No. 18-2196

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

ERIKA BAZEMORE

Plaintiff-Appellant,

v.

BEST BUY

Defendant-Appellee.

On Appeal from the United States District Court
For the District of Maryland, Southern Division (18-cv-00264-PJM)

Opening Brief of Plaintiff-Appellant – Erika Bazemore

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STATEMENT OF SUBJECT MATTER & APPELLATE JURISDICTION

Erika Bazemore filed an action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et. seq*. against Best Buy in the United States District Court for the District of Maryland. The district court had jurisdiction under 28 U.S.C. § 1331.

On June 25, 2018, the district court granted Best Buy's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). On July 19, 2018, Ms. Bazemore timely moved for reconsideration pursuant to Federal Rule of Civil Procedure 59(e).[1] On September 10, 2018, the district court denied Ms. Bazemore's motion for reconsideration. Ms. Bazemore timely appealed on October 4, 2018. This Court has jurisdiction under 28 U.S.C. § 1291.

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[1] Ms. Bazemore's motion for reconsideration was timely. *See* Fed. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment"). Below, Best Buy opposed her motion, asserting that it was untimely under Local Rule 105.10. *See* J.A. 96. Local Rule 105.10 does not alter Rule 59(e)'s twenty-eight-day deadline. Loc. R. 105.10 ("Except as otherwise provided in Fed. R. Civ. P. 50, 52, 59, or 60, any motion to reconsider any order issued by the Court shall be filed with the Clerk not later than fourteen (14) days after entry of the order."); *see Armani v. Comm'r*, No. JMC-14-CV-976, 2015 WL 2062183, at *1 (D. Md. May 1, 2015) ("Because the . . . Order was a final judgment, it is governed by Rule 59(e), rather than the local rule.").

STATEMENT OF THE ISSUE

Did Erika Bazemore state a plausible hostile work environment claim against her employer, Best Buy, when she alleged that a coworker targeted her with the slur "Nigger Tits" in public and that Best Buy's response was inadequate?

STATEMENT OF THE CASE

Introduction

While working at Best Buy, Erika Bazemore was talking with some coworkers when one of them, Anne Creel, targeted her with the slur "Nigger Tits." Ms. Bazemore promptly reported Creel's harassment to Human Resources. In response, Best Buy conducted a *pro forma* investigation led by the store's General Manager, who was Creel's best friend. The General Manager then took "corrective action" that was inconsistent with Best Buy's policies. When this "corrective action" failed to dispel the hostility that directly flowed from the harassment, Ms. Bazemore notified the company. Best Buy did not respond. After waiting a month for a response, Ms. Bazemore filed a hostile work environment complaint with the EEOC.

Factual Background

Erika Bazemore began working part-time as a Mobile Phone Sales Consultant at Best Buy in Greensboro, North Carolina in February 2011. J.A. 58. Later that year, Ms. Bazemore transferred to a Best Buy store in Waldorf, Maryland, where she worked in a similar role. *Id*.

On February 5, 2017, Ms. Bazemore was on the sales floor chatting with a group of coworkers with customers nearby. J.A. 49, 52. The group included Anne Creel and Terrance Mallory, Creel's supervisor. J.A. 5, 12. Creel was eating a bag of mixed nuts and held up a Brazil nut for the group to see. J.A. 49. Creel asked: "Hey, do you know what these were called back in the day?" *Id*. The group waited for an answer. *Id*. Creel paused, asking, "Do you promise not to call HR on me?" *Id*. Before anyone could respond, Creel turned directly to Ms. Bazemore, the only African American woman in the group, and said, "Nigger Tits!" *Id*.

Creel burst out laughing while the rest of the group stood frozen. J.A. 49. Ms. Bazemore "could feel all the eyes of the coworkers present in the group looking straight at [her] breast[s]." J.A. 50. For Ms. Bazemore, the experience evoked a visceral response as she was taken "back to the days of Slavery, where black women stood naked on the auction block to be sold; and while waiting, jokes [were] made about . . . their bodies." *Id*. Humiliated, Ms. Bazemore responded, "Okay," and walked away. J.A. 49.

The following day, Ms. Bazemore called Best Buy Human Resources ("HR") to report Creel's harassment.[2] J.A. 49. When HR asked Ms. Bazemore why she did

[2] Best Buy calls its HR department "Employee Relations." *See* J.A. 38.

not report the incident to the store's General Manager, April Brewster, Ms. Bazemore explained that she did not feel comfortable reporting the harassment to Brewster because Brewster and Creel were best friends.[3] *Id*. Ms. Bazemore was worried that Brewster would not take the complaint seriously given her close relationship with Creel. J.A. 49, 119.

A few days later, on February 9, Ms. Bazemore received a call from Colleen Hayes, a caseworker from HR. J.A. 50. Hayes summarized Ms. Bazemore's complaint and told her that she was "overseeing the matter and would see that it [was] resolved." *Id*. Hayes did not ask Ms. Bazemore any follow-up questions during the conversation. J.A. 139.

Eleven days later, Hayes left Ms. Bazemore a voicemail informing her that she had "worked with the General Manager (Brewster) and the matter had been resolved," thus "the case was officially closed." J.A. 50. Hayes ended the voicemail by telling Ms. Bazemore she should call her if she had any questions. *Id*.

This voicemail was the only response Ms. Bazemore received from Best Buy regarding her complaint. J.A. 117. At no point did the store's General Manager

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[3] Ms. Bazemore's report to HR was consistent with Best Buy's policy, which instructs: "If you believe you have been subjected to harassment or you become aware of such a situation, you should report the matter to your manager or Employee Relations immediately . . . ." J.A. 44. The record is silent on whether Creel's supervisor, Mr. Mallory, or any of the other bystanders reported Creel's public slur to management. *See id*.

address the situation with Ms. Bazemore. *Id*. Ms. Bazemore was never offered an apology. *Id*. And even though several coworkers witnessed the incident, Best Buy did not take any public action to make clear that the use of a slur like "N****r T*ts" was inappropriate in the workplace. J.A. 50.

Ms. Bazemore's "work environment [was] drastically altered" by the incident and subsequent events. J.A. 51. The environment in the store became tense—both Creel and Brewster started giving her "hostile, unfriendly, and judgmental looks" and avoided talking to her. J.A. 139. For Ms. Bazemore, it was like "walk[ing] on eggshells." J.A. 51. She was particularly intimidated by the hostility from Brewster, who was her boss. J.A. 117, 139. Ms. Bazemore did everything she could to avoid being alone with Creel or Brewster, even going so far as to carefully plan her trips to the bathroom to avoid them. J.A. 51.

