolfman, Brian

The undersigned certifies that, to his knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

October 16, 2025

Respectfully submitted,

/s/Brian Wolfman

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Statement Regarding Oral Argument

Plaintiff-Appellant Hireana Johnson requests oral argument. Oral argument would help the Court resolve any uncertainties about how the continuing-violation doctrine and the causation element of a Title VII retaliation claim should be evaluated at the motion-to-dismiss stage. Relatedly, oral argument would help the Court assess how the facts of Ms. Johnson's Title VII claims should be assessed under the proper pleading standard.

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Introduction

For over a year, Eric Jackson terrorized his coworker, Hireana Johnson. He propositioned her for sex and repeatedly tormented her with sexually explicit comments. After Ms. Johnson strenuously objected to Mr. Jackson's conduct, he sent her a video of him performing a sexual act and a picture of his genitals. When Ms. Johnson reported Mr. Jackson to their employer, the nightmare did not end. Quite the opposite. In a thinly veiled threat on her life, Mr. Jackson sent Ms. Johnson a picture of a snake he had killed. He turned coworkers against her. And on the same day that Mr. Jackson testified about his misconduct before the workplace grievance committee, someone smashed Ms. Johnson's car windows and slashed her tires.

Where was the employer—Defendant Local 1414—during this ordeal? At Mr. Jackson's side. When Ms. Johnson initially reported Mr. Jackson, a Local 1414 supervisor said that he would protect Mr. Jackson “no matter right or wrong.” Later, management leaked the contents of a confidential meeting about the harassment to the entire workplace. In the end, Local 1414 never disciplined Mr. Jackson. Instead, it punished Ms. Johnson—first by blocking her from completing a certificate necessary for her continued employment and then by suspending her for thirty days without pay.

Despite this egregious misconduct, the district court dismissed Ms. Johnson's Title VII complaint for failure to state a claim. The district court erred in two key ways.

First, the district court mistakenly held that Ms. Johnson's hostile-work-environment claim was untimely because the court failed to recognize the plausible connection between Mr. Jackson's initial explicitly sex-based harassment and his later facially sex-neutral conduct. Second, as to Ms. Johnson's retaliation claim, the district court overlooked allegations that Local 1414's management harbored retaliatory animus toward Ms. Johnson for reporting the harassment and consequently found no causal connection between her EEOC charge and suspension without pay. By viewing the allegations in isolation and not giving Ms. Johnson the benefit of reasonable inferences, the district court misapplied both Title VII and the motion-to-dismiss standard.

This Court should reverse.

Statement of Jurisdiction

Plaintiff-Appellant Hireana Johnson sued Defendant-Appellee International Longshoreman Association, Local 1414 under Title VII in the Southern District of Georgia. App. 4. The district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(4), and 42 U.S.C. § 2000-5(e). *See* App. 5. The district court's order, App. 25, and separate judgment, App. 42, both entered on August 14, 2025, *see* App. 3, disposed

of all of Ms. Johnson's claims. Ms. Johnson timely filed a notice of appeal on September 11, 2025. App. 43. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

I. Whether the district court misapplied the continuing-violation doctrine when it dismissed Ms. Johnson's Title VII hostile-work-environment claim as administratively untimely, even though, drawing all inferences in Ms. Johnson's favor, she endured public ridicule, intimidation, and property damage from the same perpetrator during the statutory filing period.

II. Whether the district court erred in dismissing Ms. Johnson's Title VII retaliation claim when Local 1414 blocked her from completing a required job certificate after she lodged internal complaints and then suspended her without pay after she filed an EEOC charge.

Statement of the Case

I. Factual background

This appeal arises from a grant of a motion to dismiss. The facts set out below are taken from Ms. Johnson's complaint. They must be accepted as true, and all reasonable inferences arising from them must be drawn in Ms. Johnson's favor. *Sebastian v. Ortiz*, 918 F.3d 1301, 1307 (11th Cir. 2019).

In May 2021, Hireana Johnson began working at the International Longshoreman Association, Local 1414. App. 6 (¶ 7). On her first day, Ms. Johnson met another Local 1414 employee, Eric Jackson. *Id.* (¶ 8). Although Mr. Jackson was not formally Ms. Johnson’s supervisor, she was informed that he “ran” the workplace. *Id.* (¶ 9). In her new position, Ms. Johnson had daily contact with Mr. Jackson. *Id.* (¶ 12). Within the first hours of her employment, Mr. Jackson asked Ms. Johnson for her phone number and insisted that she take his number in case of a work emergency. *Id.* (¶ 10).

Mr. Jackson soon subjected Ms. Johnson to sexually explicit comments about women and the size of his penis in front of other coworkers. App. 7 (¶ 13). When Ms. Johnson objected to Mr. Jackson’s comments, he said he would tone down his language. *Id.* (¶ 14). But the harassment continued. Mr. Jackson began calling Ms. Johnson, said he noticed that she worked out, and asked to join her workouts. *Id.* (¶ 15-16). Ms. Johnson declined. *Id.*

Things got worse. In June 2021, Mr. Jackson sent Ms. Johnson a video of him masturbating, which he had filmed on the job. App. 7 (¶ 17), 8 (¶ 18). Ms. Johnson again confronted Mr. Jackson, telling him that the video was unwanted and inappropriate. App. 8 (¶ 19). In mid-July 2021, Mr. Jackson texted Ms. Johnson a photo of his penis. *Id.* (¶ 21). Once again, Ms. Johnson told Mr. Jackson the photo was “unacceptable” and that he needed to stop. *Id.* (¶ 22). Later that month, Mr. Jackson asked Ms.

