No. 11-1917

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Tara V. Luevano,
Plaintiff-Appellant,
v.

Wal-Mart Stores, Inc.,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:10-cv-03999
The Honorable Virginia M. Kendall

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT TARA V. LUEVANO

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Sarah O'Rourke Schrup
Attorney
Sarah J. Newman
Senior Law Student
Marjorie M. Filice
Senior Law Student

Counsel for Plaintiff-Appellant,
Tara V. Luevano

ORAL ARGUMENT REQUESTED

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TARA V. LUEVANO, Plaintiff-Appellant, v. WAL-MART STORES, INC., Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division Case No. 1:10-cv-03999 The Honorable Virginia M. Kendall

Disclosure Statement

I, the undersigned counsel for the Plaintiff-Appellant, Tara V. Luevano, furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case:
Tara V. Luevano

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court:

Sarah O'Rourke Schrup (attorney of record), Sarah J. Newman (senior law student), and Marjorie M. Filice (senior law student) of the Bluhm Legal Clinic at the Northwestern University School of Law.

The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

Danielle M. Kays
Grady Pilgrim Christakis Bell LLP
53 W. Jackson Blvd., Suite 151
Chicago, IL 60604

Lu Han
Cheng Cohen LLC
311 N. Aberdeen St., Suite 400
Chicago, IL 60607

/s/ Sarah Schrup
Date: October 30, 2012

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No

Address:	375 East Chicago Avenue, Chicago, Illinois 60611
Phone Number:	(312) 503-0063
Fax Number:	(312) 503-8977
E-Mail Address:	s-schrup@law.northwestern.edu

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Jurisdictional Statement

Appellant Tara V. Luevano filed this lawsuit in the United States District Court for the Northern District of Illinois, alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a) (2006). The district court therefore had subject matter jurisdiction under 28 U.S.C. § 1331 (2006).

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 (2006), as this is an appeal of a final order from the district court granting a motion to dismiss. The final order of the district court from which this appeal follows was entered on March 24, 2011. (A.17.)[1] Luevano timely filed her Notice of Appeal on April 19, 2011. (A.18.)

It is Appellant's position that the district court's March 24, 2011 order confers jurisdiction on this Court for all the issues raised in this appeal. Out of an abundance of caution and recognizing counsel's duty to assist this Court in ascertaining its jurisdiction, Appellant acknowledges that certain case law from this Court could be read as depriving jurisdiction over the first issue—that is, whether the district court's dismissal without prejudice under 28 U.S.C. § 1915 (2006) was erroneous. *See, e.g.*, *Lee v. Cook Cnty.,* 635 F.3d 969, 972 (7th Cir. 2011) (explaining in dicta that the appellant "should have appealed immediately" from an erroneous dismissal without prejudice); *Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th Cir. 2000) (explaining that the "proper remedy for an erroneous dismissal . . . is

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[1] Citations to the appendices required under Circuit Rules 30(a) and 30(b) are designated (A.__). Citations to the record from the district court that are not included in the appendix are designated (R.__).

appeal"). But as discussed below, *see infra* at 16, those cases do not apply here because they did not involve dismissals under § 1915 and because they concerned orders that were effectively final on the day of dismissal. Here, however, Luevano still had time remaining in the limitations period when the district court dismissed her complaint under § 1915, and she was therefore required to raise her objection to the district court's § 1915 dismissal only after the district court's final order on March 24, 2011. (A.17.) Therefore, this Court retains jurisdiction over all issues in this appeal.

Statement of the Issues

I. Whether the district court erroneously dismissed Luevano's first *pro se* form complaint under 28 U.S.C. § 1915 when the district court failed to liberally construe the complaint and when Luevano alleged facially adequate claims of supervisor-based harassment and retaliation.

II. Whether the district court erred in denying equitable tolling when Luevano actively pursued her claims in the district court and when the district court affirmatively instructed Luevano to file an amended complaint but failed to explain how its dismissal without prejudice affected the statute of limitations.

III. Whether the district court improperly dismissed Luevano's retaliation claim when her Second Complaint was timely with respect to her second EEOC charge and when the retaliation claim in her Fourth Complaint was reasonably related to that charge.

Statement of the Case

Appellant Tara V. Luevano filed two charges with the Equal Employment Opportunity Commission (EEOC) against her employer, Wal-Mart Stores, Inc. ("Wal-Mart"). *See* 42 U.S.C. § 2000e-5(e)(1) (2006). Luevano filed her first EEOC charge on March 16, 2010, alleging that Wal-Mart had discriminated against her based on her sex and had retaliated against her for asserting her rights. Luevano received a right-to-sue letter based on this first charge on April 1, 2010. Luevano subsequently filed a second EEOC charge on June 7, 2010, alleging that Wal-Mart had retaliated against her for filing the first EEOC charge. She received a right-to-sue letter based on this second charge on June 30, 2010.

After filing both EEOC charges and receiving her first right-to-sue letter, Luevano, a *pro se* plaintiff, filed a lawsuit against Wal-Mart on June 28, 2010, raising Title VII sex discrimination and retaliation claims. Using a court-approved form for this first of four complaints that she would file over the course of the lawsuit, Luevano alleged that Wal-Mart had created a hostile work environment because of her supervisor's harassment and had retaliated against her for reporting his conduct. On the same day, Luevano also filed motions to proceed *in forma pauperis* (IFP) and for appointment of counsel. On July 9, 2010, the district court dismissed Luevano's First Complaint without prejudice for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) (2006). At the same time, the district court also denied Luevano's motions for counsel and to proceed IFP.

On August 4, 2010, Luevano filed a *pro se* motion to amend her complaint and reinstate her case. She attached a copy of her proposed amended complaint (her "Second Complaint")[2] to that motion. Once again, the Second Complaint alleged that her supervisor had harassed her and had retaliated against her for reporting his conduct. On August 9, 2010, the court granted Luevano's motion and reopened her case. On August 19, 2010, the district court also granted Luevano leave to proceed IFP and appointed counsel to assist her. The court gave Luevano until September 30, 2010, to file an amended complaint.

Luevano complied with the district court's order and filed her Third Complaint with the assistance of appointed counsel on September 29, 2010. As in her prior two complaints, Luevano alleged that her supervisor harassed her and retaliated against her for asserting her rights. Wal-Mart then filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), claiming that Luevano failed to file her Second and Third Complaints within the ninety-day statute of limitations period running from her first right-to-sue letter as required by Title VII in 42 U.S.C. § 2000e-5(f)(1) (2006). In response, Luevano filed a motion to amend her Third Complaint, which the court granted.