It was clear to Ms. Bazemore that the matter had not, in fact, "been resolved." *See* J.A. 50. Therefore, as instructed, Ms. Bazemore called Hayes' direct line on February 27 to report the continued hostility; Hayes did not answer. *Id*. Ms. Bazemore called again later that week; again, Hayes did not answer. *Id*. This time, Ms. Bazemore left a voicemail. *Id*. In the voicemail, Ms. Bazemore told Hayes that she did not see how "the matter had been resolved" because "nothing ha[d] happened," "[t]hings in the store were still tense," and that "both Creel and Brewster

were giving [her] hostile, unfriendly, and judgmental looks." J.A. 50, 139. Hayes did not return her call. J.A. 50.

The "unreturned phone calls" and the way her boss, Brewster, treated her, "all showed [Ms. Bazemore] that her being referred to as n[****]r t[*]ts in front of a group of her coworkers was nothing." J.A. 50. And the longer Ms. Bazemore "waited for something to be done, the more trash like [she] began to feel." *Id*. Indeed, Ms. Bazemore's well-being deteriorated from the constant stress of the workplace—her self-confidence was in shambles, she lost fifteen pounds, and she needed therapy and medication to address her anxiety, depression, and paranoia. J.A. 52.

After waiting for Best Buy to respond for a month to no avail, and seeing no improvement in her workplace, Ms. Bazemore filed a complaint with the Equal Employment Opportunity Commission ("EEOC") on March 28, 2017. J.A. 56. The EEOC sent Best Buy a letter detailing the allegations in Ms. Bazemore's complaint. *See* J.A. 58.

In August 2017, Best Buy responded to the EEOC, admitting that Creel made "a race related comment" and that Ms. Bazemore promptly reported the incident. J.A. 58–59. Best Buy claimed, however, that it had appropriately responded to Ms. Bazemore's complaint by issuing Creel a "final written warning." J.A. 59. When the EEOC sent Best Buy's response to Ms. Bazemore, it was the first time she learned of any action taken by Best Buy—six months after the incident. J.A. 50–51.

Best Buy appended a "Coaching & Corrective Action" form to its August 2017 letter, which memorialized the company's response to Ms. Bazemore's complaint. J.A. 16. The form revealed that Best Buy did not give Creel a "final warning" until February 18—almost two weeks after Ms. Bazemore reported the incident. *Id*. The form further revealed that it was Brewster, Creel's best friend, who gave Creel the "final warning." *Id*. The form does not elaborate on what was said during the meeting between Brewster and Creel.[4] *See id*. And it describes Creel's use of the slur "N****r T*ts" as follows: "Anne . . . made a comment about what Brazilian nuts were called back in her day that was offensive and a violation of the inappropriate conduct policy and Best Buy's values." *Id*. Creel did not contest this account. *Id*.

Best Buy's "final warning" did not put a stop to Creel's offensive and inappropriate behavior. Prior to the February 5 harassment, Ms. Bazemore heard

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[4] The form asks the investigator to "[d]escribe facts and circumstances of violation(s) including relevant dates and times. Please be specific." Brewster entered:

> On 2/5/17 Anne was talking to other employees in the Appliance department and made a comment about what Brazilian nuts were called back in her day that was offensive and a violation of the inappropriate conduct policy and Best Buy's values. Going forward Anne needs to make sure she's living up to our values of showing respect, humility and integrity. Failing to follow policies and live the values will lead to further disciplinary action up to and including termination.

J.A. 16. Creel's supervisor, Mr. Mallory, signed the form as a "witness" to the corrective action. *Id.*

Creel refer to customers of color pejoratively as "gypsies." J.A. 119, 137. After Best Buy's corrective action, Creel continued to use the slur "gypsy" to refer to customers. J.A. 137. Additionally, both Creel and Brewster began giving Ms. Bazemore dirty looks when they saw her around the store. J.A. 139.

In addition to the coaching form, Best Buy also appended a copy of its "Equal Employment Opportunity" and anti-harassment policies to its response to the EEOC. J.A. 19. Best Buy's "Coaching & Corrective Action Process" guidelines have two categories of "Serious Offenses" that address harassment: "Disorderly Conduct" and "Reckless Conduct." J.A. 26, 30. "Disorderly Conduct" includes harassment that "is not considered serious enough to warrant immediate termination." J.A. 27. The typical corrective action for Disorderly Conduct is either a final written warning or termination. J.A. 26. This category of conduct includes "offensive or degrading remarks, comments or implication" and "unwelcome requests to 'date,' 'meet' or 'visit.'" *Id*.

By contrast, "Reckless Conduct" includes harassment that creates "circumstances which would make the workplace intolerable unless immediate and effective relief is provided." J.A. 30. The guidelines then provide categories of Reckless Conduct, one of which is extremely offensive verbal conduct. *Id.* The first

example listed in this category is "racial slurs."[5] *Id*. For Reckless Conduct, the guidelines instruct that termination is the only appropriate action. *Id*. Indeed, Ms. Bazemore was aware of Best Buy's zero-tolerance policy against the use of racial slurs and knew of two Best Buy employees who were fired for saying "N****r."[6] J.A. 118.

Despite Best Buy's policies expressly recognizing that the use of racial slurs makes the workplace "intolerable," its explicit policy that the use of racial slurs warrants termination, and the same Best Buy store firing employees in the past for

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[5] Under the policy, "Reckless Conduct includes: "Physical assault, attempted assault or extremely offensive, aggressive and/or threatening verbal or non-verbal conduct (i.e., **racial slurs** or taunts, threats of bodily harm to a person or family, etc.) of employee(s), applicants, customers, vendors or contract workers." J.A. 30 (emphasis added).

[6] Best Buy's "Policy Against Harassment" instructs that: "Best Buy will not allow employees to be harassed by anyone, including our employees, customers, or visitors . . . . The following behavior may be harassment and prohibited under this policy if based on a protected category: **Slurs** or derogatory comments . . . " J.A. 43 (emphasis added).

using the word "N****r," Best Buy gave Creel a "final warning" for making an "offensive" comment.[7] J.A. 16, 30, 118.