Johnson if she noticed his gym body. *Id.* (¶ 23). He then told her that he was working out so that he could “give dis dick to [her] good.” *Id.*

On August 2, 2021, Ms. Johnson met with head union representative Decy-O McDuffie to report the harassment. App. 9 (¶ 24). Ms. Johnson showed him the picture that Mr. Jackson had sent her of his penis. *Id.* (¶ 25). Before she told Mr. McDuffie that Mr. Jackson was the perpetrator, Mr. McDuffie recognized Mr. Jackson from a scar on his stomach. *Id.* (¶ 26). Mr. McDuffie then told Ms. Johnson that Mr. Jackson was his “boy” and that he would “help Jackson no matter right or wrong.” *Id.* (¶ 27). After Mr. McDuffie called Mr. Jackson into the meeting, Mr. Jackson said he would not send unwanted videos or photos, call or speak with Ms. Johnson, or disturb Ms. Johnson’s work. App. 9 (¶ 28), 9-10 (¶ 29).

Yet, a week later, Mr. Jackson and three men confronted Ms. Johnson as she was leaving work, and Mr. Jackson yelled at her for “snitching.” App. 10 (¶ 30). Ms. Johnson immediately reported the confrontation to Mr. McDuffie, who said he would talk to Mr. Jackson, *id.* (¶ 31), but whether he did is unknown. Worried that Mr. McDuffie was not taking her concerns seriously, Ms. Johnson reported Mr. Jackson’s conduct to Local 1414’s Vice President Paul Mosely on or around August 9, 2021. *Id.* (¶ 32).

Ms. Johnson’s work environment continued to deteriorate—and quickly. Although she had requested that her meeting with Mr. Mosely

remain confidential, the next day, their conversation “began spreading throughout the workplace like a wildfire.” App. 10 (¶ 33). Shortly after, Mr. Jackson texted Ms. Johnson a picture of a snake that he had killed, which she understood as a threat on her life for “snitching.” *Id.* (¶ 34). Ms. Johnson again reported the threat to Mr. McDuffie, who downplayed its severity but said he would talk to Mr. Jackson. App. 11 (¶ 35). Again, it is unknown if he ever did. Ms. Johnson continued to report Mr. Jackson to management throughout the fall of 2021. *Id.* (¶ 36).

In December 2021, Ms. Johnson learned she had been blocked from the Powered Industrial Truck, or PIT, driver-certificate list. App. 11 (¶ 36). Without that certificate, Ms. Johnson could not complete the hours required by her 2021 contract. *Id.*

On January 24, 2022, Ms. Johnson submitted a hostile-work-environment complaint to the union’s Port Grievance Committee. App. 11 (¶ 37). On the day that the committee was scheduled to interview Mr. Jackson, someone slashed the tires and shattered the windows of Ms. Johnson’s car. *Id.* (¶ 38). Following the committee hearing, coworkers who were “closely associated” with Mr. Jackson repeatedly confronted Ms. Johnson and accused her of lying about Mr. Jackson’s conduct. App. 11 (¶ 39), 13 (¶ 48). In May 2022, Mr. Jackson appeared in Ms. Johnson’s assigned work area despite being instructed to stay away from her. App. 12 (¶ 40).

On May 31, 2022, Ms. Johnson filed a charge with the EEOC alleging sex discrimination and retaliation. App. 12 (¶ 41), 15 (¶ 56). About two months later, on August 3, 2022, Local 1414 suspended Ms. Johnson for 30 days without pay. App. 12 (¶ 41).

II. District-court proceedings

On April 12, 2024, Ms. Johnson received a right-to-sue notice from the EEOC. App. 5 (¶ 5), 18. She then sued Local 1414 in the Southern District of Georgia, alleging sexual harassment and retaliation in violation of Title VII. App. 4, 12-16.

Local 1414 filed a motion to dismiss, which the district court granted on both claims. App. 34, 40. The court held that Ms. Johnson's hostile-work-environment claim was administratively time-barred, finding that no instances of sex discrimination occurred within the statutory 180-day period before Ms. Johnson filed her EEOC charge. App. 34. Although the court acknowledged that Ms. Johnson continued to face harassment during the filing period, it found that these incidents "fall under Plaintiff's claim for retaliation." *Id.*

On the retaliation claim, the court did not consider whether blocking the PIT certificate constituted an adverse action. Instead, it examined only the suspension without pay. The court held that Ms. Johnson had exhausted her administrative remedies because the claim regarding the suspension without pay "could reasonably be expected to grow" out of her

EEOC charge. App. 37 (quoting *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988)). The court ruled, however, that Ms. Johnson failed to plead sufficient facts indicating that her suspension without pay was causally related to her EEOC charge. App. 39-40.

III. Standard of review

This Court reviews de novo the district court's grant of a Rule 12(b)(6) motion to dismiss. *Davis v. City of Apopka*, 78 F.4th 1326, 1331 (11th Cir. 2023). This Court must "accept all allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor." *Sebastian v. Ortiz*, 918 F.3d 1301, 1307 (11th Cir. 2019).

Summary of Argument

I.A. The district court erred in dismissing Ms. Johnson's hostile-work-environment claim as untimely. The court erroneously found that the harassment Ms. Johnson endured before and during the filing period was not sufficiently related to constitute a single hostile work environment. But during both periods, the same perpetrator, Mr. Jackson, harassed Ms. Johnson, and two reasonable inferences indicate that the same sex-based animus motivated him throughout. First, it can reasonably be inferred that the later harassment stemmed from Ms. Johnson rejecting Mr. Jackson when she reported him to Mr. McDuffie and Mr. Mosely. The later actions therefore would not have occurred but for Mr. Jackson's desire to have sex with Ms. Johnson. Second, Mr. Jackson's earlier

explicitly sex-based harassment revealed an expectation that he could torment women with impunity. It is reasonable to infer that, when Ms. Johnson upended this expectation by reporting him, his reaction stemmed from the same sex-based hostility that motivated his harassment of her in the first place. At the motion-to-dismiss stage, each of these inferences is independently sufficient to show that the acts before and during the statutory filing period constitute a single timely hostile-work-environment claim.

