

APPENDIX A
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13887-CC

SYBIL LITTLE,
Plaintiff - Appellant,
versus
CRSA,
a corporation,
[RICKEY] NORRIS,
individually and in his official capacity,
JASON PATRICK,
individually and in his official capacity,
Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

(Filed Sep. 28, 2018)

BEFORE: ED CARNES, Chief Judge, WILSON, and
JORDAN, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Ed Carnes
CHIEF JUDGE

APPENDIX B

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13887
Non-Argument Calendar

D.C. Docket No. 1:17-cv-00126-CSC

SYBIL LITTLE,
Plaintiff-Appellant,
versus
CRSA,
a corporation,
RICKY NORRIS,
individually and in his official capacity,
JASON PATRICK,
individually and in his official capacity,
Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

(Filed Aug. 15, 2018)

Before ED CARNES, Chief Judge, WILSON, and JORDAN, Circuit Judges.

PER CURIAM:

Sybil Little, proceeding pro se, appeals the district court's judgment dismissing her first amended complaint. She alleged a Title VII hostile work environment claim and related state law claims against her employer, CRSA, Inc., and two CRSA employees, Ricky Norris and Jason Patrick.

Since 2006 Little has been employed as a technician and safety coordinator at CRSA, which is located in Fort Rucker, Alabama. She alleges that around March 11, 2015, Patrick, CRSA's Operations Manager, called her and propositioned her for "oral and missionary sex." She also alleges that at some other point Patrick told her that he had not had sex with his wife in over a year and wanted to have oral sex with Little.

Little also alleged that Norris, CRSA's Lead Technician, regularly subjected her to sexual harassment on a continuing basis from 2006 through 2016. That claim is based on the following comments Norris allegedly made: that she "had a cute ass"; that she "looked good in her jeans"; that she should "wear dresses so he could stand at the bottom of the ladder and look up her dress and watch her climb the ladder"; and that she should wear heels to work so that she could get men's attention. Norris also allegedly commented on Little's appearance when she tucked her shirt in and questioned whether she had to change clothes because of her menstrual cycle. Little alleges that she told Norris

on numerous occasions that his comments were unwelcome and that she asked him to stop. She also alleges that she has had a heart attack due to the problems at work, has been diagnosed with hypertension, and receives counseling. Finally, she alleges that CRSA was aware of the harassment and did not stop it.

Little filed a charge of discrimination with the Equal Employment Opportunity Commission in October 2016. In the section titled “discrimination based on,” she checked only the box for sex discrimination. For the date of discrimination, she put May 1, 2016, to July 13, 2016; she did not check the box for “continuing action.” As for the description of harassment, she stated:

I am a female who has worked for [CRSA] since 2006 as Simulator Technician II/Safety Coordinator. I have been sexually harassed by Rick Norris (Lead Technician). I am being discriminated against because of my sex.

Beginning in May 2016, Norris has stated that I have a cute ass; told me that I look good in my jeans; asked me to wear dresses and heels to work so he could stand at the bottom of the ladder and watch me climb the ladder.

I am being discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

After the EEOC issued its right to sue notice, Little, represented by counsel, filed this action in March 2017. The defendants filed motions to dismiss

for failure to state plausible claims for relief under Federal Rule of Civil Procedure 12(b)(6). The district court found that Little did not plead sufficient facts to state plausible claims for relief, and it allowed her leave to file an amended complaint. Little filed an amended complaint, which alleged a Title VII hostile work environment claim against CRSA, Norris, and Patrick, and state law claims for negligent supervision and retention, wanton supervision and retention, and outrage against all three defendants.

CRSA, Norris, and Patrick moved to dismiss the first amended complaint under Rule 12(b)(6). The court ruled that Little's first amended complaint was limited by the scope of her EEOC charge, which alleged discrimination only by Norris, and that those allegations were insufficient to state a plausible claim for relief on her Title VII hostile work environment claim against CRSA. It dismissed her Title VII claims against Norris and Patrick on the ground that Title VII claims cannot be maintained against individuals. It dismissed those claims with prejudice, and it dismissed Little's state law claims without prejudice for lack of supplemental jurisdiction.

“We review *de novo* the district court’s grant of a motion to dismiss under Rule 12(b)(6),” taking the “factual allegations in the complaint as true and constru[ing] them in the light most favorable to the plaintiff[.]” *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010). We do not accept as true “labels and legal conclusions.” *Id.* “Dismissal for failure to state a claim is proper if the factual allegations are not enough

to raise a right to relief above the speculative level.” *Id.* (quotation marks omitted). In other words, the factual allegations must “possess enough heft to set forth a plausible entitlement to relief.” *Id.* (quotation marks omitted). Because Little is now proceeding *pro se*, we liberally construe her brief. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). She contends that the district court erred in dismissing her first amended complaint because she alleged sufficient facts to state a plausible claim for relief under Title VII for a hostile work environment based on sexual harassment. That contention fails.