Since filing her complaint, Ms. Bazemore transferred to a different Best Buy location. She also learned that Best Buy opened an investigation into April Brewster's management of the Waldorf store and that Brewster subsequently resigned.[8]

Procedural History

In her EEOC charge, filed March 28, 2017, Ms. Bazemore alleged that she was suffering ongoing discrimination on the basis of her race and sex. J.A. 56. Ms. Bazemore explained that Creel had used the slur "N****r T*ts, in front of [her],

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[7] A "final warning" is not, strictly speaking, the last warning before termination. Best Buy's policy allows an employee to receive up to three "final warnings" for different misconduct within a one-year period without being terminated. J.A. 24. Indeed, it is clear from the coaching form that the "final warning" that Brewster gave to Creel was not necessarily final, because Brewster wrote that future harassment could lead to "further disciplinary action up to and including termination." J.A. 16.

[8] This Court can consider additional facts when deciding whether it was appropriate for the district court to dismiss Ms. Bazemore's complaint. As the Seventh Circuit explained, when reviewing an appeal from a motion to dismiss, an appellant can supplement the record with additional facts so long as they are "not inconsistent with the allegations of the complaint—in order to show that the complaint should not have been dismissed on its face." *Orthmann v. Apple River Campground, Inc.*, 757 F.2d 909, 915 (7th Cir. 1985); *cf. Pegram v. Herdrich,* 530 U.S. 211, 230 n.10 (2000) (finding that courts may use a party's brief "to clarify allegations in her complaint whose meaning is unclear").

[Creel's] supervisor, and other staff," that she had reported the incident to corporate HR, and that Best Buy "ha[d] not taken corrective action to resolve the incident." *Id.*

The EEOC dismissed Ms. Bazemore's charge and issued a Notice of Right to Sue on August 31, 2017. J.A. 61. Ms. Bazemore then filed a *pro se* complaint in the Prince George's County Circuit Court alleging a hostile work environment in violation of Title VII on December 22, 2017. J.A. 5–8. On January 26, 2018, Best Buy removed the complaint to the United States District Court for the District of Maryland. J.A. 129.

Ms. Bazemore amended her complaint, J.A. 49–54, and on February 28, 2018, Best Buy moved to dismiss the amended complaint for failure to state a claim, or in the alternative for summary judgment. J.A. 62. On June 25, 2018, the district court granted Best Buy's motion to dismiss, J.A. 136, issuing a written memorandum opinion. J.A. 128–135. The court held that dismissal was appropriate because Ms. Bazemore's complaint "fail[ed] to allege sufficient facts to show that Creel's conduct [was] imputable to Best Buy." J.A. 132.

Ms. Bazemore timely appealed. J.A. 157. This Court appointed undersigned counsel and asked for briefing on the following issue: "Whether district court erred in dismissing [Ms. Bazemore's] complaint alleging race- and sex-based hostile work environment arising from comment by coworker."

SUMMARY OF THE ARGUMENT

Erika Bazemore stated a plausible hostile work environment claim when she alleged that: her coworker, Anne Creel, targeted her with the slur "N****r T*ts" in a public setting; Creel had a close relationship with the General Manager, April Brewster, who would protect Creel from punishment; and she suffered ongoing hostility in the workplace that emanated from the harassment. These allegations stated conduct that is sufficiently "severe or pervasive" to create a hostile work environment.

Ms. Bazemore also plausibly alleged a basis for imposing liability on Best Buy. After Ms. Bazemore notified Best Buy of the harassment, the company tapped Creel's best friend, Brewster, to investigate. The resulting remedial action was a single private meeting led by Brewster, during which Brewster merely issued Creel a "written warning." This slap on the wrist fell well short of the company's own policies and was not reasonably calculated to address Ms. Bazemore's complaint. Further, Best Buy did not even inform Ms. Bazemore of its "remedial" action or address the public nature of the harassment. In fact, Best Buy's corrective action was clearly deficient because Creel *and* Brewster started to openly treat Ms. Bazemore with hostility, and when Ms. Bazemore notified the company of this fact, Best Buy did not respond. These allegations plausibly demonstrate that Best Buy's response to the harassment was negligent, and thus the company can be held liable.

When the factual allegations in Ms. Bazemore's complaint are construed liberally and accepted as true, and all reasonable inferences are drawn in her favor, her complaint plausibly states a hostile work environment claim.

ARGUMENT

I. Standard of Review

This Court reviews *de novo* a district court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Stewart v. Iancu*, 912 F.3d 693, 702 (4th Cir. 2019). Thus, this Court "can decide the matter without deference to the lower court," and can review "the complaint in the same way as could the district court" with the "benefit of the parties' briefs." *SD3, LLC v. Black & Decker Inc.*, 801 F.3d 412, 427 (4th Cir. 2015).

In assessing the sufficiency of a complaint, this Court "assume[s] as true all its well-pleaded facts and draw[s] all reasonable inferences in favor of the plaintiff." *Nanni v. Aberdeen Marketplace, Inc.*, 878 F.3d 447, 452 (4th Cir. 2017). If the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" then dismissal is improper. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To survive a motion to dismiss, a complaint must simply contain factual allegations that "raise a right to relief above the speculative level," "nudging [the]

claims across the line from conceivable to plausible." *Hately v. Watts*, 917 F.3d 770, 782 (4th Cir. 2019) (quoting *Twombly*, 550 U.S. at 570).

Moreover, because Ms. Bazemore was *pro se* below, her complaint "must be liberally construed," *Williamson v. Stirling*, 912 F.3d 154, 170 (4th Cir. 2018) (quotation omitted), "however inartfully pleaded." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation omitted). Indeed, liberal construction is particularly appropriate here, where a "*pro se* plaintiff raises civil rights issues." *DePaola v. Clarke*, 884 F.3d 481, 486 (4th Cir. 2018).

II. Ms. Bazemore Stated a Plausible Hostile Work Environment Claim When She Alleged that She Was Publicly Harassed by a Coworker's Racist and Sexist Slur and Best Buy's Perfunctory Response Was Not Reasonable.

A prima facie hostile work environment claim has four elements. A plaintiff must show that: "(1) [she] experienced unwelcome harassment; (2) the harassment was based on [a protected category]; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer." *Perkins v. Int'l Paper Co.*, 936 F.3d 196, 207–08 (4th Cir. 2019).