Luevano filed her fourth and final complaint on November 24, 2010, raising the same underlying claims as all her previous complaints and also attaching her

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[2] Luevano filed one complaint and three amended complaints in the district court. For simplicity's sake, Appellant refers to the original Complaint as the "First Complaint," (A.22), the Amended Complaint as the "Second Complaint," (A.35), the Second Amended Complaint as the "Third Complaint," (A.48), and the Third Amended Complaint as the "Fourth Complaint," (A.61).

second EEOC charge and right-to-sue letter. Wal-Mart again filed a motion to dismiss, arguing that all of Luevano's amended complaints—the Second, Third, and Fourth Complaints—were barred by the ninety-day statute of limitations and that the relation back and equitable tolling doctrines were inapplicable. The district court granted Wal-Mart's motion and entered judgment against Luevano on March 24, 2011.

This appeal followed on April 19, 2011.

Statement of the Facts

This case arises out of a series of events involving Appellant Tara V. Luevano's job as a people greeter at the Wal-Mart in Orland Hills, Illinois. (A.28.) In short, Luevano consistently alleged over a series of four successive complaints[3] that: (1) a male coworker threatened her; (2) when she went to her male supervisor to report the situation, he too threatened and harassed her; and (3) the supervisor further told her that he would not help her because the other employee was a man. Luevano also alleged throughout the proceedings below that Wal-Mart retaliated against her by reducing her hours after she complained first to Wal-Mart management and then to the Equal Employment Opportunity Commission (EEOC).

Luevano pursued her claims *pro se* throughout the first half of these proceedings. She timely filed two EEOC charges, and she timely filed her First Complaint in the district court within the ninety-day deadline. The issues in this appeal arise both from the substantive allegations in Luevano's First Complaint and from the district court's dismissal of her amended complaints as untimely and not subject to equitable tolling.

I. March 16, 2010—Luevano's First EEOC Charge

In her First Complaint, Luevano, then a *pro se* plaintiff, provided a handwritten statement alleging the following specific facts and events that prompted her to file her first EEOC charge. (A.26.) On February 13, 2010, a male

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[3] The contours of the pleadings and their substance are detailed below. But for the Court's convenience, a condensed timeline of the pleadings is provided in the appendix. (A.1.)

Wal-Mart coworker began physically and verbally intimidating and threatening Luevano. (A.26.) As a result, Luevano reported the coworker's conduct to her supervisor, providing a written report and a list of witnesses. (A.26.) When she submitted her written report to her supervisor, however, he refused to investigate the complaint. (A.26.) The supervisor admitted that he would not respond to Luevano's complaint because the coworker was a man and, for that reason, the supervisor wanted to help the male coworker rather than help and protect Luevano. (A.26.) Because her supervisor did not respond to her complaint, Luevano reported the supervisor's conduct to Wal-Mart's district manager. (A.26.) When her supervisor learned that she had reported him, he intimidated Luevano, watched her on breaks, and cut her scheduled work hours. (A.26.) Finally, as a result of this treatment, Luevano suffered serious expenses and developed medical issues. (A.26.)

Luevano subsequently filed her first of two charges with the EEOC on March 16, claiming sex discrimination and retaliation. (A.28.) She stated in the charge that she had "been subjected to harassment" and had "complained to [Wal-Mart] to no avail." (A.28.) Luevano received a right-to-sue letter from the EEOC related to her first charge on April 1, 2010. (A.29.)

II. June 7, 2010—Luevano's Second EEOC Charge

After Luevano reported her supervisor's conduct, he reduced her scheduled work hours. (A.26, 40.) As a result, Luevano filed her second EEOC charge on June 7. In this second charge, she stated that "[d]uring my employment, I complained of discrimination (EEOC # 440-2010-02955). I was subsequently subjected to different

terms and conditions of employment, including but not limited to, reduced work hours." (A.72.) She received a second right-to-sue letter related to her second EEOC charge on June 30, 2010. (A.73.)

III. June 28, 2010—Luevano's First *Pro Se* Complaint

On June 28, after filing both EEOC charges and receiving her first right-to-sue letter, Luevano initiated this lawsuit against Wal-Mart in the United States District Court for the Northern District of Illinois for sex discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. (A.22–33.) On the same day that she filed her First Complaint, Luevano also filed motions to proceed *in forma pauperis* (IFP) and for appointed counsel. (R.4; R.5.)

Luevano filed her First Complaint *pro se* by completing the five-page form complaint provided by the Northern District of Illinois for employment discrimination claims. (A.22–25, 27.) On the form complaint, Luevano checked the appropriate boxes to indicate that Wal-Mart had "failed to stop harassment" and had "retaliated against [her] because [she] did something to assert [her] rights." (A.24.) Luevano also attached several documents to the form complaint, including her first EEOC charge and right-to-sue letter, an electronic time sheet, a police report documenting a report she made against the male coworker, and a medical form requesting a leave of absence due to anxiety and other health problems stemming from her hostile work environment. (A.28–33.)

Additionally, Luevano provided a page-long handwritten statement describing the events involving her coworker and supervisor. In her statement,

Luevano explained that her supervisor told her he would not respond to her complaint because "he understood [her] harasser because he's a male and that he wanted to help him." (A.26.) Luevano also alleged that after she lodged her complaint with Wal-Mart's district manager, she "was then subjected to intimidation by [her] manager, being watched on [her] breaks and ultimately they cut [her] hours." (A.26.) Finally, Luevano indicated that she believed Wal-Mart had discriminated against her because of her sex by checking the box next to "Sex" on the court-provided form complaint. (A.24.)

IV. July 9, 2010—The District Court's First Dismissal Under 28 U.S.C. § 1915

On July 9, the district court—citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)—dismissed Luevano's First Complaint, finding that Luevano "failed to allege any basis giving rise to a plausible claim for relief under Title VII because she has not alleged that either the harassment [or] the retaliation occurred because of her sex." (A.8.) At the same time, the district court also denied Luevano's IFP petition and her motion for appointed counsel. (A.7–8.) In its order, the district court explained that it was unable to determine whether Luevano's claims warranted the appointment of counsel because "Luevano has not yet provided the Court with sufficient information to determine whether her claims are particularly difficult or complex." (A.8.) However, the court advised Luevano that she could renew her motion for appointment of counsel "if [Luevano] provides the Court with an amended Complaint providing a sufficient basis for the Court to find that the harassment of which she complains occurred due to her sex." (A.8.) The court did

not set a filing deadline for the amended complaint, nor did it advise Luevano of any statute of limitations issues arising from its dismissal without prejudice. The district court did not enter this order on the docket until July 12, 2010. (A.3) (docket sheet indicating that R.6 order from July 9, 2010, was entered on July 12, 2010).