To begin with, the district court did not err in limiting Little’s allegations to the scope of her EEOC charge. *See Gregory v. Ga. Dep’t of Human Res.*, 355 F.3d 1277, 1280 (11th Cir. 2004) (“[W]e have held that a plaintiff’s judicial complaint is limited by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.”) (quotation marks omitted). Little’s EEOC charge alleged only that Norris made offensive comments between May 1, 2016, and July 13, 2016; she did not mention Patrick’s derogatory comments (which he allegedly made in March 2015). Although we do not strictly interpret EEOC complaints, and “judicial claims are allowed if they amplify, clarify, or more clearly focus the allegations in the EEOC [charge],” *id.*, Little’s allegations cannot clarify what is not in her EEOC charge.¹ As a result, we consider only her

¹ Little did allege in her first amended complaint that she spoke with an EEOC investigator about Patrick’s offensive comments and

allegations against Norris. *See id.* at 1279–80 (“[A]llegations [in a judicial complaint] of new acts of discrimination are inappropriate.”).

Little’s allegations against Norris do not establish a plausible Title VII hostile work environment claim against CRSA.² To state her claim, Little must plausibly allege (1) that she belonged to a protected group, (2) that she was “subjected to unwelcome harassment,” (3) that the “harassment was based on a protected characteristic,” (4) that the “harassment was sufficiently severe or pervasive to alter the terms and conditions of [her] employment and create an abusive working environment,” and (5) that “a basis exists for holding the employer liable.” *Trask v. Sec’y, Dep’t of Veterans Affairs*, 822 F.3d 1179, 1195 (11th Cir. 2016).

Little’s claim fails on the fifth factor. To establish a basis for CRSA’s liability, Little must allege facts showing that it “is responsible for [the abusive working] environment under either a theory of vicarious or of direct liability.” *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275 (11th Cir. 2002). “An employer is

that she thought he would include them in the charge, but there is no indication that she filed a separate EEOC charge alleging harassment by Patrick, and her October 2016 charge does not mention him.

² Little’s Title VII claims against Norris and Patrick must be dismissed because Title VII claims may be brought against employers only. *See Dearth v. Collins*, 441 F.3d 931, 933 (11th Cir. 2006) (“[T]he relief granted under Title VII is against the employer, not against individual employees whose actions would constitute a violation of the Act.”) (quotation marks and alterations omitted).

subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee.” *Id.* at 1278. Little pleads no facts showing that Norris or Patrick were anything other than co-employees, which means that CRSA is directly liable only “if it knew or should have known of the harassing conduct but failed to take prompt remedial action.” *Id.* That means Little “must show either actual knowledge on the part of the employer or conduct sufficiently severe and pervasive as to constitute constructive knowledge to the employer.” *Id.*

There are no allegations indicating that Little ever told management about Norris’ alleged harassment. *See id.* (“Actual notice is established by proof that management knew of the harassment. . . .”). And her allegations that Norris made several offensive, discriminatory comments between May and July 2016 are not enough to show that CRSA management must have known. *Cf. id.* at 1278–79 (concluding that plaintiff showed constructive knowledge where the manager’s office was located where much of the abuse occurred, the evidence showed that the manager “was actually present at times when [an employee] shouted [] ethnic insults at [the plaintiff],” and the “abuse occurred on a daily basis for [a] month” and was “often directed at [the plaintiff] in the presence of others”).³

³ Little did allege that she reported Norris’ comments to Patrick in March 2015, but that was a year before Norris made the comments that are the subject of Little’s EEOC charge. And her bare allegations that CRSA had “actual and constructive notice”

Without sufficient facts alleging actual or constructive notice, there is no basis for holding CRSA liable.

The district court did not err in dismissing Little's Title VII claims against CRSA, Norris, and Patrick. And Little does not argue that it erred in dismissing her state law claims, which means that issue is abandoned. *See Timson*, 518 F.3d at 874 ("[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned.").

AFFIRMED.⁴

of the harassment and did "not take any steps" to stop the misconduct is not enough to survive a motion to dismiss. *See Edwards*, 602 F.3d at 1291 ("We are not . . . required to accept the labels and legal conclusions in the complaint as true.").

⁴ Little has also filed a motion for oral argument. Because the "facts and legal arguments are adequately presented in the briefs and record and the decisional process will not be significantly aided by oral argument," 11th Cir. R. 34-3(b)(3), her motion is **DENIED**.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

SYBIL LITTLE,)
Plaintiff,)
v.) CIVIL ACT. NO.
CRSA, a corporation,) 1:17cv126-CSC (WO)
RICKEY NORRIS,)
and JASON PATRICK,)
Defendants.)

MEMORANDUM OPINION and ORDER

(Filed Aug. 9, 2017)

I. INTRODUCTION

The plaintiff, Sybil Little (“Little”), an employee of defendant CRSA, brings this action pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et. seq*, alleging that she was subjected to sexual harassment and a hostile work environment by defendant Rickey Norris (“Norris”). She further contends that when she complained to defendant Jason Patrick (“Patrick”), Patrick sexually harassed her, perpetuating the hostile work environment. Finally, she alleges state law claims of negligent and wanton supervision and retention, and outrage. Little seeks compensatory and punitive damages and attorney fees. After the defendants filed motions to dismiss (docs.