In her complaint, Ms. Bazemore was not required to "plead facts that constitute a prima facie case in order to survive a motion to dismiss." *Coleman v. Md. Court of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510–15 (2002)). She needed only to "*allege facts*

sufficient to *state* elements of the claim." *Robertson v. Sea Pines Real Estate Cos.*, 679 F.3d 278, 291 (4th Cir. 2012) (citation omitted). As the Supreme Court made clear, "the prima facie case operates as a flexible evidentiary standard" that should *not* be "transposed into a rigid pleading standard for discrimination cases."[9] *Swierkiewicz*, 534 U.S. at 512.

Ms. Bazemore's complaint satisfied federal pleading requirements. The rules only require that she give "a short and plain statement of the claim showing that [she] is entitled to relief" that gives "the defendant fair notice of what the claim is and the grounds upon which it rests." *Erickson*, 551 U.S. at 93 (cleaned up). This standard is appropriate "[b]efore discovery has unearthed relevant facts and evidence." *Swierkiewicz*, 534 U.S. at 512.

Ms. Bazemore plausibly alleged that she suffered unwelcome harassment based on her race and sex that was severe or pervasive when Ms. Creel targeted her with the slur "N****r T*ts," and that her work environment was altered as a result. J.A. 49–52. Ms. Bazemore also plausibly alleged a basis to hold Best Buy liable. After she promptly reported the harassment, Best Buy failed to take remedial action

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[9] Although *Swierkiewicz* preceded the refined pleading standards established in *Twombly* and *Iqbal*, this Court has confirmed that *Twombly* and *Iqbal* "did not overrule *Swierkiewicz's* holding that a plaintiff need not plead the *evidentiary* standard for proving a Title VII claim." *McCleary-Evans v. Md. Dep't of Transp.*, 780 F.3d 582, 586 (4th Cir. 2015).

reasonably calculated to address Creel's harassment and negligently allowed the resulting hostility to persist. When Ms. Bazemore's complaint is construed liberally and taken as true, Ms. Bazemore stated a plausible hostile work environment claim against Best Buy.

Before the district court, Best Buy did not contest Ms. Bazemore's allegations that she suffered unwelcomed harassment or that the harassment was because of her race and gender. J.A. 67–71. Indeed, Best Buy conceded that Creel harassed Ms. Bazemore with the slur "N****r T*ts." J.A. 79, 122, 132. Instead, Best Buy argued for dismissal because the harassment alleged by Ms. Bazemore was not sufficiently severe or pervasive. J.A. 67–69. The district court did not address this argument. J.A. 132. Best Buy alternatively argued that Ms. Bazemore did not allege sufficient facts to impute liability onto the company. J.A. 69–71. The district court agreed with Best Buy and dismissed Ms. Bazemore's complaint on this basis. J.A. 132–34.

Best Buy was wrong on both fronts, and the district court erred in dismissing Ms. Bazemore's complaint.

A. Ms. Bazemore plausibly alleged severe harassment that interfered with her employment when she was publicly humiliated by a coworker's racist and sexist slur and endured ongoing hostility.

Ms. Bazemore alleged that Creel targeted her with the slur "N****r T*ts" in front of her coworkers and a supervisor, she suffered ongoing hostility from Creel and the store's General Manager, April Brewster, and that her workplace was

"drastically altered" as a result. J.A. 51. Whether this conduct was "severe or pervasive is quintessentially a question of fact" that cannot be resolved at the motion-to-dismiss stage. *Walker v. Mod-U-Kraf Homes, LLC*, 775 F.3d 202, 208 (4th Cir. 2014) (quotation omitted). Under this Court's case law, these allegations stated harassment that was sufficiently severe or pervasive to survive a motion to dismiss.[10]

The severity of the slur "N****r" is uncontested in modern society. As this Court has repeatedly said, the epithet "N****r" is "pure anathema to African-Americans;" therefore, "*even a single incident* in which that epithet or one like it is directed at an employee may be severe enough to engender a hostile work environment." *Savage v. Maryland*, 896 F.3d 260, 277 (4th Cir. 2018) (emphasis added); *see also Ezell v. Potter*, 400 F.3d 1041, 1048 (7th Cir. 2005) ("[I]n the case

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[10] District courts throughout this Circuit have denied dismissal when faced with allegations less severe than alleged here. *See, e.g.*, *Lindsay v. E. Penn Mfg. Co.*, No. 1:18CV406, 2019 WL 1244088, at *3 (M.D.N.C. Mar. 18, 2019) (reasoning that the court had "no trouble finding that Plaintiff has plausibly alleged" a claim based on allegations of a coworker calling him a "black mother f[*]cker" and "spitting incidents" that did not involve the plaintiff); *Chambers v. Walmart Stores, Inc.*, No. 1:14CV996, 2015 WL 4479100, at *4 (M.D.N.C. July 22, 2015) (unpublished) (denying motion to dismiss when assistant manager used the word "Blackie" and "ghetto" in plaintiff's presence) *report and recommendation adopted*, 2015 WL 5147056 (M.D.N.C. Sept. 1, 2015); *Muldrow v. Schmidt Baking Co.*, No. CIV. WDQ-11-0519, 2011 WL 2620271, at *3 (D. Md. June 30, 2011) (unpublished) (denying dismissal where plaintiff alleged that a non-employee called him "n****r" twice in an aggressive and "very loud and embarrassing tone"); *cf. Reid v. Dalco Nonwovens, LLC*, 154 F. Supp. 3d 273, 291–92 (W.D.N.C. 2016) (denying summary judgment finding a "text message *itself* [from defendant using 'n***a']" could "be considered a single instance of 'extremely serious' conduct").

of racial and ethnic slurs, some words are so outrageous that a single incident might qualify for a hostile environment claim."); c*f. Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001) (cleaned up) ("Perhaps no single act can more quickly alter the conditions of employment and create an abusive working environment than the use of . . . 'n[****]r' by a supervisor in the presence of his subordinates.") . This is so because "[n]o other word in the English language so powerfully or instantly calls to mind our country's long and brutal struggle to overcome racism" as it "sums up . . . all the bitter years of insult and struggle in America," and is "probably the most offensive word in English." *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 580 (D.C. Cir. 2013) (Kavanaugh, J., concurring) (quoting Langston Hughes, *The Big Sea* 269 (2d ed. 1993) (1940)). "N****r" is "the essence of despicable racial animus," *Bernard v. Calhoon MEBA Eng'g Sch.*, 309 F. Supp. 2d 732, 738 (D. Md. 2004), because it "automatically separates the person addressed from every non-black person" and "is discrimination *per se*." *Bailey v. Binyon*, 583 F. Supp. 923, 927 (N.D. Ill. 1984). "N****r" is "[f]ar more than a 'mere offensive utterance.'" *Spriggs*, 242 F.3d at 185. "[I]t is degrading and humiliating in the extreme." *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 280 (4th Cir. 2015) (en banc).