V. August 4, 2010—Luevano's Second *Pro Se* Complaint

On August 4, Luevano filed a *pro se* motion to amend her complaint and to reinstate her case, and she attached her Second Complaint to that motion. (R.7; A.35–46.) Although Luevano provided more details in her Second Complaint, she alleged the same underlying facts and events as in her First Complaint. Again, by checking the appropriate boxes on the court-provided form complaint, Luevano indicated that she believed Wal-Mart had discriminated against her based on her sex. (A.37.) She also indicated that Wal-Mart had failed to stop harassment and had retaliated against her. (A.37.) Then, in a two-page handwritten statement, Luevano repeated many of the allegations that she made in her First Complaint. (A.39–40.) According to her Second Complaint, the male coworker began harassing her on February 13, 2010. (A.39.) Her supervisor also harassed her and retaliated against her beginning on March 13, 2010, (A.39), and reduced her hours on April 8, 2010, (A.40).

Luevano also alleged new facts in her Second Complaint that were responsive to the district court's July 9 dismissal. Luevano's supervisor made "sexist comments with ap[p]roval" and made "excuses for the male harasser's offensive,

hostile verbal abuse." (A.39.) Her supervisor also explained to her that he "want[ed] to help [the male coworker], being also a male" and admitted that the male coworker had an "M.O. toward women." (A.39.) The supervisor "confirmed male favoritism and protection" by giving the male coworker "no consequences" and stating that the male coworker "would not be fired." (A.39.) The supervisor likewise "practice[d] his m.o. power of male authority to intimidate female not male." (A.40.) Finally, Luevano attached a copy of Wal-Mart's HR-19 Discrimination and Harassment Prevention Policy. (A.42–43.) She put an asterisk next to the policy on "Retaliation" and also next to the prohibition on taking negative action against an employee for "[f]iling a complaint of discrimination or harassment with a government agency or court." (A.43.)

VI. August 9, 2010—The District Court Reopened the Case

On August 9, the district court granted Luevano's motion to amend her complaint and reopened the case. (R.10.) On August 19, the district court also granted Luevano leave to proceed IFP and appointed counsel to assist her. (A.9.) The district court explained that "Luevano appears to have timely claims under Title VII and the assistance of counsel appears reasonably necessary to enable her to present those claims to the Court." (A.9.) The court gave Luevano until September 30 to file an amended complaint. (R.13.)

VII. September 29, 2010—Luevano's Third Complaint

Luevano filed her Third Complaint with the assistance of appointed counsel on September 29. (A.48–59.) This complaint was consistent with the facts alleged

in Luevano's first two *pro se* complaints, again raising claims of sex discrimination and retaliation. Luevano also executed a summons to Wal-Mart on October 1, 2010. (R.16.)

Wal-Mart then filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) on October 21, claiming that Luevano failed to file her Second and Third Complaints within the ninety-day statute of limitations period running from her first right-to-sue letter as required by Title VII in 42 U.S.C. § 2000e-5(f)(1) (2006). (R.19; R.20.) In response, Luevano filed a motion to amend her Third Complaint on November 23, explaining that her appointed counsel was unaware of her second EEOC charge at the time Luevano filed her Third Complaint. (*See* R.33 ¶ 6.) The district court granted Luevano's motion. (R.35.)

VIII. November 24, 2010—Luevano's Fourth Complaint

Luevano filed her fourth and final complaint on November 24. (A.61–73.) Luevano attached her second EEOC charge and right-to-sue letter to this amended complaint. (A.72–73.) Otherwise, the facts she alleged in the Fourth Complaint were the same as those she alleged in all of her previous complaints.

Wal-Mart then filed a second motion to dismiss, arguing that all of Luevano's amended complaints—the Second, Third, and Fourth Complaints—were barred by the ninety-day statute of limitations and that the relation back and equitable tolling doctrines were inapplicable. (R.41; R.42.) The district court granted Wal-Mart's motion and entered final judgment against Luevano on March 24, 2011. (A.17.) Luevano filed a *pro se* Notice of Appeal on April 19, 2011. (A.18.)

Summary of the Argument

Despite the many procedural obstacles erected before her, Appellant Tara V. Luevano diligently pursued her claims in the district court. First, after Wal-Mart failed to respond to her reports of sexual harassment, Luevano filed two timely EEOC charges alleging sex discrimination and retaliation. Then, when Luevano timely filed this lawsuit as a *pro se* plaintiff, the district court erroneously dismissed her claims on two separate occasions, once under 28 U.S.C. § 1915(e)(2)(B) and then again under Federal Rule of Civil Procedure 12(b)(6).

The district court's § 1915 dismissal was improper because the district court failed to liberally construe Luevano's first *pro se* complaint—a complaint that Luevano had lodged by accurately filling out the employment discrimination form complaint that the district court itself provided to *pro se* plaintiffs. The district court also failed to properly analyze the underlying claims in Luevano's complaint. It failed to apply the supervisor-based legal standard for hostile work environment claims, and it entirely ignored the facially adequate retaliation claim that Luevano alleged in her complaint. Therefore, this Court should reverse the district court's § 1915 dismissal.

The district court's dismissal of Luevano's amended complaints under Rule 12(b)(6) was also in error for two independent reasons. *First*, the district court improperly held that equitable tolling did not stop the statute of limitations running from Luevano's first EEOC charge. The district court's analysis was flawed for two reasons. It first ignored the diligence prong of the equitable tolling standard and

thus overlooked Luevano's consistent struggle to have her claims heard. Next, the district court conducted an incomplete analysis of the extraordinary circumstances prong of the equitable tolling standard because it did not consider how its own July 9 order lulled Luevano into believing that filing an amended complaint would be sufficient to preserve her claim. Because Wal-Mart will not be prejudiced by equitable tolling, this Court should reverse the district court's denial of equitable tolling.