9, 12 & 15), the court ordered the plaintiff to file an amended complaint that sufficiently established a factual basis for her claims. *See* Doc. # 28. On May 24, 2017, the plaintiff filed her amended complaint, and on June 2, 2017, the defendants filed motions to dismiss the amended complaint (docs. # 30, 32 & 34). The plaintiff has filed responses in opposition to the defendants' motions. *See* Docs. # 37, 38 & 39.

The court has jurisdiction over this matter pursuant to 42 U.S.C. § 1331 (federal question) and the jurisdictional grant contained in 42 U.S.C. § 2000e-5(f)(3). It has supplemental jurisdiction of the state law claims pursuant to 28 U.S.C. § 1337. Pursuant to 28 U.S.C. § 636(c)(1) and M.D. Ala. LR 73.1, the parties have consented to the United States Magistrate Judge conducting all proceedings in this case and ordering the entry of final judgment.

After careful review of the motions to dismiss, and the briefs filed in support of and in opposition to the motions, the court concludes that the motions to dismiss are due to be granted.¹

II. STANDARD OF REVIEW

In ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept well-pled facts as true, but the court is not

¹ In light of the filing of the amended complaint, the defendants' motions to dismiss (docs. # 9, 12 & 15) are due to be denied as moot.

required to accept a plaintiff's legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009) ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"). In evaluating the sufficiency of a plaintiff's pleadings, the court must indulge reasonable inferences in plaintiff's favor, "but we are not required to draw plaintiff's inference." *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005). Similarly, "unwarranted deductions of fact" in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff's allegations. *Id.* See also *Iqbal*, 556 U.S. at 681 (stating conclusory allegations are "not entitled to be assumed true").

While a complaint need not contain "detailed factual allegations," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), it must plead "enough facts to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570); *Sinatrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1268 (11th Cir. 2009).

We take the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff[]. *Rivell v. Private Health Care Sys., Inc.*, 520 F.3d 1308, 1309 (11th Cir. 2008). We are not, however, required to accept the labels and legal conclusions in the complaint as true. *Sinatrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009); see also *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) ("[T]he tenet that a court must accept as true

all of the allegations in a complaint is inapplicable to legal conclusions.”); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007) (stating that a complaint “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do”). Dismissal for failure to state a claim is proper if the factual allegations are not “enough to raise a right to relief above the speculative level. “A complaint may be dismissed if the facts as pled do not state a claim for relief that is plausible on its face.” *Sinaltrainal*, 578 F.3d at 1260 (citing *Iqbal*, 129 S.Ct. at 1950; *Twombly*, 550 U.S. at 561-62, 570, 127 S.Ct. at 1968-69, 1974). “Stated differently, the factual allegations in the complaint must ‘possess enough heft’ to set forth ‘a plausible entitlement to relief.’” *Fin. Sec. Assurance, Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1282 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 557, 127 S.Ct. at 1966-67).

Edwards v. Prime, Inc., 602 F.3d 1276, 1291 (11th Cir. 2010).

A complaint states a facially plausible claim for relief “when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “[A] plaintiff’s obligations to provide the ‘grounds’ of h[er] ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]” *Twombly*, 550 U.S. at 555 (citing *Papasan v.*

Allain, 478 U.S. 265, 286 (1986)). *See also Fin. Sec. Assur., Inc. v. Stephens, Inc.* 500 F.3d 1276, 1282 (11th Cir. 2007).

III. Facts²

Little has been employed by CRSA at Fort Rucker, Alabama since 2006. According to her amended complaint, defendant Norris “made sexually derogatory comments” towards her including statements that “she had a cute ass,” and “looked good in her jeans.” (Doc. # 29 at 3, ¶10). Norris also asked Little to wear dresses so he could “look up her dress.” (*Id.*). Little points to one specific incident on July 13, 2016 of Norris telling her “she should wear heels to work not dress flat shoes as it would get men’s attention.” (*Id.* at 4, ¶ 12). Little asserts that on numerous occasions she told Norris that his comments were unwelcome and asked him to stop. (*Id.* at 5, ¶ 14). According to Little, he did not but she alleges no other specific instances involving Norris. (*Id.*)

On March 11, 2015, Little complained to Patrick about Norris’ sexual harassment, and according to Little, Patrick told her he would “tell Norris to leave her alone.”³ (*Id.* at ¶ 15). Little alleges that sometime

² At this stage of the proceedings, for purposes of ruling on the motions to dismiss, the facts alleged in the complaint and reasonable inferences to be drawn there from are set forth in the light most favorable to the plaintiff. *See Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010).

³ It is not at all clear from the complaint if Patrick supervised Little or Norris because Little alleges only that Patrick is the

later that day, Patrick asked her for sex. (*Id.* at 5-7, ¶ 17).