In *Boyer-Liberto*, this Court, sitting en banc, reversed a grant of summary judgment and held that the "two uses of the 'porch monkey' epithet—whether

viewed as a single incident or as a pair of discrete instances of harassment—were severe enough to engender a hostile work environment." *Id*. This Court reasoned that some slurs are so severe that they create the "type of case contemplated in *Faragher* where the harassment, though perhaps 'isolated,' can properly be deemed to be 'extremely serious.'" *Id.* at 281 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)). Creel's use of the word "N****r" involves the exact type of harassment that "can properly be deemed to be 'extremely serious,'" sufficient to create a hostile work environment. *Id.*

But Creel did not just use the epithet "N****r." She paired the racial slur with the gendered derogatory word "t*ts," which magnified the severity of the harassment and humiliation. J.A. 49; *see Mosby-Grant v. City of Hagerstown*, 630 F.3d 326, 336 (4th Cir. 2010) ("[A] hostile work environment claim can be bolstered by relying on evidence of a workplace tainted by both sex and racial discrimination."); *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 318 (3d Cir. 2013) ("[A]s the Supreme Court explained in *Pacifica*, the word 't[*]ts' . . . is a patently offensive reference to sexual organs.") (citing *FCC v. Pacifica Found.*, 438 U.S. 726, 745–46 (1978)). Ms. Bazemore alleged that Creel combined the epithets specifically to target her by looking directly at her, the only African American woman in the group, when she delivered the slurs. J.A. 49–50, 116–17. The "aggregat[ion]" of both racist and sexist hostility are relevant to assessing a hostile work environment. *Goodman v.*

Md. Dep't of Soc. Servs., 64 F.3d 657, 1995 WL 501355, at *3 (4th Cir. Aug. 23, 1995) (unpublished table decision)); *see Harris v. Forklift Sys.*, 510 U.S. 17, 23 (1993) ("[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances.").

The severity of the double-barreled slur was further "compounded by the context in which it took place," given that Creel humiliated Ms. Bazemore "in front of other employees and customers." *EEOC v. R&R Ventures*, 244 F.3d 334, 340 (4th Cir. 2001); *see also Conner v. Schrader-Bridgeport Int'l, Inc.*, 227 F.3d 179, 197 (4th Cir. 2000) (considering, among other factors, that humiliation "within view of her co-workers" contributed to severity). "This public setting only increased the humiliation, and, therefore, the severity of the discriminatory conduct." *Smith v. Nw. Fin. Acceptance*, 129 F.3d 1408, 1414 (10th Cir. 1997).

Adding to the severity, Ms. Bazemore alleged that Creel had a close relationship with Brewster, who, as the General Manager, was her and Creel's boss. J.A. 49. This friendship gave Creel the confidence to use a racist and sexist slur on the sales floor in front of her own supervisor and coworkers—Creel even mocked calling HR before using the slur. *Id.* Thus, Creel's tight-knit relationship with Brewster further exacerbated the severity of her conduct. *See Oncale v. Sundowner Offshore Servs., Inc*., 523 U.S. 75, 81–82 (1998) (emphasis added) ("The real social impact of workplace behavior often depends on a constellation of surrounding

circumstances, expectations, and *relationships* which are not fully captured by a simple recitation of the words used . . . ."); *Boyer-Liberto*, 786 F.3d at 271 (noting that a harassing employee had a close relationship with the restaurant's owner and as a result the owner "would listen to anything [the harasser] said and wouldn't believe [the plaintiff]"). Creel's relationship with Brewster caused Ms. Bazemore to reasonably believe that Brewster would side with Creel over her, and that there would be no real repercussions for Creel's abusive behavior. J.A. 49, 112. It was this belief that motivated Ms. Bazemore to report Creel's harassment to Best Buy's HR corporate hotline instead of Brewster. J.A. 49, 112.

Further, Ms. Bazemore alleged that, after the harassment, she suffered ongoing hostility at work and that Creel and Brewster acted noticeably different towards her, ostracizing Ms. Bazemore after she made the complaint. J.A. 50, 110, 139–40. Thus, "[t]he more serious incident[]" of Creel targeting her with the slur "N****r T*ts" in front of her colleagues was worsened by "numerous additional occurrences" that "served to exacerbate the severity of the situation." *Conner,* 227 F.3d at 197. This cumulative effect impacted Ms. Bazemore's well-being, causing weight loss, depression, and anxiety serious enough to require therapy and medication to treat. J.A. 52; *see Harris*, 510 U.S. at 22–23 (1993) (explaining that the effect on employee's psychological well-being is relevant to the hostile environment analysis); *Boyer-Liberto*, 786 F.3d at 277 ("[T]he plaintiff may, but is

not required to, establish that the environment is 'psychologically injurious.'"). The extent to which the hostile environment negatively impacted Ms. Bazemore is evinced by her decision to transfer to a different Best Buy store. *See Shockley v. HealthSouth Cent. Ga. Rehab. Hosp.*, 293 F. App'x 742, 747 (11th Cir. 2008) (unpublished) (finding plaintiff's request to transfer was "evidence that her workplace performance was affected" by harassment); *Williamson v. Carolina Power & Light Co.*, 754 F. Supp. 2d 787, 792 (E.D.N.C. 2010) (finding that harassment "interfered with Plaintiff's work performance," in part, because she requested a transfer).

The Supreme Court has instructed that "[t]he real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." *Oncale*, 523 U.S. at 81–82; *see Harris*, 510 U.S. at 23 (noting that a hostile work environment "can be determined only by looking at all the circumstances"). Viewing the full constellation of surrounding circumstances alleged in Ms. Bazemore's complaint and drawing all reasonable inferences in her favor, she alleged conduct sufficiently severe or pervasive to create a hostile work environment.

B. Ms. Bazemore plausibly alleged a basis for Best Buy's liability when the company failed to take remedial action reasonably calculated to end the hostile work environment.