B. Local 1414 did not contest the merits of Ms. Johnson's hostile-work-environment claim below—and for good reason. Within the first few months of her employment, Mr. Jackson subjected Ms. Johnson to a torrent of unwanted sexually explicit conduct. When Ms. Johnson indicated that she would not accept Mr. Jackson's behavior by reporting him, he threatened her life, turned coworkers against her, and likely smashed her car windows and slashed her tires. Despite this shocking conduct, Local 1414 never punished Mr. Jackson. Other than once telling Mr. Jackson to leave Ms. Johnson alone, management allowed Mr. Jackson's harassment to continue unabated. These facts are more than sufficient to show that the harassment was unwelcome, sex-based, severe or pervasive, and imputable to Local 1414.

II.A. Ms. Johnson was not required to separately exhaust her Title VII retaliation claim related to her suspension without pay because that

claim grew out of her earlier EEOC charge of discrimination and retaliation.

B. The district court erred in dismissing Ms. Johnson’s retaliation claim. Local 1414 first retaliated against Ms. Johnson for reporting the harassment by blocking her from acquiring the PIT certificate. The complaint plausibly pleaded causation between these events because the retaliation may have occurred just days or weeks after Ms. Johnson’s last report, Local 1414’s managers expressed retaliatory animus, and Ms. Johnson’s complaints were widely known around the workplace. Local 1414 again retaliated by suspending Ms. Johnson for thirty days without pay after she filed an EEOC charge. Ms. Johnson’s complaint plausibly alleged a causal connection between these events based on the retaliatory animus just mentioned and the short two-month gap between the adverse action and the filing of the EEOC charge. And it is reasonable to infer that the decisionmakers who suspended Ms. Johnson learned about her charge during the EEOC investigation, if not through other means.

Argument

I. The district court erred in dismissing Ms. Johnson’s hostile-work-environment claim.

A. Ms. Johnson pleaded a timely hostile-work-environment claim.

As long as one part of a hostile work environment occurred within the 180-day statutory filing period, the “entire time period of the hostile

environment may be considered” part of a timely claim. *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002). Ms. Johnson’s complaint identified three episodes of harassment that occurred during the filing period that began on December 2, 2021: (1) In early February 2022, someone slashed her tires and smashed her car windows on the same day that the grievance committee interviewed Mr. Jackson, App. 11 (¶ 38); (2) thereafter, coworkers “closely associated” with Mr. Jackson repeatedly “chastised” Ms. Johnson and claimed she was lying about the harassment, App. 11 (¶ 39), 13 (¶ 48); and (3) in May 2022, Mr. Jackson violated the order to keep away from Ms. Johnson’s workstation, App. 12 (¶ 40). So, the only question is whether these acts were “part of the same actionable hostile work environment practice” as the acts that occurred before the filing period. *Morgan*, 536 U.S. at 120.

To answer this question, the court must conduct an “individualized assessment of whether [the] incidents and episodes are related,” looking to the totality of circumstances. *McGullam v. Cedar Graphics, Inc.*, 609 F.3d 70, 77 (2d Cir. 2010). Though it is sufficient to show that the acts in both periods were related by “type, frequency, and perpetrator,” a plaintiff need not “always produce evidence of such a relationship in order to survive” even the relatively demanding summary-judgment standard. *Tademy v. Union Pac. Corp.*, 614 F.3d 1132, 1143 (10th Cir. 2008).

Here, at the less-exacting motion-to-dismiss stage, Ms. Johnson’s complaint needed to show only that, looking to the totality of the circumstances, it is plausible that the conduct before and during the filing period was “sufficiently related” as to be “fairly considered part of the same claim.” *See Chambless v. Louisiana-Pac. Corp.*, 481 F.3d 1345, 1350 (11th Cir. 2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Ms. Johnson’s complaint clears this “exceedingly low” plausibility threshold. *See Corbett v. Transp. Sec’y. Admin.*, 968 F. Supp. 2d 1171, 1178 (S.D. Fla. 2012), *aff’d*, 568 F. App’x 690 (11th Cir. 2014) (quoting *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 703 (11th Cir. 1985)).

To begin with, it is reasonable to infer that, like the conduct that occurred before the filing period, Mr. Jackson was responsible for the later harassment. Given that the destruction of Ms. Johnson’s car occurred on the day that the grievance committee interviewed Mr. Jackson, it can be inferred that Mr. Jackson or someone acting on his behalf slashed her tires and smashed her windows. App. 11 (¶ 38). Similarly, it can be inferred that Mr. Jackson prompted the harassment from other coworkers because the coworkers were “closely associated” with Mr. Jackson and harassed Ms. Johnson for (purportedly) lying about the allegations against him. App. 11 (¶ 39), 13 (¶ 48). Lastly, and importantly, Mr. Jackson violated the order to stay away from Ms. Johnson and continued his pattern of intimidation when he appeared in her assigned workspace in May 2022. App. 9-10 (¶ 29), 12 (¶ 40). That

Mr. Jackson perpetrated the harassment both before and during the filing period strongly suggests that the later conduct was sufficiently related to the earlier harassment. *See Morgan*, 536 U.S. at 120.

Ms. Johnson also suffered from the same type of threatening conduct in both periods. Before the filing period, Mr. Jackson sent her a picture of a snake he had killed as a threat and yelled at her for “snitching.” App. 10 (¶¶ 30, 34). During the filing period, he slashed her tires and turned coworkers against her for lying about the harassment. *See App.* 11 (¶¶ 38-39), 13 (¶ 48). The harassment in both periods was, thus, clearly part of the same pattern of intimidation.