On October 7, 2016, Little filed a charge of sex discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging sexual harassment by Norris beginning on May 1, 2016 and continuing until July 7, 2016.⁴ (Doc. # 38, Ex. A). She filed this action on March 2, 2017.

LCT/TFPS Operations Manager for CRSA. Despite being given an opportunity to amend her complaint, Little at no point asserts that Patrick is her supervisor, Norris’ supervisor or the appropriate person within the company to whom she should report sexual harassment.

⁴ Although the plaintiff did not attach a copy of her EEOC charge to her complaint, defendant CRSA attached a copy to its’ motion to dismiss the complaint as well as their motion to dismiss the amended complaint. *See* Doc. # 10, Ex. 1; Doc. # 31, Ex. A. Thereafter, Little attached a copy of the EEOC charge to her brief in opposition to the motion to dismiss (doc. # 21, Ex. 1) and her brief in opposition to the motion to dismiss the amended complaint (doc. # 38, Ex. A). The court may consider exhibits attached to the motion to dismiss in certain circumstances without converting the motion to dismiss into a motion for summary judgment.

Our Rule 12(b)(6) decisions have adopted the “incorporation by reference” doctrine, *see In re Silicon Graphics Inc. Securities Litigation*, 183 F.3d 970 (9th Cir.1999), under which a document attached to a motion to dismiss may be considered by the court without converting the motion into one for summary judgment only if the attached document is: (1) central to the plaintiff’s claim; and (2) undisputed. *See Harris v. Ivax Corp.*, 182 F.3d 799, 802 n. 2 (11th Cir.1999). “Undisputed” in this context means that the authenticity of the document is not challenged. *See, e.g., Beddall v. State Street Bank and Trust Co.*, 137 F.3d 12, 16–17 (1st Cir.1998); *GFF*

IV. Discussion

A. Sexual Harassment Hostile Work Environment Claim

Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin in a variety of employment practices. *See Walker v. NationsBank of Florida, N.A.*, 53 F.3d 1548, 1555 (11th Cir. 1995).⁵ It is well-settled that an employer may be liable under Title VII for subjecting an employee to sexual harassment

Corp. v. Associated Wholesale Grocers, Inc., 130 F.3d 1381, 1384 (10th Cir.1997); *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994).

Horsley v. Feldt, 304 F.3d 1125, 1134 (11th Cir. 2002). *See also Fuller v. Sun Trust Banks, Inc.*, 744 F.3d 685, 696 (11th Cir. 2014) abrogated on other grounds *Stargel v. SunTrust Bank, Inc.*, 791 F.3d 1309 (11th Cir. 2015) (“This [C]ourt recognizes an exception, however, in cases in which [1] a plaintiff refers to a document in its complaint, [2] the document is central to [her] claim, [3] its contents are not in dispute, and [4] the defendant attaches the document to its motion to dismiss.”); *Harris v. Ivax Corp.*, 182 F.3d 799, 802 n. 2 (11th Cir. 1999) (“[A] document central to the complaint that the defense appends to its motion to dismiss is also properly considered, provided that its content are not in dispute.”)

Although Little does not reference her EEOC charge in her amended complaint, she relies on it to oppose CRSA’s motion to dismiss; it is central to her claims; and she does not dispute its contents or authenticity.

⁵ 42 U.S.C.A. § 2000e-2(a)(1) provides: “It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin.”

in the workplace. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 65-66 (1986).

CRSA asserts that Little's Title VII sexual harassment hostile work environment claim should be dismissed because she failed to exhaust her administrative remedies and she cannot demonstrate that Norris' conduct was sufficiently severe or pervasive to create a hostile work environment.

"The filing of an administrative complaint with the EEOC is ordinarily a jurisdictional prerequisite to a Title VII action." *Chanda v. Engelhard/ICC*, 234 F.3d 1219, 1225 (11th Cir. 2000). "A plaintiff's judicial complaint is limited by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination" that the plaintiff filed with the EEOC. *Mulhall v. Advance Sec., Inc.*, 19 F.3d 586, 589 n.8 (11th Cir. 1994). *See also Gregory v. Ga. Dep't of Human Resources*, 355 F.3d 1277, 1279 (11th Cir. 2004). In her amended complaint, Little alleges that Norris and Patrick created a hostile work environment because of her sex. In her EEOC charge, Little asserts that the harassment began on May 1, 2016 and ended on July 13, 2016. In her EEOC charge, Little states the following: "[b]eginning in May 2016, Norris has stated I have a cute ass; told me I look good in my jeans; asked me to wear dresses and heels to work so he could stand at the bottom of the ladder and watch me climb the ladder." (Doc. # 30, Ex. A).

First, Little's EEOC charge contains absolutely no indication that she was also accusing Patrick of sexual

harassment, and the charge contains no factual allegations that could reasonably lead to an EEOC investigation of sexual harassment hostile work environment created by Patrick. Little's sexual harassment hostile work environment claim regarding Patrick's conduct fails as a matter of law because she failed to exhaust her administrative remedies with respect to his conduct. *See Chanda*, 234 F.3d at 1225.