Second, the district court erroneously dismissed Luevano's retaliation claim. Conflating timeliness with exhaustion of administrative remedies, the district court improperly failed to apply the relation back doctrine. Luevano's Second Complaint was timely with respect to her second right-to-sue letter, and she properly pled exhaustion when she attached her second charge and right-to-sue letter to her Fourth Complaint. The retaliation claim in all of Luevano's complaints was reasonably related to Luevano's second EEOC charge, and there were sufficient factual allegations in the Fourth Complaint to survive a motion to dismiss. In short, these errors warrant reversal, and this Court should remand Luevano's claims to the district court to be considered on the merits.

Argument

I. The district court erroneously dismissed Luevano's first *pro se* complaint.

The district court erroneously dismissed Luevano's first *pro se* complaint under 28 U.S.C. § 1915(e)(2)(B) (2006). This error snowballed into an avalanche of procedural obstacles that ultimately prevented Luevano from having her case reviewed on the merits. This improper dismissal was the culmination of three independent errors. First, the district court failed to apply the lenient pleading standard used to construe *pro se* complaints. Next, the district court failed to apply the correct legal standard for supervisor-based hostile work environment claims. Finally, the district court erred by ignoring Luevano's facially adequate retaliation claim. Therefore, this Court should reverse the district court's dismissal of Luevano's First Complaint.

The district court's final order entered on March 24, 2011, (A.17), confers jurisdiction on this Court to review the district court's § 1915 dismissal. Because the district court's July 9, 2010 dismissal was without prejudice, this order was not a final, appealable order for the purposes of 28 U.S.C. § 1291, and it would have been premature for Luevano to appeal the order at that time. *See Mosely v. Bd. of Educ.*, 434 F.3d 527, 531 (7th Cir. 2006) (explaining that a dismissal without prejudice is not ordinarily a final, appealable decision). Furthermore, the exceptions that transform a dismissal without prejudice into a final, appealable decision did not apply when the district court ruled. *See Muzikowski v. Paramount Pictures Corp.*, 322 F.3d 918, 923 (7th Cir. 2003) (explaining that a dismissal

without prejudice may be final "if there is no amendment [a plaintiff] could reasonably be expected to offer to save the complaint" or "if a new suit would be barred by the statute of limitations"). On the day the order was entered on the docket, the district court explicitly informed Luevano that she could file an amended complaint. Additionally, because Luevano had concurrently filed a petition to proceed *in forma pauperis* (IFP) with her First Complaint, thus tolling the statute of limitations while the district court considered the petition, there was still time remaining on the limitations clock when the district court dismissed her First Complaint and her IFP petition. *See Williams-Guice v. Bd. of Educ.*, 45 F.3d 161, 162 (7th Cir. 1995). Therefore, because there was still time to amend her complaint on the day the district court entered its order dismissing the complaint without prejudice, Luevano was required to raise her objection to the district court's § 1915 dismissal only after the district court's final order on March 24, 2011. (A.17.);[4] *cf. Habitat Educ. Ctr. v. U.S. Forest Serv.*, 607 F.3d 453, 456 (7th Cir. 2010) ("[G]enerally when a final judgment or other order is appealed, the appellant can challenge any interlocutory ruling that adversely affects him."). This Court reviews a dismissal under § 1915(e)(2)(B) *de novo* and applies the same standards used to evaluate Rule 12(b)(6) dismissals. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011).

[4] To the extent that the § 1915 dismissal became a final appealable order when the statute of limitations ran, equitable tolling principles, discussed below, permit Luevano to raise these issues on appeal.

A. The district court failed to liberally construe Luevano's first *pro se* complaint.

The district court's threshold error in dismissing Luevano's first *pro se* complaint was its failure to liberally construe the complaint. Under 28 U.S.C. § 1915(e)(2)(B), which applies when a plaintiff files an IFP petition, the district court must screen a complaint to determine whether it "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)–(iii) (2006); *see Lindell v. McCallum*, 352 F.3d 1107, 1109 (7th Cir. 2003). When a district court conducts this screening, however, it must liberally construe *pro se* plaintiffs' complaints and hold such complaints "to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation and internal quotation marks omitted).

Even in the wake of the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), this Court has joined many of its sister circuits in continuing to liberally construe *pro se* plaintiffs' complaints. *See, e.g.*, *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011); *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) ("*Iqbal* incorporated the *Twombly* pleading standard and *Twombly* did not alter courts' treatment of *pro se* filings; accordingly, we continue to construe *pro se* filings liberally when evaluating them under *Iqbal*."); *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 461–62 (5th Cir. 2010); *Casanova v. Ulibarri*, 595 F.3d 1120, 1124–25 (10th Cir. 2010); *Capogrosso v. Supreme Court of N.J.*, 588 F.3d 180, 184 n.1 (3d Cir. 2009); *Harris v. Mills*, 572

F.3d 66, 72 (2d Cir. 2009) ("Even after *Twombly*, though, we remain obligated to construe a *pro se* complaint liberally." (citing *Erickson*, 551 U.S. 89)).

This Court, for example, leniently construed a *pro se* plaintiff's complaint in *Swanson v. Citibank, N.A.* when it reversed the district court's dismissal of the plaintiff's Fair Housing Act claim. 614 F.3d 400, 405–06 (7th Cir. 2010). In particular, this Court held that the district court had improperly dismissed the *pro se* plaintiff's discrimination claim because the plaintiff had properly "identifie[d] the type of discrimination that she thinks occur[ed] (racial), by whom . . . , and when." *Id.* This Court held that "[t]his [was] all that [the plaintiff] needed to put in the complaint." *Id.* (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511–12 (2002)).[5]

Under this lenient pleading standard as applied in *Swanson*, Luevano's complaint also should have survived a motion to dismiss. Luevano fully filled out the court-provided form complaint,[6] and then added even more detail than required.

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[5] *Swanson* hinted at two grounds for this lenient pleading standard. Luevano's claim fits within either rationale. First, this Court explained that the required level of factual specificity in the pleadings is correlated to the complexity of the claim. *See Swanson*, 614 F.3d at 405; *see also McCauley v. City of Chicago*, 671 F.3d 611, 616–17 (7th Cir. 2011). Like the plaintiff's simple Fair Housing Act claim in *Swanson*, Luevano's Title VII claim is a very "straightforward case[]" that "will not be any more difficult today [for a plaintiff to meet the Rule 8(a) pleading standard] . . . than it was before the Court's recent decisions [in *Twombly* and *Iqbal*]." *Swanson*, 614 F.3d at 404 (providing a failure-to-promote hypothetical as an example of a "straightforward case"). Second, this Court's relaxed pleading standard in *Swanson* can also be explained by virtue of the plaintiff's *pro se* status. *See id.* at 402–03 (citing *Erickson*, 551 U.S. 89).