The harassment also plausibly occurred “because of” Ms. Johnson’s sex. *See* 42 U.S.C. § 2000e-2(a)(1). It can be reasonably inferred that Mr. Jackson perceived Ms. Johnson’s reports to management as public rejections of his sexual advances in front of his supervisors. True, his response was facially sex-neutral. But just as “an employer [who] fires a woman for refusing his sexual advances” has treated a “woman worse in part because of her sex,” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 659 (2020), so too has a harasser who slashes a coworker’s tires or otherwise threatens her for refusing his advances. “[W]hen harassment is motivated by a failed attempt to establish a [sexual] relationship, ‘the victim’s sex is inextricably linked to the harasser’s decision to harass.’” *Perez-Cordero v. Wal-Mart P.R., Inc.*, 656 F.3d 19, 28 (1st Cir. 2011)

(quoting *Forrest v. Brinker Int'l Payroll Co.*, 511 F.3d 225, 229 (1st Cir. 2007)).

Here, the facially sex-neutral acts—yelling at her for “snitching,” sending her the picture of the snake, destroying her car, turning her coworkers against her, and impermissibly entering her workspace—“take color” from and are similarly linked to Mr. Jackson’s earlier explicitly sex-based harassment. See *Livingston v. Marion Bank & Tr. Co.*, 30 F. Supp. 3d 1285, 1308 (N.D. Ala. 2014) (quoting *Reed v. MBNA Mktg. Sys., Inc.*, 333 F.3d 27, 30 (1st Cir. 2003)). Before Ms. Johnson reported him, Mr. Jackson singled her out because he wanted to impose his will and have sex with her. During the filing period, it is plausible that he fixated on her because he wanted to have sex with her but could not. That Mr. Jackson’s actions took on a different, but still intimidating, tone after Ms. Johnson publicly rejected him does not split the hostile work environment in two. Throughout, Ms. Johnson experienced harassment from the same person who was plausibly motivated by the same sex-based animus. At this early stage of the litigation, the continued harassment during the filing period plausibly constitutes “part of the same actionable hostile work environment practice.” *Morgan*, 536 U.S. at 120.

In holding otherwise, the district court overlooked this reasonable inference that the later harassment stemmed from Ms. Johnson’s rejections of his advances and reasoned that the later actions fell

exclusively under Ms. Johnson's retaliation claim. App. 34. Though Mr. Jackson may have "retaliated" against Ms. Johnson in the colloquial sense, this conduct is not actionable under a standard Title VII retaliation claim, which imposes liability only for retaliatory actions taken by someone acting on the employer's behalf, not by a coworker like Mr. Jackson. *See* 42 U.S.C. § 2000e-3(a).

Besides, retaliatory and discriminatory motivations are not always mutually exclusive. *See Perez-Cordero*, 656 F.3d at 32. If a harasser felt especially emboldened or motivated to punish a female reporter in a way that he would not have if a man had reported him to management, that would constitute sex-based harassment.

Accordingly, even if Mr. Jackson's later conduct stemmed from Ms. Johnson reporting him rather than from rejecting him (as argued above at 13-14), punishing Ms. Johnson for her reports still plausibly constituted sex-based harassment. Indeed, sexual harassment is "often motivated by issues of power and control," *Tanner v. Prima Donna Resorts, Inc.*, 919 F. Supp. 351, 355 (D. Nev. 1996), or by "general hostility to the presence of women in the workplace," *see Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998). Here, Mr. Jackson's earlier conduct revealed his hostility to women and his expectation that he could torment women with impunity. When Ms. Johnson upset this sex-based expectation, it is reasonable to infer that he punished her for it. In other words, his vindictive response to Ms. Johnson's reports could plausibly

reflect the same hostility to women that motivated his initial sexually explicit conduct.

To be sure, a jury may ultimately find that non-sex-based retaliatory animus exclusively motivated Mr. Jackson's conduct after he was spurned by Ms. Johnson when she reported him to management. But at this stage, "the evidence can reasonably be viewed as demonstrating either discriminatory animus or retaliatory animus," or both. *Perez-Cordero*, 656 F.3d at 32. Because this Court must draw all inferences in Ms. Johnson's favor, it must presume that sex-based animus motivated Mr. Jackson's later conduct. And because it can be reasonably inferred that the same sex-based animus motivated the actions before and during the filing period, the later period can fairly be considered part of the same hostile work environment. This Court should therefore reverse.

B. Ms. Johnson pleaded a prima facie hostile-work-environment claim.

Local 1414 did not challenge the merits of Ms. Johnson's hostile-work-environment claim below. Nor could it have reasonably done so. At this stage, Ms. Johnson only needed to plead facts that plausibly indicated (1) that she belongs to a protected class and that the harassment was (2) unwelcome, (3) sex-based, (4) severe or pervasive, and (5) imputable to her employer. *See Breda v. Wolf Camera & Video*, 222 F.3d 886, 889 & n.3 (11th Cir. 2000). Ms. Johnson's complaint easily satisfies these elements.

The first three elements require little discussion. As a woman, Ms. Johnson belongs to a protected class. 42 U.S.C. § 2000e-2(a)(1); App. 12 (¶ 43). Her emphatic and contemporaneous objections to Mr. Jackson, as well as her numerous reports to management, demonstrate that Mr. Jackson's conduct was both unwelcome and subjectively severe or pervasive. See *Henson v. City of Dundee*, 682 F.2d 897, 903 (11th Cir. 1982); *Freytes-Torres v. City of Sanford*, 270 F. App'x 885, 890 (11th Cir. 2008); App. 7 (¶¶ 14, 16), 8 (¶¶ 19, 22), 9 (¶ 24), 10 (¶¶ 31-32), 11 (¶¶ 35, 37). And by propositioning her for sex and sending her a picture of his penis and a video of him masturbating, Mr. Jackson demonstrated that the harassment was because of her sex. See *Lipphardt v. Durango Steakhouse of Brandon, Inc.*, 267 F.3d 1183, 1189 (11th Cir. 2001); App. 7 (¶ 17), 8 (¶¶ 21, 23).