More importantly, however, Little's claim of sexual harassment hostile work environment fails because she has failed to sufficiently allege the claim, even after being given an opportunity to amend her complaint. A plaintiff adequately pleads a claim for hostile work environment if she alleges (1) she belongs to a protected group; (2) she was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of her employment and create an abusive working environment; and (5) a basis exists for holding the employer liable. *Trask v. Sec'y, Dep't of Veterans Affairs*, 822 F.3d 1179, 1195 (11th Cir. 2016); *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1245 (11th Cir. 1999). It is the fourth element – conduct sufficiently severe or pervasive to alter the conditions of employment – “that tests the mettle of most sexual harassment claims.” *Gupta v. Fla. Bd. of Regents*, 212 F.3d 571, 583 (11th Cir. 2000). “Requiring the plaintiff to prove that the harassment is severe or pervasive ensures that Title VII does not become a mere “general civility code.”” *Id.* (quoting *Faragher*, 524 U.S. at 788)

An employer is liable for violating Title VII based on sexual harassment when the harassing conduct unreasonably interferes with an employee's job performance by creating a hostile, intimidating, or offensive work environment.⁶ *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986). Whether harassing conduct is sufficiently severe or pervasive to alter the terms and conditions of a plaintiff's employment includes an objective and a subjective component. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21-22 (1993). The plaintiff must subjectively perceive the environment to be abusive, and the conduct must be severe or pervasive enough to create an objectively hostile or abusive work environment. *Id.* at 21. The Supreme Court has noted that “[w]hether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at all the circumstances,” such as (1) the frequency of the discriminatory conduct; (2) its severity; (3) whether the conduct was physically threatening or humiliating; and (4)

⁶ The employer is subject to vicarious and strict liability for a supervisor's sexual harassment that results in a tangible employment action. *Cotton v. Cracker Barrel Old Country Store*, 434 F.3d 1227, 1246 (11th Cir. 2006). “A tangible employment action constitutes a *significant* change in employment status, such as hiring, firing, failing to promote, reassignment with *significantly* different responsibilities, or a decision causing a *significant* change in benefits.” *Davis v. Town of Lake Park, Fl.*, 245 F.3d 1232, 1239 (11th Cir. 2001) (quoting *Burlington Indus. Inc., v. Ellerth*, 524 U.S. 742, 760-61 (1998) (emphasis in original)). However, Little makes no allegation that she suffered a tangible employment action as the result of Norris' conduct. Consequently, the court looks solely to her claim that the actions of Norris were severe and pervasive enough to alter the terms of her employment.

whether it unreasonably interfered with the employee's work performance. *Id.* at 23. *See also Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 270-71 (2001) (emphasizing that workplace conduct is not to be measured in isolation); *Mendoza*, 195 F.3d at 1246 (citations omitted); *Johnson v. Booker T. Washington Broad. Serv., Inc.*, 234 F.3d 501 (11th Cir. 2000); *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 647 (11th Cir. 1997) (citing *Harris*, 510 U.S. at 23).

Applying the requisite factors to the totality of these events, the court concludes that the plaintiff has failed to sufficiently allege that the conduct at issue was objectively sufficiently severe or pervasive to alter the terms and conditions of her employment and create a hostile or abusive working environment. In her amended complaint, Little details a single incident involving Norris. According to Little, in July 2016, Norris told her how to dress to get a man's attention. (Doc. # 29 at 4, ¶ 12). Although Little alleges in her amended complaint that Norris' comments began in 2006 and continued through 2016, her EEOC charge asserts that the harassment began in May 2016 and ended in July 2016. The court is constrained by the allegations contained in Little's EEOC charge, and will not consider conduct that occurred prior to May 2016. *See Mulhall*, 19 F.3d at 589.

Little asserts that Norris routinely made inappropriate comments to her. She does not allege when he made these comments, nor does she quantify what she means by routinely. Her vague conclusory statement

that his comments were routine is unsupported by facts.

Even if the court were to assume that Norris made all of the complained about comments between May and July 2016, the lack of severity of Norris' boorish immature comments militate against concluding that Little has alleged sufficiently severe or pervasive conduct to alter her work environment.⁷ According to Little, Norris made the following comments:

- She "had a cute ass" (doc. # 29 at 3, ¶ 10)
- She "looked good in jeans" (*id.*)
- "[A]sked her to wear dresses so he could stand at the bottom of the ladder and look up her dress and watch her climb the ladder" (*id.*)
- "how she looked whenever she was required to tuck in her shirt" (*id.* at ¶ 11)
- "how her butt looked in her jeans" (*id.*)
- "asked the Plaintiff if she was on her menstrual cycle when the Plaintiff had problems . . . requiring her to change clothes" (*id.*)
- "told the Plaintiff on July 13, 2016[,] she should wear heels to work not dress flat shoes as it would get men's attention and she would receive favorable responses . . . "

⁷ Even if the plaintiff were to show frequent conduct, "the frequency . . . does not compensate for the absence of the other factors." *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1248 (11th Cir. 1999).