[6] To the extent that the district court's "Complaint of Employment Discrimination" form no longer complies with the Supreme Court's "plausibility" standard under *Twombly* and *Iqbal*, the just solution is to amend the form so that future *pro se* plaintiffs will not continue to be misled into providing allegations insufficient to survive a motion to dismiss. This Court has flagged this precise concern about the form complaints approved as part of the Federal Rules of Civil Procedure. *See McCauley*, 671 F.3d at 623–24 (Hamilton, J., dissenting in part) ("Unless one can plausibly explain away the tension between *Iqbal* . . .

(A.24, 28) (indicating that she filled out an EEOC charge for sex discrimination based on hostile work environment and retaliation claims). Although the form only provided six lines to describe the "facts supporting the plaintiff's claim of discrimination," (A.25), Luevano attached a page-long description to the complaint, alleging specific facts related to her supervisor's harassing and retaliatory conduct, (A.26). In short, Luevano's complaint contained concrete factual allegations for all three of the prongs identified in *Swanson*: (1) she checked the "sex" box on the form, thus identifying the type of discrimination (A.24); (2) she identified the basis of her claims as supervisor-based harassment and retaliation (A.26); and (3) Luevano identified when these events occurred by alleging that they happened after February 13, 2010, (A.26). Under *Swanson*, Luevano stated a claim sufficient to survive a motion to dismiss. The district court's dismissal was therefore erroneous.

B. The district court failed to apply the correct legal standard to Luevano's supervisor-based hostile work environment claim.

Even ignoring its failure to liberally construe Luevano's first *pro se* complaint, the district court also failed to properly analyze Luevano's supervisor-based hostile work environment claim. To state a claim for a hostile work environment, a plaintiff must plead that: "(1) her work environment was both objectively and subjectively offensive; (2) the harassment she complained of was

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and the Rule 84-endorsed form complaints, then *Iqbal* conflicts with the Rules Enabling Act and the prescribed process for amending the Federal Rules of Civil Procedure." (citation omitted)); *see also* Victor D. Quintanilla, *Beyond Common Sense: A Social Psychological Study of* Iqbal*'s Effect on Claims of Race Discrimination*, 17 Mich. J. Race & L. 1, 53 (2011) (noting that "[i]ncomplete instructions" in form complaints "may lull pro se plaintiffs into pleading claims in a more general fashion than is advisable under current federal jurisprudence").

based on her sex; (3) the conduct was either severe or pervasive; and (4) there was a basis for employer liability." *Passananti v. Cook Cnty.*, 689 F.3d 655, 664 (7th Cir. 2012). The analysis proceeds differently for the fourth prong of the test depending on whether a supervisor or a coworker is the harasser. *Williams v. Waste Mgmt. of Ill.*, 361 F.3d 1021, 1029 (7th Cir. 2004). If a coworker is the alleged harasser, then the employer is liable if it did not "respond in a manner reasonably likely to end the harassment." *Sutherland v. Wal-Mart Stores, Inc.*, 632 F.3d 990, 995 (7th Cir. 2011). But the employer is strictly liable if the supervisor is the harasser. *Williams*, 361 F.3d at 1029.

The district court ignored Luevano's supervisor-based harassment claim. Failing to draw all inferences in Luevano's favor, the district court analyzed the sufficiency of Luevano's sexual harassment claim solely based on the assumption that her male coworker was the alleged harasser. The district court ultimately dismissed the complaint because Luevano failed to allege that the coworker's harassment "occurred because of her sex" or was "sexual in nature." (A.8.) While Luevano did not plead facts in her First Complaint demonstrating that the *coworker* harassed her because of her sex, Luevano nevertheless did plead facts giving rise to an inference that her *supervisor* subsequently harassed her because of her sex. In addition to checking the "sex" box, Luevano alleged in her handwritten statement that her supervisor had admitted to Luevano that he refused to investigate or rectify the situation with her coworker because the coworker was a man. (A.26) ("After asking my male manager once again what was being done about my

complaints, he told me he understood my harasser because he's a male and that he wanted to help him and related situation to his brother and himself both males."). Luevano then alleged that she was "subjected to intimidation *by my manager*." (A.26) (emphasis added).

Luevano also alleged sufficient facts to demonstrate that the harassment was severe and pervasive. She alleged that because of her hostile work environment, she "suffered serious medical issues and expenses." (A.26.) Luevano also attached a health certification form completed by her healthcare provider requesting a medical leave of absence due to health problems stemming from the hostile environment at Wal-Mart. (A.33.) Under *Williams*, if these facts were true, then Wal-Mart would be strictly liable because the harasser was her supervisor. *Williams*, 361 F.3d at 1029. Therefore, the § 1915 dismissal was premature, and the district court erred by not allowing Luevano's hostile work environment claim to proceed.

C. The district court erred in ignoring and then dismissing Luevano's facially adequate retaliation claim.

Independent of the district court's first two errors, the district court also erred when it ignored and then dismissed Luevano's viable retaliation claim. The district court's July 9 order only once referenced Luevano's retaliation claim, and even then only in passing, while giving an incomplete explanation of the legal standard for hostile work environment claims. The district court wrote that "Luevano has failed to allege any basis giving rise to a plausible claim for relief under Title VII because she has not alleged that either the harassment [or] the

retaliation occurred because of her sex." (A.8.)[7] The district court subsequently ignored all of Luevano's allegations related to her retaliation claim.

Had the district court properly analyzed Luevano's retaliation claim, Luevano's claim should have survived a motion to dismiss. To prove a retaliation claim, the plaintiff "must present evidence of (1) a statutorily protected activity; (2) a materially adverse action taken by the employer; and (3) a causal connection between the two." *Turner v. The Saloon, Ltd.*, 595 F.3d 679, 687 (7th Cir. 2010) (citation and internal quotation mark omitted). Luevano easily satisfied this standard. She alleged that she lodged a complaint against her supervisor—a protected activity. She then alleged that her supervisor subsequently took adverse action by cutting her hours. (A.26.) Finally, the timing of the facts alleged was sufficient to show causation and to survive a motion to dismiss. *See Dey v. Colt Constr. & Dev. Co.*, 28 F.3d 1446, 1458 (7th Cir. 1994) (finding that a four-week lapse between protected activity and discharge supported an inference of causation). Not only did the district court err by ignoring Luevano's retaliation claim, it also erred by dismissing the claim at all.