Ms. Bazemore's complaint alleged a basis for imposing liability on Best Buy because its corrective action was not reasonably calculated to end the hostile work environment. When a coworker's harassment creates a hostile work environment, the employer is liable "if [it] knew or should have known about the harassment and failed to take effective action . . . by responding with remedial action reasonably calculated to end the harassment." *Pryor v. United Air Lines, Inc.*, 791 F.3d 488, 498 (4th Cir. 2015) (quotation omitted). "[A]n employer will always be liable when its negligence leads to the creation or continuation of a hostile work environment." *Vance v. Ball State Univ.*, 570 U.S. 421, 446 (2013). Even at summary judgment, a "plaintiff need prove only that [their employer] failed to exercise reasonable care" and "is not required to establish that their employer's response to the complaints was inadequate as a matter of law." *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 335 (4th Cir. 2011).

Here, it is undisputed that Ms. Bazemore promptly notified Best Buy of Creel's conduct—she called HR to report Creel's harassment the next day. J.A. 49. Best Buy therefore had actual knowledge of the hostile work environment. *See Katz v. Dole*, 709 F.2d 251, 255 (4th Cir. 1983) (holding that an "employer had actual or constructive knowledge" when "complaints about the harassment were lodged with

the employer"). The court below nevertheless dismissed Ms. Bazemore's complaint, holding that Ms. Bazemore did not "allege sufficient facts to show that Creel's conduct is imputable to Best Buy." J.A. 132. The court reached this conclusion because it found that Best Buy's "written warning . . . was reasonably prompt and did in fact stop the harassment." J.A. 133.

The district court was wrong both factually and legally. Ms. Bazemore alleged that the hostility from the harassment persisted after Best Buy took limited action, J.A. 50, 119, 137–39, which the district court had to accept as true. *Nanni*, 878 F.3d at 452. And it was inappropriate for the district court to dismiss Ms. Bazemore's complaint on the ground that Creel's actions were not imputable to Best Buy because the "adequacy of [an employer's] response . . . is a factual issue," *Amirmokri v. Balt. Gas & Elec. Co.*, 60 F.3d 1126, 1131 (4th Cir. 1995), and a district court should not "resolve contests surrounding the facts" on a motion to dismiss.[11] *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016) (quotation omitted).

The reasonableness of an employer's response to harassment is a fact-bound question that requires evaluating "[1] the promptness of any investigation, [2] the specific remedial measures taken, and [3] the effectiveness of those measures."

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[11] Indeed, this Court has held that *summary judgment* is inappropriate "if reasonable minds could differ as to whether the remedial action was reasonably calculated to end the harassment." *Paroline v. Unisys Corp.*, 879 F.2d 100, 106 (4th Cir. 1989) (quotation omitted), *vacated, in part, on other grounds*, 900 F.2d 27 (4th Cir. 1990).

Pryor, 791 F.3d at 498. In any particular case, whether an employer's corrective action is reasonable "depends, in part, on the seriousness of the underlying conduct." *Id*. Here, Ms. Bazemore's complaint pled sufficient facts to justify an inference, accepting her allegations as true, that Best Buy's response to Creel's harassment was unreasonable and that this negligence led to the continuation of a hostile work environment. These allegations were sufficient to survive a motion to dismiss.

1. <u>Best Buy's investigation was inadequate.</u>

Once an employer receives a complaint of harassment, failing to thoroughly and promptly investigate that complaint is unreasonable. *See Strothers v. City of Laurel*, 895 F.3d 317, 336 (4th Cir. 2018). Recognizing this, Best Buy's "Equal Employment Opportunity" policy assures that when an employee reports discrimination, "Best Buy will conduct a fair, timely, and thorough investigation." J.A. 101. Here, Ms. Bazemore plausibly alleged that Best Buy's investigation fell short on each of these criteria because it was slow, superficial, and biased.

Ms. Bazemore's factual allegations, accepted as true and drawing reasonable inferences in her favor, support the conclusion that Best Buy's investigation was not

prompt.[12] *See Howard v. Burns Bros.*, 149 F.3d 835, 841 (8th Cir. 1998) ("[T]he promptness and adequacy of the employer's response to a complaint of harassment are fact questions for the jury to resolve."). It was not until twelve days after Ms. Bazemore reported Creel's harassment, on February 18, that Best Buy issued Creel a written reprimand. J.A. 16. *See EEOC v. Cent. Wholesalers, Inc.*, 573 F.3d 167, 177–78 (4th Cir. 2009) (finding that corrective action a week and a half after a complaint was not prompt).

Ms. Bazemore also plausibly alleged that Best Buy's investigation was insufficiently thorough. When Best Buy's HR representative, Colleen Hayes, called Ms. Bazemore after she reported the harassment, Hayes did not ask follow-up questions, but merely summarized the facts and said that she would resolve the matter. J.A. 139. This Court has noted that "a juror could conclude that it was unreasonable for [an experienced HR officer] to not ask follow-up questions" when interviewing a victim of harassment. *Howard v. Winter*, 446 F.3d 559, 570 (4th Cir. 2006). And despite Ms. Bazemore's report that several of its employees witnessed Creel's harassment, there is no evidence that Best Buy interviewed any witnesses. *See Pryor*, 791 F.3d at 499 (finding investigation unreasonable when, in part,

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[12] The district court had the date wrong when it characterized Best Buy's response as "prompt." The district court identified the date of Brewster's "written warning" as February 8. J.A. 129. In fact, Brewster issued the warning ten days later on February 18. J.A. 16.

employer failed to interview coworkers); *Amirmokri*, 60 F.3d at 1131–32 (describing employer's investigation as "fall[ing] far short" when employer did not "interview any members of [the victim's] work group" other than his supervisor, among other failings).

Further, Ms. Bazemore plausibly alleged that Best Buy's investigation was biased. When Ms. Bazemore reported Creel's harassment, she explained to HR that she did not feel comfortable reporting the harassment to her boss, General Manager April Brewster, because Brewster was Creel's best friend. J.A. 49. Despite Best Buy's notice of this clear conflict of interest, the company delegated the bulk of its investigation to Brewster. J.A. 79. Best Buy's investigation then culminated with the February 18 "Coaching & Corrective Action," but Brewster's documentation of the process in the "Corrective Action Form," was cursory, at best. J.A. 16. Where the form asked her to "[d]escribe facts and circumstances . . . [p]lease be specific," Brewster was vague and evasive. J.A. 16. Brewster's description of Creel's misconduct omitted the phrase "N****r T*ts," choosing instead to euphemize the slur as merely "offensive." *Id.* Indeed, rather than emphasizing the seriousness of Creel's transgressions, Brewster simply reminded Creel of the importance of "living up to [Best Buy's] values." *Id. See Spriggs*, 242 F.3d at 188–90 (finding that a jury could find a response unreasonable when the employer "downplayed the complaints" of racial slurs).