Little has not alleged facts showing that “the workplace [wa]s permeated with discriminatory intimidation, ridicule, and insult.” *Butler v. Ala. Dep’t of Transp.*, 536 F.3d 1209, 1214 (11th Cir. 2008). The comments, while childish, were not derogatory slurs or imbued the workplace with overt hostility. Her bald allegations which are lacking in specificity are simply insufficient as a matter of law to establish that Norris’ comments were sufficiently severe and pervasive to constitute a hostile work environment.

Furthermore, she does not assert that any of Norris’ comments were physically threatening and she makes no allegation that he touched her. In her amended complaint, Little asserts that Norris’ conduct “affected her work and her home life.” (Doc. # 29 at 9, ¶ 18.) However, she does not detail how his comments affected her ability to do her job and a fair reading of her amended complaint indicates that she still works at CSRA. She asserts no facts in support of her allegation that Norris’ comments interfered with her ability to do her job or that she was hindered in her ability to do her job as a result of his conduct. The totality of the circumstances alleged by Little do not support a conclusion that Norris’ conduct rose to the level required to meet the fourth element of hostile environment sexual harassment claim.⁸

⁸ Even if the court were to consider Little’s allegation against Patrick, she still has not alleged sufficiently severe or pervasive conduct. The incident involving Patrick, while offensive, is an isolated incident that occurred during a telephone call. It did not involve any touching and there is no allegation that Patrick made

The fifth element requires allegations of a basis for holding CSRA liable.⁹ Little contends that CRSA is liable for such misconduct by Norris and Patrick because it had actual and constructive notice of the misconduct and failed to take any steps to prevent a recurrence of such unlawful behavior.” (*Id.* at 6, ¶ 25). However, she fails to allege *any facts* in support of her conclusory assertion. When the perpetrator of the harassment is a co-employee of the victim, the employer is liable only “if it knew or should have known of the harassing conduct but failed to take prompt remedial action.” *Miller v. Kenworth of Dothan Inc.*, 277 F.3d 1269,

repeated comments to Little. It is clear that this occurrence was an isolated event which was not so severe or threatening as to render the workplace objectively hostile or abusive. Consequently, this incident does not support Little’s hostile work environment claim.

⁹ “An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998). The employer is strictly liable for the hostile environment if the supervisor takes tangible employment action against the victim. *See id.* at 807. However, when an employee has established a claim for vicarious liability where no tangible employment action was taken, a defending employer may raise as an affirmative defense to liability or damages: “(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.” *Id.* There is no allegation in the amended complaint that Norris or Patrick were supervisors. Little alleges no facts that she took advantage of any preventive opportunities or that she reported the conduct to anyone other than Patrick on one occasion.

1278 (11th Cir. 2002). Little alleges absolutely no facts to support an allegation that CSRA was aware of any of Norris' conduct. Little does not allege that she complained to anyone other than Patrick, and she complained to Patrick on March 11, 2015, long before she filed her EEOC complaining only about Norris' actions that occurred in 2016. Therefore, her complaint to Patrick cannot serve as a basis to hold CSRA liable. Based on the foregoing, the court concludes that CSRA's motion to dismiss Little's Title VII sexual harassment claim is due to be granted.

B. Title VII Claims against Norris and Patrick

Defendants Norris and Patrick assert that the Title VII sexual harassment hostile work environment claims against them individually should be dismissed because Title VII claims cannot be maintained against individuals. The court agrees. *See Dearth v. Collins*, 441 F.3d 931, 933 (11th Cir. 2006). *See also, e.g., Shatz v. City of Plantation*, 344 F.3d 1161, 1174 n.20 (11th Cir. 2003) (noting that Title VII does not provide a remedy against individual defendants); *Smith v. Lomax*, 45 F.3d 402, 403 n.4 (11th Cir. 1995) (noting that individuals cannot be held liable under Title VII). “The relief granted under Title VII is against the *employer*, not individual employees whose actions would constitute a violation of the Act.” *Busby v. City of Orlando*, 931 F.2d 764, 772 (11th Cir. 1991). Little concedes that her Title VII claim cannot be maintained against Norris, and she does not respond to this aspect of Patrick’s motion

to dismiss. *See* Doc. # 39 at 6. Consequently, because the plaintiff cannot bring Title VII claims against the individual defendants, defendant Norris and Patrick's motions to dismiss count one of the amended complaint against them (docs. # 32 & 34) are due to be granted.

C. State Law Claims

The court's exercise of supplemental jurisdiction over the plaintiff's remaining state law claims is discretionary. Under 28 U.S.C. § 1337(c)(3), the court may "decline to exercise supplemental jurisdiction over a [state law] claim if the district court has dismissed all claims over which it has original jurisdiction . . ." The court declines to exercise supplemental jurisdiction over the plaintiff's state law claims, and these claims are due to be dismissed without prejudice.