These three independent errors led to the district court's § 1915 dismissal, which triggered all the subsequent hurdles that ultimately prevented Luevano from

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[7] The district court's explanation might also indicate that it was erroneously conflating the legal standards used to analyze hostile work environment and retaliation claims. As discussed below, retaliation claims arise when an employer takes a materially adverse action because of the employee's statutorily protected *activity*, not because of the employee's statutorily protected *trait*. *See Turner v. The Saloon, Ltd.*, 595 F.3d 679, 687 (7th Cir. 2010). To the extent that the district court was articulating the wrong legal standard for evaluating Luevano's retaliation claim, reversal and remand are also appropriate.

having her case considered on the merits. This Court should therefore reverse the district court's dismissal of Luevano's First Complaint.

II. The district court's misleading July 9, 2010 order justifies equitably tolling the statute of limitations running from Luevano's first right-to-sue letter.

Independent of its erroneous dismissal of Luevano's First Complaint, the district court again erred by denying equitable tolling. The district court's denial of equitable tolling was the product of two errors. First, the district court failed to acknowledge that Luevano diligently pursued her rights and therefore did not adequately analyze whether equitable tolling applied. Second, the district court's July 9 order lulled Luevano into believing she could preserve her claim by filing an amended complaint, which was an extraordinary circumstance justifying equitable tolling. Finally, Wal-Mart will not be prejudiced if equitable tolling applies because, notwithstanding the district court's errors, it still received timely notification of the lawsuit. Therefore, even ignoring the district court's first error—dismissing Luevano's First Complaint—reversal and remand are still appropriate because the district court's own conduct prevented Luevano from complying with the statute of limitations.

The Supreme Court has recognized that Title VII time limits are not jurisdictional and are therefore subject to equitable remedies. *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 93–96 (1990). This Court reviews a denial of equitable tolling for abuse of discretion, *Socha v. Pollard*, 621 F.3d 667, 670 (7th Cir. 2010), but reviews the district court's findings of fact for clear error, *Bensman*

v. U.S. Forest Serv., 408 F.3d 945, 964 (7th Cir. 2005). *See also Gramercy Mills, Inc. v. Wolens*, 63 F.3d 569, 573 (7th Cir. 1995) ("An abuse of discretion occurs when a court applies the wrong legal standard . . . .").

A. The district court's equitable tolling analysis was incomplete because it ignored Luevano's diligence.

The district court's equitable tolling analysis was incomplete because it ignored an entire prong of the equitable tolling standard. Under the two-prong standard for equitable tolling, a court must analyze: (1) whether "some extraordinary circumstance . . . prevented timely filing," and (2) whether the litigant nevertheless "pursu[ed] [her] rights diligently." *Lee v. Cook Cnty.,* 635 F.3d 969, 972 (7th Cir. 2011) (quoting *Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010)); *see also Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990) (explaining that situations in which a plaintiff "has actively pursued his judicial remedies by filing a defective pleading during the statutory period" may warrant equitable tolling).

Although the district court cited this two-prong standard in its order dismissing Luevano's amended complaint, it entirely ignored the diligence prong of the standard in its analysis. (*See* A.13–14.) Nevertheless, because Luevano's diligence is apparent from the record, remand is not necessary to make factual findings to determine whether she was diligent. *Cf. Williams-Guice v. Bd. of Educ.*, 45 F.3d 161, 165 (7th Cir. 1995) (explaining that remand to make "straightforward" findings of fact is not necessary if it "would lead to nothing but paper-shuffling").

This Court has defined due diligence expansively, dismissing a plaintiff's equitable tolling claim for lack of diligence only when the plaintiff allowed months

or years to elapse. *See, e.g.*, *Pace v. DiGuglielmo*, 544 U.S. 408, 418–19 (2005) (finding lack of diligence when the petitioner "waited years, without any valid justification, to assert [certain] claims"); *Shropshear v. Corp. Counsel*, 275 F.3d 593, 595 (7th Cir. 2001) (finding same when the plaintiff waited more than a year to verify whether his lawyer filed suit and then another five months to file suit himself); *Elmore v. Henderson*, 227 F.3d 1009, 1013 (7th Cir. 2000) (finding same when the plaintiff waited four months to sue after realizing the statute of limitations had run).

Unlike these cases of months or years, Luevano acted diligently throughout the entire proceedings in the district court. She timely filed her EEOC charges and her First Complaint. 42 U.S.C. § 2000e-5; (*see* A.22, 28–29). She likewise continued to actively pursue her claims in the wake of the district court's initial dismissal, refiling her complaint within just a few weeks. (*See* A.3, 35) (filing her Second Complaint on August 4, less than a month after the court entered its dismissal on July 12). Luevano subsequently continued to meet every court-imposed deadline through the remainder of her case. (*See* R.13; A.48; R.28; A.61.) Therefore, had the district court reviewed the record, as it was required to do, it would have found that Luevano acted diligently.

B. The district court's instruction to file an amended complaint, together with its failure to warn Luevano of the statute of limitations, constitutes an extraordinary circumstance that warrants equitable tolling.

The district court's July 9 order instructing Luevano to file an amended complaint—combined with its simultaneous failure to notify Luevano, a *pro se* plaintiff, of how its dismissal without prejudice affected the statute of limitations—formed an extraordinary circumstance that prevented Luevano from complying with the statute of limitations. Although this Court grants equitable tolling sparingly, these circumstances justify applying the doctrine.

This Court has recognized that a court's own misleading statements may constitute extraordinary circumstances that warrant equitable tolling. *See, e.g.*, *Prince v. Stewart*, 580 F.3d 571, 575 (7th Cir. 2009) ("Equitable tolling is properly invoked in any case in which 'the court has led the plaintiff to believe that she had done everything required of her,' . . . or has 'misled a party regarding the steps that the party needs to take to preserve a claim.'" (quoting *Baldwin Cnty. Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984) (per curiam); *Brinson v. Vaughn*, 398 F.3d 225, 230 (3d Cir. 2005))). The danger of a court's misleading or incomplete instructions is magnified when the litigant is proceeding *pro se*. *See Prince*, 580 F.3d at 574 ("[L]ulling a pro se litigant provides a valid basis for invoking equitable tolling . . . ."). Finally, "inadequate notice" is also a factor that warrants equitable tolling. *Baldwin Cnty. Welcome Ctr.*, 466 U.S. at 151 (rejecting equitable tolling because "[t]his is not a case in which the claimant has received inadequate notice").