Best Buy closed the case two days later based on the cursory corrective action form that Brewster completed without interviewing witnesses or following up with Ms. Bazemore. J.A. 16, 50–51. *See Hathaway v. Runyon*, 132 F.3d 1214, 1223–24 (8th Cir. 1997) (finding investigation inadequate and conducted in bad faith when investigator was the harasser's friend, failed to interview the only witness, did not produce a report, or inform the victim of the outcome); *Gyulakian v. Lexus of Watertown, Inc.*, 56 N.E.3d 785, 798 (Mass. 2016) (finding that an "investigation was marred from the beginning" when "carried out by a member of management who admitted to carrying a bias against the plaintiff"). These allegations sufficiently state that Best Buy's perfunctory and biased investigation was unreasonable.

2. <u>Best Buy's remedial action was not reasonably calculated to end the harassment.</u>

Ms. Bazemore also plausibly alleged that Best Buy's response was not reasonably calculated to end the hostile work environment created by Creel's harassment. Indeed, taking the facts in the complaint as true, it is reasonable to infer that Brewster's action was "nothing more than a slap on the wrist" and that Brewster "did not intend to take serious action to stop [the] harassment." *Paroline*, 879 F.2d at 107.

First, Ms. Bazemore alleged that Best Buy failed to take any store-wide action in response to Creel's public harassment. J.A. 50. Best Buy's only action was a

private discussion between Creel, her best friend April Brewster, and Creel's supervisor as a "witness." J.A. 16. This *private* response was not tailored as a remedy for *public* harassment that infected the entire workplace. *Pryor*, 791 F.3d at 500 (finding that a response that was "reluctant and reactive, intended to minimize any disruption to day-to-day operations," was not reasonably focused on "deterring future harassment"); *Snapp-Foust v. Nat'l Constr., LLC*, 1 F. Supp. 2d 773, 780 (M.D. Tenn. 1997) (reasoning that corrective action "serve[s] a crucial education and deterrence function in the entire workplace, both as to the harasser's contacts with other employees, and as to other potential harassers").

Given that Creel used the derogatory slur in front of her coworkers *and* her supervisor, a reasonably calculated remedial action would have made clear to the entire workplace that Creel's conduct was wholly inappropriate.[13] Instead, Best Buy was silent, sending a clear message that the company was doing nothing to prevent workplace harassment. An objectively reasonable response required, at a minimum, some staff-wide corrective action. Indeed, this Court has found staff-wide responses

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[13] Terrance Mallory, Creel's direct supervisor, witnessed the harassment, yet there is no evidence that he reported this harassment as required by company policy. J.A. 43; 56. This further supports Ms. Bazemore's claim that Best Buy's response was unreasonable. *See Clark v. UPS*, 400 F.3d 341, 350–51 (6th Cir. 2005) ("[W]e must consider whether, as implementors of [the employer's] sexual harassment policy, the supervisors here acted reasonably—in response to what they observed—to prevent and correct sexual harassment.").

to be part of an employer's reasonable response to public or well-known harassment. *See EEOC v. Xerxes Corp*., 639 F.3d 658, 665–66, 671 (4th Cir. 2011) (providing staff-wide training after harassment occurred in front of multiple employees); *Mikels v. City of Durham*, 183 F.3d 323, 326, 329 (4th Cir. 1999) (holding meeting with entire police squad after harassment witnessed by multiple officers); *Spicer v. Va. Dep't of Corrs.*, 66 F.3d 705, 710 (4th Cir. 1995) (en banc) (conducting two staff-wide trainings after a sexually harassing memo was read out loud at staff meetings).

Second, Ms. Bazemore's complaint made plain that Best Buy noticeably failed to follow its own policies. J.A. 51. As this Court has explained, "a company's policies reflect its reasoned belief as to the best way to address and end harassing conduct;" thus, an employer's failure to "compl[y] with those policies is a factor" that suggests the unreasonableness of their actions. *Pryor*, 791 F.3d at 499 n.7; *see Nischan v. Stratosphere Quality, LLC*, 865 F.3d 922, 932 (7th Cir. 2017) (reasoning that an employer "is accountable to the standard of care that it created for itself [in its policies]"). As Ms. Bazemore plausibly alleged, Best Buy had a zero-tolerance policy regarding the use of racial slurs by employees in their workplace that the company failed to uphold here. J.A. 118. Ms. Bazemore even observed Best Buy's policy in practice when she witnessed two instances where Best Buy terminated an employee for using the racial slur "N****r." J.A. 118. In fact, racial slurs are the

first example given in Best Buy's "Coaching & Corrective Action Process" Guidelines of extremely offensive verbal conduct that warrants immediate termination. *See* J.A. 30. Best Buy's failure to follow its own policies only bolsters the conclusion that Best Buy's response was not reasonably calculated to stop the harassment.

3. <u>Best Buy's remedial action was ineffective.</u>

Finally, Ms. Bazemore plausibly alleged that Best Buy's perfunctory remedial action did not, in fact, stop either Creel's conduct or the hostility directed at Ms. Bazemore. An employer's response to a hostile work environment is only adequate as a matter of law, and sufficient to eliminate its liability, if its remedial action "effectively stops the harassment."[14] *Xerxes*, 639 F.3d at 670. Ms. Bazemore alleged that Best Buy's response was ineffective for three distinct reasons: (1) the company did not address her reports of continuing hostility from Creel and Brewster; (2) Best Buy did not inform Ms. Bazemore of its remedial action; and (3) Creel continued to use racial epithets.

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[14] Assessing the effectiveness of Best Buy's remedial action is particularly inappropriate "[b]efore discovery has unearthed relevant facts and evidence," because Ms. Bazemore does not have access to records of Creel's conduct and other complaints either before or after Ms. Bazemore's report. *Swierkiewicz*, 534 U.S. at 512.

First, when Ms. Bazemore called HR after receiving a voicemail informing her that the "matter had been resolved," J.A. 50, she informed Best Buy that the hostile work environment had, in fact, *not* been resolved. J.A. 139. Ms. Bazemore told Best Buy that she continued to experience hostility from Creel and that she now was experiencing hostility from, Brewster too, including glares, being shunned, and similar ostracizing behavior. *Id*.; *see Hathaway*, 132 F.3d at 1222 (finding that "snickers and noises" from harassers were intimidating because of the "nexus between that behavior" and prior more serious harassment). Yet Best Buy did not respond to Ms. Bazemore's report of continued hostility—in fact, the company did not even return her call. J.A. 139; *see Hirase-Doi v. U.S. W. Commc'ns, Inc.*, 61 F.3d 777, 784 n.3 (10th Cir. 1995) (emphasis added) (finding that subsequent complaints of "threatening stares" from harasser could "constitute *continuing* sexual harassment"), *abrogated on other grounds by Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998).