Ms. Johnson's complaint also plausibly describes harassment that was objectively severe or pervasive. In *Henson*, dismissal was inappropriate when the plaintiff alleged that her supervisor subjected women to "periodic" sexual comments and "repeatedly" propositioned the plaintiff for sex. 682 F.2d at 899, 905. Mr. Jackson similarly subjected Ms. Johnson to periodic sexual comments and repeatedly propositioned her for sex. But his conduct was even more severe than that pleaded in *Henson* because Mr. Jackson sent her an unwanted video of him committing a sexual act and a picture of his penis. App. 7 (¶ 17), 8 (¶ 21).

Mr. Jackson's conduct was more severe for another reason: After Ms. Johnson made clear that she would not tolerate Mr. Jackson's behavior by reporting him, he spent the next nine months making her life miserable. He yelled at her for snitching, implicitly threatened her life by sending her a picture of a snake he had killed, likely slashed her tires and smashed her car windows, turned coworkers against her, and continued to intimidate her by showing up in her workspace after being told not to. App. 10 (¶¶ 30, 34), 11 (¶¶ 38-39), 12 (¶ 40). As described above (at 13-14), it is reasonable to infer that these actions, though facially sex-neutral, contributed to the same sex-based hostile work environment. Taken together, then, Ms. Johnson has pleaded more than enough facts to plausibly demonstrate that her workplace was "permeated with 'discriminatory intimidation, ridicule, and insult,' that [was] 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65, 67 (1986)).

Lastly, Ms. Johnson plausibly alleged that Local 1414's response to her harassment was negligent and that the conduct was therefore imputable to it. *See Vance v. Ball State Univ.*, 570 U.S. 421, 439 (2013). Local 1414 had actual knowledge of the initial harassment once Ms. Johnson reported Mr. Jackson to Union Representative McDuffie in August 2021. App. 9 (¶¶ 24-26). At this point, management also knew

that Ms. Johnson was telling the truth because Mr. McDuffie recognized that the scar in the nude picture belonged to Mr. Jackson. *See id.* (¶ 26).

Yes, Mr. McDuffie may have taken some modest remedial action by meeting with Mr. Jackson. App. 9-10 (¶ 29). But ample facts in Ms. Johnson's complaint suggest Local 1414's overall response fell far short of "immediate and appropriate." *See Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1280 (11th Cir. 2002). To begin with, Mr. McDuffie did not punish Mr. Jackson for his conduct but rather told Ms. Johnson that Mr. Jackson was his "boy" and that he would help him "no matter right or wrong." App. 9 (¶ 27). It is therefore reasonable to infer that Mr. McDuffie's negligible efforts were not "reasonably calculated to end the harassment" but rather to protect his friend. *See Munn v. Mayor & Aldermen of City of Savannah*, 906 F. Supp. 1577, 1583 (S.D. Ga. 1995) (quoting *Sanchez v. City of Miami Beach*, 720 F. Supp. 974, 980 (S.D. Fla. 1989)).

This inference is more than reasonable because the harassment did not, in fact, end. "[W]here the remedy does not end the current harassment and deter future harassment, liability attaches for both the past harassment and any future harassment." *Nichols v. Azteca Rest. Enters., Inc.*, 256 F.3d 864, 876 (9th Cir. 2001). What's more, even as Ms. Johnson continued to report the ongoing harassment to Mr. McDuffie, Vice President Mosely, and the grievance committee management took no further remedial action. *See* App. 10 (¶¶ 31-32), 11 (¶¶ 35-37). Instead,

Local 1414 actively worsened the hostility she faced from other coworkers by leaking conversations that she had asked management to keep confidential. App. 10 (¶ 33). Because Local 1414 did not take any effective remedial measures despite knowing that the harassment continued, Ms. Johnson's complaint plausibly alleged that Local 1414's response was negligent.

II. The district court erred in dismissing Ms. Johnson's retaliation claim.

A. Ms. Johnson administratively exhausted her retaliation claim.

The district court correctly held that Ms. Johnson had administratively exhausted her retaliation claim. App. 35-37. When she filed her EEOC charge, Ms. Johnson checked the retaliation box and alleged that Local 1414 blocked her from completing her projects hours after she complained about Mr. Jackson's harassment. App. 22-23. True, Ms. Johnson did not amend the EEOC charge to include her subsequent suspension without pay. App. 35. But this Court held decades ago that "it is unnecessary for a plaintiff to exhaust administrative remedies prior to urging a retaliation claim growing out of an earlier charge." *Gupta v. E. Tex. State Univ.*, 654 F.2d 411, 414 (5th Cir. 1981); *see also Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 168-69 (11th Cir. 1988) (affirming *Gupta* on same point).