IV. CONCLUSION

For the reasons as stated, it is

ORDERED as follows:

1. That the defendants' motions to dismiss (docs. # 9, 12 & 15) be and are hereby DENIED as moot.
2. That the motions to dismiss (docs. # 30, 32 & 34) be and are hereby GRANTED with respect to the plaintiff's Title VII claims, and the federal claims against the defendants be and are hereby DISMISSED with prejudice.

3. That the plaintiff's state law claims be and are hereby DISMISSED without prejudice.

[4.] That this case be and is hereby DISMISSED; and

[5.] Costs be and are hereby TAXED against the plaintiff.

A separate judgment will issue.

Done this 9th day of August, 2017.

/s/Charles S. Coody
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE

1D

APPENDIX D
NO. 17-13887

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SYBIL LITTLE
Plaintiff/Appellant

VERSUS

CSRA, INC., RICKY NORRIS,
and JASON PATRICK
Defendants/Appellees

On Appeal from the United States District Court
for the Middle District of Alabama,
Civil Action No. 1:17-cv-00126-CSC

APPELLEES' MOTION TO STRIKE
AND MEMORANDUM IN SUPPORT

(Filed Feb. 7, 2018)

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**COUNSEL FOR APPELLEES
CSRA, INC., RICKY NORRIS,
AND JASON PATRICK**

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Come now Appellees, CSRA, Inc., Ricky Norris, and Jason Patrick, and file this Certificate of Interested Persons and Corporate Disclosure Statement as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3.

The following is a complete list of the persons and entities that have an interest in the outcome of this case:

1. U.S. Magistrate Judge Coody, Charles S.
2. CSRA, Inc. (CSRA)
3. Fish, Allison
4. Harrison, David
5. The Kullman Firm, PLC
6. Little, Sybil
7. Norris, Ricky

8. Patrick, Jason

9. Wood, Daniel

CSRA, Inc. does not have any parent corporations or subsidiaries, and no corporate entities own more than 10% of CSRA, Inc.'s stock.

RELEVANT BACKGROUND

Appellant Sybil Little ("Little") initiated this appeal on August 29, 2017, seeking review of a district court order granting a motion to dismiss filed by Appellees CSRA, Inc., Rickey Norris, and Jason Patrick (collectively "Appellees"). On October 6, 2017, Little filed her appellate brief, but on October 23, 2017 her appeal was dismissed for failure to timely file an Appendix. The Court subsequently reinstated Little's appeal, and her Appendix was filed on December 21, 2017. Appellees filed their brief on January 22, 2018.

On February 5, 2018, Little filed a Reply brief along with a new Appendix. However, Little's Reply is replete with unsupported facts and arguments not raised before the district court or in Little's initial appellate brief. In fact, it is impossible for Appellees to even direct the Court to which specific portions of Little's Reply include new material, because virtually every sentence contains allegations or arguments not previously raised in this action. Similarly, Little's new Appendix is almost completely comprised of documents never submitted to the district court in this matter and documents which Appellees have never seen.

Specifically, of the 21 documents contained in Little's new Appendix, only 2 were submitted to the district court-Little's Complaint and CSRA's Memorandum in Support of its Motion to Dismiss.

ARGUMENT AND CITATIONS OF AUTHORITY

In deciding issues on appeal, this Court considers "only evidence that was part of the record before the district court." *Selman v. Cobb Cty. Sch. Dist.*, 449 F.3d 1320, 1332 (11th Cir. 2006). *See also United States v. Brinson*, 679 F. App'x 855, 859 n.6 (11th Cir. 2017); *Ledford v. Warden, Georgia Diagnostic & Classification Prison*, 818 F.3d 600, 637 (11th Cir. 2016), *cert. denied sub nom. Ledford v. Sellers*, 137 S. Ct. 1432, 197 L. Ed. 2d 650 (2017). Additionally, the Court will not consider new arguments raised for the first time in a reply brief. *See Willard v. Fairfield S. Co.*, 472 F.3d 817, 825 n.4 (11th Cir. 2006) ("Because Willard did not clearly argue a right of control theory in his initial appellate brief, we will not consider it, and we grant the motion to strike this portion of Willard's reply brief."). *See also Hinson v. Titan Ins. Co.*, 656 F. App'x 482, 489 n.4 (11th Cir. 2016); *Gary v. Georgia Dep't of Human Res.*, 206 F. App'x 849, 850 n.1 (11th Cir. 2006).

Little's Reply is full of arguments and allegations that were not raised in her initial brief and are not supported by citation to the record. Additionally, other than 2 of the 21 exhibits, Little's new Appendix consists entirely of documents that were not part of the record before the district court. Accordingly, the Court

may not consider Little's Reply or new Appendix, and these filings should be stricken from the record. *See Gupta v. Walt Disney World Co.*, 256 F. App'x 279, 282 (11th Cir. 2007) (granting motion to strike allegations in reply brief because they "were not supported by citation to the record" and the evidence attached to the brief "was not presented to the district court"); *Willard*, 472 F.3d at 825 n.4 (granting motion to strike new arguments in reply brief); *Gary*, 206 F. App'x at 850 n.1 (same).