Here, the district court's instruction to file an amended complaint, combined with its failure to explain how its dismissal without prejudice affected the statute of limitations, was a misleading statement that lulled Luevano into believing that filing an amended complaint was the only action required to preserve her claim. In the July 9 order, the district court explained to Luevano that she could renew her IFP petition and motion for appointed counsel if she filed an amended complaint. (A.8.) The district court explained that it was unable to determine whether Luevano's claims warranted appointment of counsel because "Luevano has not *yet* provided the Court with sufficient information to determine whether her claims are particularly difficult or complex." (A.8) (emphasis added). However, the court advised Luevano that she may renew her motion for appointed counsel "if [Luevano] provides the Court with an amended Complaint providing a sufficient basis for the Court to find that the harassment of which she complains occurred due to her sex." (A.8.) The district court itself conceded that "[t]he July 9 order told Luevano that she could file an amended complaint." (A.14.)[8]

The district court's failure to explain how its dismissal without prejudice affected the statute of limitations running from Luevano's first right-to-sue letter

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[8] The district court also cited its August 19 order, which granted Luevano leave to proceed IFP and with counsel. In that order, the district court noted that Luevano's claims "*appear* to be timely so as to justify appointment of a lawyer to see if there are any viable claims." (A.14) (citation and internal quotation marks omitted). By August 19, however, equitable tolling had already been triggered by the district court's misleading and incomplete July 9 order. That the district court analyzed its August 19 order in denying equitable tolling thus underscores the fact that the district court's equitable tolling analysis was flawed. This August 19 order would only be relevant for analyzing whether the district court lulled Luevano into not pursuing an appeal of its dismissal by allowing her to proceed with her claims in the district court.

made the court's incomplete instruction even more misleading. This Court has recognized that plaintiffs are entitled to adequate notice when they seek to enforce their rights under Title VII. *See, e.g.*, *DeTata v. Rollprint Packaging Prods. Inc.*, 632 F.3d 962, 970 (7th Cir. 2011) ("Notice is inadequate when the EEOC fails to inform a claimant of the time within which suit must be filed."); *see also Baldwin Cnty. Welcome Ctr.*, 466 U.S. at 151 (denying equitable tolling because the district court and the magistrate judge had both warned the plaintiff about the statute of limitations). Luevano received adequate notice from the EEOC in her right-to-sue letter about the ninety-day statute of limitations period. (*See* A.29.) That instruction was clear, and Luevano timely complied by filing her First Complaint within the ninety-day limitations period. (A.22.)

By contrast, the district court failed to give adequate notice regarding the subsequent deadlines connected with the nuances of jurisdiction following its dismissal without prejudice. As discussed above, the jurisdictional consequences of a dismissal without prejudice are complicated even for many lawyers. *See, e.g.*, *Lee v. Cook Cnty.*, 635 F.3d 969, 972 (7th Cir. 2011) (noting that a lawyer failed to understand the jurisdictional consequences of the district court's dismissal without prejudice). Luevano, a *pro se* plaintiff who plainly lacked sophistication with respect to the legal system, could not have understood these jurisdictional complexities. *Cf. Socha v. Pollard*, 621 F.3d 667, 673 (7th Cir. 2010) ("[T]he district court should also keep in mind the flexibility that is often appropriate for *pro se* litigants, who are likely not well versed in complex procedural rules."). Given that

the district court affirmatively instructed Luevano to file an amended complaint, its failure to notify Luevano of upcoming deadlines lulled her into believing that filing an amended complaint was the only action required to preserve her claim. Equitable tolling is therefore justified.

C. Wal-Mart will not be prejudiced if this Court equitably tolls the statute of limitations running from Luevano's first right-to-sue letter.

Wal-Mart will not be prejudiced by equitably tolling the statute of limitations. When the conditions for equitable tolling are met and the defendant will not be prejudiced by the delay, equitable tolling is appropriate. *Savory v. Lyons*, 469 F.3d 667, 673–74 (7th Cir. 2006). Wal-Mart was notified of Luevano's lawsuit by summons on October 1, 2010. (R.16.) Even measured from June 28, 2010, the date on which Luevano filed her First Complaint, Luevano properly executed this summons within the 120-day period required under Federal Rule of Civil Procedure 4(m). In other words, there was no delay in notifying Wal-Mart of the lawsuit. Wal-Mart will therefore not be prejudiced if equitable tolling is applied.

In conclusion, independent of its erroneous dismissal of Luevano's First Complaint, the district court again erred when it failed to properly apply equitable tolling principles to Luevano's case. This Court should therefore also reverse the district's second dismissal under Federal Rule of Civil Procedure 12(b)(6).

III. The district court erroneously dismissed the retaliation claim that Luevano raised in her amended complaints.

This Court should also reverse the district court's Rule 12(b)(6) dismissal because it erred again when it dismissed the retaliation claim that Luevano raised in her second EEOC charge and properly preserved in her amended complaints. First, the district court failed to accurately apply the relation back doctrine, improperly conflating timeliness of claims with their exhaustion. Had the district court applied the doctrine correctly, it would have found that Luevano's Fourth Complaint, to which she attached her second EEOC charge and second right-to-sue letter, related back to her timely Second Complaint. Second, the district court failed to analyze the adequacy of Luevano's retaliation claim. Indeed, the retaliation claim in Luevano's Fourth Complaint reveals that it was reasonably related to Luevano's second EEOC charge. Therefore, the district court erred when it dismissed Luevano's retaliation claim.

A. The district failed to apply the correct legal standard for relation back under Federal Rule of Civil Procedure 15(c).

As a threshold matter, the district court erroneously dismissed Luevano's retaliation claim because it did not properly apply the relation back doctrine under Federal Rule of Civil Procedure 15(c). Rule 15(c)(1)(B) allows relation back when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Relation back is appropriate when an amended complaint merely corrects technical deficiencies in an earlier pleading that was timely. *BCS Fin.*

Corp. v. United States, 118 F.3d 522, 524 (7th Cir. 1997) ("A complaint afflicted with merely formal defects can ordinarily be amended to correct them with relation back to the date of the original filing of the suit."); *see also Henderson v. Bolanda*, 253 F.3d 928, 931 (7th Cir. 2001) (recognizing that relation back is permissible when the original complaint was "timely filed"). *See generally Woods v. Ind. Univ.-Purdue Univ. at Indianapolis*, 996 F.2d 880, 884 (7th Cir. 1993) (noting that the concept of relation back "has its roots in the equitable notion that dispositive decisions should be based on the merits rather than technicalities").