In coming to this conclusion, this Court relied on “strong practical reasons.” *Gupta*, 654 F.2d at 414. “[I]t is the nature of retaliation claims that they arise after the filing of the EEOC charge.” *Id.* And requiring plaintiffs to file a second EEOC charge in such circumstances would result in “a double filing that would serve no purpose except to create additional procedural technicalities when a single filing would comply with the intent of Title VII.” *Id.* Holding otherwise would “erect a needless procedural barrier” that would undermine Title VII enforcement. *Id.*

Gupta applies here with full force. Ms. Johnson’s suspension without pay was “reasonably related” to the blockage of her hours alleged in her EEOC charge. *See Wu v. Thomas*, 863 F.2d 1543, 1547 (11th Cir. 1989). In *Wu*, the plaintiff filed a charge, alleging that her employer had retaliated against her when it told her husband (and coworker) that “he would be happier teaching somewhere else.” *Id.* Because she filed the charge, the employer allegedly engaged in a host of other retaliatory actions, including lowering her performance ratings. *Id.* at 1545-46. These acts were “reasonably related” to the employer’s suggestion that her husband find employment elsewhere because the later acts “amplif[ied] the [original] claim of retaliation with additional instances of wrongful retaliatory conduct.” *Id.* at 1547. As a result, the plaintiff did not have to further exhaust administrative remedies for the later retaliation. *Id.*

Just as in *Wu*, the suspension amplified Ms. Johnson's original claim of retaliation (that Local 1414 blocked her hours). And the retaliatory acts are more closely related here than they were in *Wu*. There, the original act was a veiled threat to the plaintiff's husband while the later retaliation directly attacked the plaintiff. *Wu*, 863 F.2d at 1545-47. Here, on the other hand, both of Local 1414's retaliatory actions directly punished Ms. Johnson in the same way: by cutting her hours. As a result, Ms. Johnson's suspension was "reasonably related" to her EEOC charge, making further exhaustion unnecessary. *See id.* at 1547.

True, in unpublished decisions, this Court has come to contradictory results as to whether *Gupta* applies only to retaliation occurring after a plaintiff files suit in the district court. Compare *Duble v. FedEx Ground Package Sys., Inc.*, 572 F. App'x 889, 892-93 (11th Cir. 2014) (per curiam) (applying *Gupta* only to post-suit retaliation), with *Thomas v. Miami Dade Pub. Health Tr.*, 369 F. App'x 19, 23 (11th Cir. 2010) (per curiam) (applying *Gupta* to pre-suit retaliation). But with little explanation, *Duble* departed from the rule "long ... established" by *Gupta*. *See Baker*, 856 F.2d at 169. *Duble* suggested that the situation before it was "factually distinguishable from *Gupta* and *Baker*" because the plaintiff "had the opportunity to amend his EEOC charge" before filing suit. *Duble*, 572 F. App'x at 893.

But respectfully, that simply states the conclusion. Nothing in this Court's reasoning in *Gupta* or *Baker* supports a distinction between pre-

and post-suit retaliation. The inquiry's touchstone is the "scope of the EEOC investigation." *See Baker*, 856 F.2d at 169. The scope of an investigation would not change because a plaintiff had filed suit.

Nor would the "strong practical reasons" that compelled this Court's holding in *Gupta*. 654 F.2d at 414. Requiring a plaintiff to file a second EEOC charge before filing suit would still result in an unnecessary "double filing" and undermine Title VII enforcement by "erect[ing] a needless procedural barrier." *Id.* And doing so would run headlong into this Court's "extreme[] reluctan[ce] to allow procedural technicalities to bar claims brought under Title VII." *Gregory v. Georgia Dep't of Hum. Res.*, 355 F.3d 1277, 1280 (11th Cir. 2004) (per curiam) (quoting *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 460-61 (5th Cir. 1970) (cleaned up)).

District courts have declined to follow *Duble* for these exact reasons. *See, e.g., Baskerville v. Sec'y of Dep't of Veteran Affs.*, 377 F. Supp. 3d 1331, 1336 (M.D. Fla. 2019); *Heard v. City of Union City*, 2017 U.S. Dist. LEXIS 199548, *14-15 (N.D. Ga. May 23, 2017); *Baker v. Nucor Steel Birmingham Inc.*, 2018 WL 2959884, at *3 (N.D. Ala. June 13, 2018); *Shell v. BellSouth Telecom., LLC*, 2020 WL 13612443, at *8 (S.D. Fla. June 8, 2020), *aff'd sub nom., Shell v. AT&T Corp.*, 2021 WL 3929916 (11th Cir. Sept. 2, 2021). This Court should do the same.

B. Ms. Johnson’s complaint alleged a prima facie case of Title VII retaliation.

An employer unlawfully retaliates when it takes an adverse action against an employee because she engaged in a statutorily protected activity. *See* 42 U.S.C. § 2000e-3(a). To plead a prima facie case of retaliation, Ms. Johnson needed to plausibly allege that (1) she engaged in a protected activity; (2) she suffered an adverse employment action; and (3) a causal connection exists between the protected activity and the adverse employment action. *See Crawford v. Carroll*, 529 F.3d 961, 970 (11th Cir. 2008). As we now show, she did. Ms. Johnson engaged in protected activities when she made internal complaints of discrimination and filed an EEOC charge; suffered adverse employment actions when Local 1414 blocked her Powered Industrial Truck certificate and suspended her for thirty days without pay; and pleaded sufficient facts to establish a causal connection between these protected activities and Local 1414’s adverse actions.

1. Protected activities

Ms. Johnson engaged in two types of protected activity. First, Title VII protected Ms. Johnson’s filing of her EEOC charge. *See* 42 U.S.C. § 2000e-3(a).

Second, Ms. Johnson engaged in protected opposition to the harassment she was suffering. Title VII protects employees like Ms. Johnson who “oppos[e] unlawful employment practices” in the workplace.

See 42 U.S.C. § 2000e-3(a). Protected opposition includes making oral complaints to management about workplace misconduct. See *Schechter v. Georgia State Univ.*, 341 Fed. App'x. 560, 562-63 (11th Cir. 2009). An employee who engages in opposition must show that she subjectively believed her employer committed unlawful discrimination and that her “belief was *objectively* reasonable in light of the facts and record present.” *Little v. United Techs., Carrier Transicold Div.*, 103 F.3d 956, 960 (11th Cir. 1997).