Second, Best Buy's action was ineffective because the company failed to follow-up with Ms. Bazemore about its corrective action. From Ms. Bazemore's perspective Best Buy had taken no action—Best Buy did not even return her calls when she asked for updates and left her struggling to understand the company's lack

of response to Creel's harassment.[15] She did not receive an apology, or any assurance from her manager that the harassment would not happen again, or observe renewed staff anti-harassment training.[16] Best Buy's failure to include Ms. Bazemore in the remedial process or to address the incident with her in any meaningful way was unreasonable given the severity and public nature of Creel's harassment. *See Sheriff v. Midwest Health Partners, P.C.*, 619 F.3d 923, 930–31 (8th Cir. 2010) ("The jury could reasonably find that [the employer] did not take [the victim's] complaints seriously, given its repeated failure to keep her apprised of its response or to follow through on its stated intentions.").

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[15] EEOC guidance instructs that an "employer should make follow-up inquiries to ensure the harassment has not resumed and the victim has not suffered retaliation." EEOC Policy Guidance on Current Issues in Sexual Harassment, N-915-050, (1990) *reprinted in* EEOC Compl. Man. (BNA), at EEOM 615:68. The Supreme Court has found that EEOC guidance is "a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Meritor Sav. Bank, F.S.B. v. Vinson*, 477 U.S. 57, 65 (1986) (quotation omitted).

[16] EEOC guidance further explains that "[m]anagement should inform both parties about these measures. Remedial measures should be designed to stop the harassment, correct its effects on the employee, and ensure that the harassment does not recur." EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, N-915-002 (1999), *reprinted in* EEOC Compl. Man. (BNA), at EEOM 615:110.

Third, Ms. Bazemore's allegations create a reasonable inference that Brewster's tepid warning was not effective because Creel continued to use racialized epithets, in particular, calling customers "gypsies." J.A. 119, 137. These comments are relevant because "the totality of the circumstances includes conduct directed not at the plaintiff."[17] *Hoyle*, 650 F.3d at 333; *see also EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 317 (4th Cir. 2008) (cleaned up) ("[W]e are, after all, concerned with the 'environment' of workplace hostility, and whatever the contours of one's environment, they surely may exceed the individual dynamic between complainant and [her] coworkers."). Creel's continued racist behavior is a strong indication that Best Buy's minimal action was inadequate. *See Xerxes*, 639 F.3d at 670 ("Repeat conduct may show the unreasonableness of prior responses." (quoting *Adler v. Wal-mart Stores, Inc.*, 144 F.3d 664, 676 (10th Cir. 1998)).

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[17] The district court characterized Ms. Bazemore's allegations about Creel's subsequent racist conduct as too general because they lacked "detail, context, date, or circumstances" and were "insufficient to establish a hostile work environment." J.A. 134. Ms. Bazemore is not alleging that these comments created a hostile work environment, but rather that Creel's continued racially offensive conduct supports the plausible inference that Best Buy's response was not reasonably calculated to correct the hostile work environment. *See Engel v. Rapid City Sch. Dist.*, 506 F.3d 1118, 1124 (8th Cir. 2007) ("To show that a hostile work environment has continued after an employer's remedial action, a plaintiff need not prove an entire accumulation of harassing acts, amounting to a new and free-standing hostile work environment."); *see also Nanni*, 878 F.3d at 452 ("[T]o satisfy the plausibility standard, a plaintiff is not required to plead factual allegations in great detail.").

In sum, Ms. Bazemore plausibly alleged that Best Buy's response to Creel's harassment was unreasonable and that this negligence led to the continuation of a hostile work environment. These factual allegations sufficiently state a basis for imputing liability onto Best Buy, and therefore were sufficient to survive a motion to dismiss.

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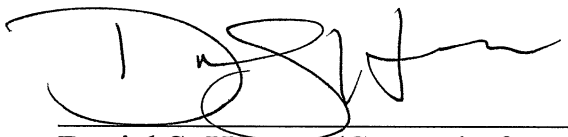
Ultimately, using the elements of a hostile work environment as a "prism to shed light upon the plausibility of the claim" reveals that Ms. Bazemore plausibly alleged a hostile work environment against her employer, Best Buy. *Rodriguez-Reyes v. Molina-Rodriguez*, 711 F.3d 49, 54 (1st Cir. 2013). She alleged facts that, when taken as true and construed liberally, plausibly support the inference that Creel's racist and sexist slur created a hostile work environment, and the inference that Best Buy's response was negligent such that the company can be held liable.

CONCLUSION

For these reasons, this Court should reverse the district court's decision and remand this case for further proceedings.



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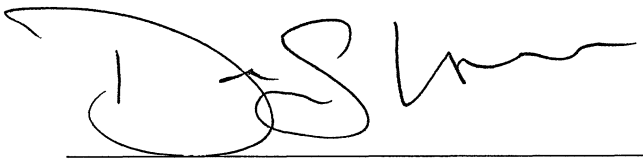
REQUEST FOR ORAL ARGUMENT

Ms. Bazemore respectfully requests that oral argument be granted in this case, pursuant to Rule 34(a) of the Federal and Local Rules of Appellate Procedure. The factual and legal issues presented in this case are sufficiently complex that oral argument would aid this Court in its decisional process.

CERTIFICATE OF COMPLIANCE

In accordance with Rule 32(a) of the Federal Rules of Appellate Procedure, undersigned counsel for appellant certifies that the accompanying brief is printed in Times New Roman 14-point font, and including footnotes, contains no more than 13,000 words. According to the word-processing system used to prepare the brief, Microsoft Word, the relevant sections of the brief under Rule 32(f) contain 8,481 words.



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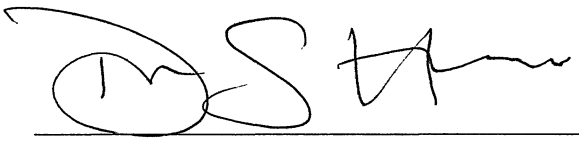
CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2019, I electronically filed the foregoing brief with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.



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