CONCLUSION

For the foregoing reasons, Appellees' Motion to Strike should be granted, and the Court should strike Little's Reply brief and new Appendix filed on February 5, 2018.

Respectfully submitted,

/s/ F. Daniel Wood Jr.

F. DANIEL WOOD JR.

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[Certificate Of Compliance Omitted]

[Certificate Of Service Omitted]

APPENDIX E
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Case Nos.17-13887-DD

SYBIL LITTLE
Plaintiffs-Appellant

v.

CSRA, et al,
JASON PATRICK, et al,
RICKEY NORRIS, et al,
Defendants-Appellees.

**APPELLANT'S REPLY TO APPELLEE'S MOTION
TO STRIKE AND MEMORANDUM IN SUPPORT**

(Filed Feb. 14, 2018)

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CORPORATE DISCLOSURE STATEMENT

The *Little* Plaintiff-Appellant state, pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-2 (c), that Appealant's Certificate of Interested Persons appears correct and complete with the

exception that the following additional individuals and entities also have an interest in the outcome of this review:

CSRA, a corporation jointly owned by CSC and SRA International

Fish, Allison

Harrison, David

Honorable Coody, Charles S., U.S. Magistrate Judge

The Kullman Firm, PLC

Norris, Rickey, Defendant-Appellant

Patrick, Jason, Defendant-Appellant

Woods Jr, Frank Daniel, Attorney for Defendants-Appellants

/s/ Sybil Little
Pro Se, Sybil Little

RELEVANT BACKGROUND

On January 22, 2018 the Appellee's filed the Brief which brought into question the Appellant's previous Attorney of Record, which about a need to furnish subsequent documentation to the court to prove the Sybil Little ("Little") proofread and subsequently changed the Amendment. Little's Attorney of Record, David Harrison ("Harrison"), before his dismissal did not furnish the Lower Court with the changes Little made under FRAP 28(c), Little was required to furnish this documentation in the Reply Brief.

ARGUMENT AND
CITATIONS OF AUTHORITY

The Attorney Oath for the Alabama Bar Association under Section 34-3-15 states: "I will (Name of Applicant) demean myself as an attorney, according to the best of my learning and ability, and with all good fidelity, as well to the court as to the client; that I will use no falsehood or delay any person's cause for lucre or malice, and that I will support the constitution of the State of Alabama and of the United States, so long as I continue a citizen thereof, so help me God." *Gupta v. Walt Disney World Co.*, 256 F.App'x 279, 282(11th Cir. 2007) does not pertain to the evidence of this case as the evidence was given to Harrison when it was received by Little. This case was about evidence being waited on and continuance being given due to Gupta not having the evidence during the timeframe in District Court, Little gave the evidence to Harrison while the case was in District Court.

FRAP 27(g) states not to file a Frivolous Motion to the court, upon review of the Citation of Authority given by Wood the brief there is no legal grounds for use by Wood while some are useful for Little.

In *Selman v Cobb City School District* 449 F.3d 1320, 1332 (11th Cir. 2006) the court found the evidence of the case while extensive had a need to go back to the District Court for further consideration, "For reasons we will explain, we have decided the best thing to do is remand the case to the district court in order for it to conduct new evidentiary proceedings and enter

a new set of findings based on evidence in a record that we will be able to review.”

The Appellee’s Attorney, F. Daniel Wood (“Wood”) has not properly followed FRAP 27(3)(d)(1)(B) in the Brief and Motion to Strike and Memorandum in Support by not providing the full correct case number for the Appeal of Record. The Wood stated the case No. 17-13887 which is not correct the correct case number is No.17-13887-DD.

Little’s Reply Brief honoured FRAP32.1(a) by citing sources of previous court cases pertaining to the subject matter at hand. Little has further stated should the court request Oral Arguments Little will be available to the court. Little has the right under FRAP 30(a)(1) to file relevant documents to the court pertaining to the case.

CONCLUSION

For the foregoing reasons, the Appellees’ Motion to Strike should not be granted, and the Court should not strike Little’s Reply Brief and Reply Brief Appendix filed on February 5, 2018. The Appellees Brief should be stricken from the record along with the Motion to Strike. The Appellant humbly asks the court.

Respectfully submitted,

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[Certificate Of Compliance Omitted]

[Certificate Of Service Omitted]

APPENDIX F
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13887-CC

SYBIL LITTLE,
Plaintiff - Appellant,
versus
CRSA,
a corporation,
RICKY NORRIS,
individually and in his official capacity,
JASON PATRICK,
individually and in his official capacity,
Defendants - Appellees.

On Appeal from the United States District Court
for the Middle District of Alabama

(Filed Mar. 30, 2018)

ORDER:

Appellees' motion to strike Appellant's reply brief
and appendix, filed on February 5, 2018, is GRANTED.

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Appellant's "Reply to Appellee's Motion to Strike," which is construed as a motion to strike Appellees' motion to strike and answer brief, is DENIED.

/s/ Julie Cohen
UNITED STATES CIRCUIT JUDGE