Ms. Johnson engaged in protected activities when she lodged several internal complaints about Mr. Jackson's harassment. These complaints include her meeting with Union Representative McDuffie on August 2, 2021; reporting to Mr. McDuffie sometime in early August 2021 that Mr. Jackson yelled at her for “snitching”; meeting with Vice President Mosely on August 9, 2021; reporting the snake picture to Mr. McDuffie sometime after August 9, 2021; “continuously report[ing] Jackson to management in the fall of 2021”; and submitting a written hostile-work-environment claim to the union's Port Grievance Committee in February 2022. App. 8 (¶ 24), 9 (¶¶ 31-32), 11 (¶¶ 35-37). Ms. Johnson's repeated complaints indicate that she subjectively believed that the harassment was unlawful. And as described above (at 17-18), the sexually explicit, unwanted, pervasive, and severe nature of the harassment shows that Ms. Johnson's belief was also objectively reasonable. Ms. Johnson therefore engaged in opposition protected under Title VII.

2. Adverse employment actions

Local 1414 took two adverse employment actions that “might have ‘dissuaded a reasonable worker from making or supporting a charge of discrimination.’” *See Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (quoting *Rochon v. Gonzales*, 438 F.3d 1211, 1219 (D.C. Cir. 2006)).

First, Local 1414 took an adverse action when it suspended Ms. Johnson without pay for thirty days on August 3, 2022. App. 12 (¶ 41). A suspension without pay for thirty days qualifies as an adverse employment action because “[m]any reasonable employees would find a month without a paycheck to be a serious hardship.” *Burlington N.*, 548 U.S. at 72.

Second, Local 1414 took an adverse action when, in December 2021, it blocked Ms. Johnson from acquiring the PIT certificate necessary to complete the hours required by her employment contract. App. 11 (¶ 36). Title VII protects employees from “forms of retaliation that produce an objective injury or harm, like a reduction in pay, benefits, or responsibilities that would demonstrate an adverse effect.” *Debe v. State Farm Mut. Auto. Ins. Co.*, 860 F. App’x 637, 639 (11th Cir. 2021) (per curiam). Here, blocking Ms. Johnson from obtaining her PIT certificate produced a serious adverse effect by making it impossible for her to fulfill her required contract hours, which, drawing inferences in Ms. Johnson’s

favor, jeopardized her continued employment with Local 1414. *See* App. 11 (¶ 36).

This adverse action regarding the PIT certificate was sufficiently pleaded because Ms. Johnson's complaint as a whole "adequately put [the defendant] on notice of the specific claims against them and the factual allegations that support those claims." *See Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1325 (11th Cir. 2015). For starters, Ms. Johnson's EEOC charge put Local 1414 on notice that Ms. Johnson was alleging that its managers took an adverse action when they blocked her from completing her required hours. App. 23 (¶ 1). And the complaint itself alleged that "[a]fter continuously reporting Jackson to management in the fall of 2021, Plaintiff learned in December 2021 that she was being blocked from the Powered Industrial Truck ('PIT') driver certification list which precluded her from completing her hours for the 2021 contract." App. 11 (¶ 36).

True, the complaint did not reallege Local 1414's interference with the PIT certificate under the retaliation count itself. App. 14-16. But "pleadings must be construed so as to do justice," Fed. R. Civ. P. 8(e), and because Ms. Johnson pleaded the PIT-related adverse action right after describing her protected activity, App. 11 (¶ 36), Local 1414 was on notice that these facts were alleged in support of her retaliation claim. That is, at least, a plausible understanding of the complaint, which is all that is

needed at this stage. *See Sebastian v. Ortiz*, 918 F.3d 1301, 1307 (11th Cir. 2019).

3. Causation

To plead causation, Ms. Johnson had to allege only that “the decision-makers were aware of the protected conduct” and that “the protected activity and the adverse action were not wholly unrelated.” *Gupta v. Florida Bd. of Regents*, 212 F.3d 571, 590 (11th Cir. 2000), *abrogated on other grounds by Burlington N.*, 548 U.S. at 54 (quoting *Farley v. Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1337 (11th Cir. 1999)). The “burden of causation can be met by showing close temporal proximity between the statutorily protected activity and the adverse employment action.” *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). When temporal proximity is the only evidence of causation, the time between the opposition and the adverse action must be “very close.” *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001) (quoting *O’Neal v. Ferguson Constr. Co.*, 237 F.3d 1248, 1253 (10th Cir. 2001)). But delays of several months between the adverse action and protected activity are “not fatal where the plaintiff presents ‘other evidence tending to show causation.’” *Baroudi v. Sec’y, U.S. Dep’t of Veterans Affs.*, 616 F. App’x 899, 902 (11th Cir. 2015) (quoting *Thomas*, 506 F.3d at 1364). The complaint plausibly pleaded causation regarding both Ms. Johnson’s suspension without pay and the blocked PIT certificate.

Suspension without pay. The district court erred in finding that a plausible causal connection was lacking between Ms. Johnson’s EEOC charge and her suspension without pay. The court concluded that “two months, without more, is insufficient for Plaintiff to sufficiently allege her retaliation claim.” App. 40.

But, as the district court acknowledged, temporal proximity was not Ms. Johnson’s only evidence of causation. App. 40. She also alleged that Local 1414’s management harbored retaliatory animus. *Id.*; App. 16 (¶ 60). For instance, when she first reported the harassment to Union Representative McDuffie, he told her that Mr. Jackson was “his boy” and that he would “help Jackson no matter right or wrong.” App. 9 (¶ 27). The district court disregarded this interaction as a “conclusory allegation,” App. 40, but that’s not correct. The allegation contains specific facts about Mr. McDuffie’s statements from which the district court was required to draw all reasonable inferences in Ms. Johnson’s favor. *See Ortiz*, 918 F.3d at 1307.