In a footnote dispensing with the parties' relation back arguments, the district court committed two errors. First, the district court failed to recognize that Luevano's Second Complaint was timely as to her second EEOC charge and right-to-sue letter. That is, at the time the district court considered the relation back question, it was clear that Luevano's Second Complaint was timely because the district court knew that Luevano had received her second right-to-sue letter on June 30, 2010, and had filed her Second Complaint on August 4, 2010, well within the ninety-day limitations period. (A.35, 73.) Luevano simply failed to attach her second EEOC charge and right-to-sue letter to her timely Second Complaint.[9]

Second, the district court then conflated the issues of timeliness and exhaustion, which are separate inquiries. (*See* A.16 n.3) (explaining incorrectly that

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[9] Again, this oversight is not surprising. The form complaint that Luevano completed only provided one line for noting the date of an EEOC charge. (A.36.) Furthermore, although plaintiffs regularly file multiple EEOC charges, this form's question regarding attaching the EEOC charge is phrased in the singular. (A.36) ("[A] copy of the *charge* is [a]ttached." (emphasis added)). The form does not ask plaintiffs whether they filed multiple EEOC charges.

relation back was not appropriate because Luevano's "earlier complaints . . . were untimely"). In fact, the only question facing the district court at the time it considered relation back was whether Luevano had pled exhaustion of administrative remedies. And the Fourth Complaint answered that question in the affirmative, by pleading exhaustion and attaching copies of the second EEOC charge and right-to-sue letter, which corrected the technical deficiency with the Second Complaint. Amending a complaint to properly plead exhaustion of administrative remedies is exactly the type of technical deficiency that relation back is designed to correct. Because all of these facts arose out of the same "conduct, transaction, or occurrence" as set out in her Second Complaint, relation back to fix Luevano's technical deficiency was appropriate.

Having timely filed her Second Complaint and properly pled exhaustion of administrative remedies in her Fourth Complaint, the district court, at the very least, should have analyzed Luevano's claim that Wal-Mart retaliated against her, as this Court has recognized in similar circumstances. *See Abdullahi v. Prada USA Corp.*, 520 F.3d 710, 713 (7th Cir. 2008) (affirming that the district court properly allowed a plaintiff to proceed on timely filed allegations connected to a third EEOC charge even though the plaintiff's allegations connected to earlier charges were time-barred). The district court should have considered Luevano's retaliation claim, which she raised in her second EEOC charge and in her timely Second Complaint to the district court. Any technical deficiency arising out of failing to plead exhaustion of administrative remedies was cured when she attached her second EEOC charge

and right-to-sue letter to her Fourth Complaint. Thus, in failing to recognize that the relation back doctrine applied to this case, the district court erred in dismissing Luevano's retaliation claim.

B. The district court failed to carefully consider the adequacy of the retaliation claim Luevano raised in her Fourth Complaint.

Had the district court properly applied the relation back doctrine, its next task would have been to carefully consider whether Luevano's Fourth Complaint adequately alleged a retaliation claim. Had the district court done so, it would have found that the complaint and its attachments were sufficient to survive a motion to dismiss.

In her Fourth Complaint, Luevano adequately pled a retaliation claim. First, she alleged that her supervisor threatened to issue a write-up of Luevano for lodging a complaint with Wal-Mart management. (A.66.) She also alleged that her supervisor "eliminated and substantially reduced the weekly hours that it scheduled Luevano" as a result of Luevano's complaints. (A.66.) Furthermore, Luevano attached her second EEOC charge to her Fourth Complaint. She explained in the charge that she was "subjected to . . . reduced work hours" after she filed her first EEOC charge.[10] (A.72); *see* Fed. R. Civ. P. 10(c) ("A copy of a

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[10] These allegations arise out of the same transaction or occurrence that Luevano raised in her Second Complaint and its attachments, in which Luevano also alleged facts consistent with a retaliation claim. Luevano filed her first EEOC charge on March 16, 2010, and her supervisor reduced her hours on April 8, 2010. (A.36, 40.) Then, in her attachments to the Second Complaint, Luevano included a copy of Wal-Mart's HR-19 Discrimination and Harassment Prevention Policy and put an asterisk next to the policy's prohibition on taking negative action against an employee for "[f]iling a complaint of discrimination or

written instrument that is an exhibit to a pleading is a part of the pleading for all purposes."); *Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) ("Attachments to the complaint become a part of the complaint, and the court may consider those documents in ruling on a motion to dismiss."). Because these claims relate back to Luevano's timely Second Complaint and were reasonably related to the claim she raised in her second EEOC charge, the district court improperly dismissed her retaliation claim as barred by the statute of limitations.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the district court's dismissal and remand for further proceedings.

Respectfully Submitted,

Tara V. Luevano
Plaintiff-Appellant

By: /s/ SARAH O'ROURKE SCHRUP
Attorney

SARAH J. NEWMAN
Senior Law Student

MARJORIE M. FILICE
Senior Law Student

Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

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harassment *with a government agency or court*," (A.43) (emphasis added), which clearly encompassed an EEOC complaint.

Counsel for Plaintiff-Appellant,
TARA V. LUEVANO

No. 11-1917

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

TARA V. LUEVANO, Plaintiff-Appellant, v. WAL-MART STORES, INC., Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division Case No. 1:10-cv-03999 The Honorable Virginia M. Kendall

Certificate of Compliance with Federal Rule of Appellate Procedure 32(a)(7)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because this brief contains 8,844 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 12 point Century Schoolbook font with footnotes in 11 point Century Schoolbook font.

/s/ Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: October 30, 2012

Certificate of Service

I, the undersigned, counsel for the Plaintiff-Appellant, Tara V. Luevano, hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on October 30, 2012, which will send the filing to the persons listed below.

Norma W. Zeitler
Nikki Annette Odom
Barnes & Thornburg
One North Wacker Drive, Suite 4400
Chicago, IL 60606

/s/ Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: October 30, 2012

No. 11-1917

UNITED STATES COURT OF APPEALS
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TARA V. LUEVANO, Plaintiff-Appellant, v. WAL-MART STORES, INC., Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division Case No. 1:10-cv-03999 The Honorable Virginia M. Kendall

Circuit Rule 30(d) Statement

I, the undersigned, counsel for the Plaintiff-Appellant, Tara V. Luevano, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the Appendix to this brief.

/s/ Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated October 30, 2012