The court also overlooked other allegations demonstrating that Local 1414’s management favored Mr. Jackson. On her first day, Ms. Johnson learned that Mr. Jackson “ran” the workplace. App. 6 (¶ 9). The day after Ms. Johnson’s confidential meeting with Vice President Mosely, their conversation was leaked to the entire organization. App. 10 (¶ 33). Then, after continuously reporting Mr. Jackson to management in fall 2021, she learned that her PIT certificate was blocked. App. 11 (¶ 36).

These allegations support the reasonable inferences that Mr. Jackson was influential and that Local 1414's management disapproved of Ms. Johnson reporting him. Retaliatory animus on its own can be sufficient to establish causation. *See Allen v. S. Commc'ns Servs., Inc.*, 963 F. Supp. 2d 1242, 1252-53 (N.D. Ala. 2013). Thus, especially when considering the brief two-month gap between Ms. Johnson's EEOC charge and suspension, her complaint alleged that Local 1414's management harbored retaliatory animus against her sufficient to indicate that the two events were not "wholly unrelated." *Florida Bd. of Regents*, 212 F.3d at 590 (quoting *Farley*, 197 F.3d at 1337).

The district court also erred in concluding that the complaint contained "no allegations that the decision maker who suspended Plaintiff was aware she filed her [EEOC] Charge." App. 40. After all, the EEOC notifies employers within ten days of receiving a charge. 28 C.F.R. § 42.605(a) (2025). Because Ms. Johnson filed her EEOC charge on May 31, Local 1414's management would have been informed of the charge before her August 3 suspension. App. 12 (¶ 41), 15 (¶ 56).

It is reasonable to infer that Local 1414's leaders, like Vice President Mosely, were aware of something as important as a pending EEOC charge against the union. Other managers at Local 1414, particularly those like Union Representative McDuffie who oversaw Ms. Johnson and fielded her earlier reports, also likely learned of the pending EEOC charge, especially if Local 1414 interviewed managers as part of the

company's response to the charge. *See, e.g.,* Melanie Pate & Mary Ellen Simonson, *Legal Trends: Effective Responses to EEOC Charges*, HR Quarterly (Oct. 1, 2013).¹ To assume otherwise would mean that Local 1414 was not conducting a legitimate investigation into a serious EEOC charge. *See* App. 22-24 (EEOC Charge).

The individuals implicated by Local 1414's likely response to the EEOC charges—Mr. McDuffie, Vice President Mosely, and potentially members of the grievance committee—also exercised managerial power over Ms. Johnson. So, it is reasonable to infer that the decisionmakers responsible for suspending Ms. Johnson without pay were also aware that she filed an EEOC charge.

PIT certificate. Ms. Johnson's complaint also alleged multiple plausible grounds for inferring that her internal reports and the blocking of her PIT certificate were causally connected. *See Florida Bd. of Regents*, 212 F.3d at 590. For one thing, it is plausible that management's decision to block her PIT certificate was also motivated by retaliatory animus because the incidents revealing management's animus discussed above (at 28-29) occurred before her PIT certificate was blocked in December 2021.

For another, Ms. Johnson pleaded close temporal proximity between her reporting Mr. Jackson's behavior and the blocking of her PIT

¹ <https://www.shrm.org/topics-tools/news/hr-magazine/legal-trends-effective-responses-to-eeoc-charges>.

certificate. She alleged that she “continuously report[ed] Jackson to management in the fall of 2021” and learned that her PIT certificate was blocked “in December 2021.” App. 11 (¶ 36). Drawing all reasonable inferences in Ms. Johnson’s favor, “throughout the fall” would include all of November and part of December. That would mean that Ms. Johnson could have learned about the blocking of her PIT certificate just a few weeks or even days after her reports of workplace misconduct. Events occurring only a few weeks apart “normally give rise to an inference of causation.” *Henderson v. FedEx Express*, 442 F. App’x 502, 507 (11th Cir. 2011); *see also Porter v. Houma Terrebonne Hous. Auth. Bd. of Comm’rs*, 810 F.3d 940, 948-49 (5th Cir. 2015) (finding causal connection from a six-and-a-half-week gap). Ms. Johnson therefore alleged a temporal link that is sufficient on its own to support a finding of causation. And when considered together with the allegations of management’s retaliatory animus detailed earlier (at 28-29), Ms. Johnson’s complaints to management and the blocking of her PIT certificate cannot be viewed as “wholly unrelated” at this stage of the litigation. *See Florida Bd. of Regents*, 212 F.3d at 590 (quoting *Farley*, 197 F.3d at 1337).

Ms. Johnson’s allegations also support the plausible inference that the decisionmakers who blocked her PIT certificate were aware that she had reported Mr. Jackson. The complaint alleged that Ms. Johnson’s private meeting with Vice President Mosely was leaked and that their conversation spread throughout the workplace “like a wildfire.”

App. 10 (¶ 33). Like the rest of Local 1414, the decisionmakers who blocked Ms. Johnson's PIT certificate would have learned from this leak that Ms. Johnson had reported Mr. Jackson—even if we indulge the notion that they had not already learned about the report from other sources. And given that Ms. Johnson reported the harassment to her managers at Local 1414 throughout the fall, it is plausible to infer that there was an overlap between the supervisors who fielded her complaints and suspended her PIT certificate. Thus, drawing all reasonable inferences in Ms. Johnson's favor, she alleged that the decisionmakers who blocked her PIT certificate were aware of her internal complaints about Mr. Jackson's harassment.

Conclusion

The district court's judgment should be reversed on both of Ms. Johnson's Title VII claims and the case remanded for further proceedings.

Respectfully submitted,

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October 16, 2025

/s/Brian Wolfman

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