25-322-cv

United States Court of Appeals

for the

Second Circuit

KATIE ELLEN PURIS,

Plaintiff-Appellee,

– v. –

TIKTOK INC., BYTEDANCE LTD, BYTEDANCE INC.,

Defendants-Appellants,

DOUYIN LIMITED, LIDONG ZHANG, DOUYIN CO., LTD,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLEE KATIE ELLEN PURIS

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INTRODUCTION

Passed with bipartisan support, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("EFAA" or "the Act"), Pub. L. No. 117-90, 136 Stat. 26 (2022) (codified at 9 U.S.C. §§ 401-402), gives survivors of sexual assault and sexual harassment the right to pursue their cases in court instead of being forced into secretive binding arbitration. Under the Act, "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, . . . no predispute arbitration agreement . . . shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to [a] sexual assault dispute or [a] sexual harassment dispute." 9 U.S.C. § 402(a).

Consistent with the EFAA, Plaintiff-Appellee Katie Puris elected to bring her lawsuit in court to hold her former employer, TikTok,[1] accountable for the sexual harassment, retaliation, and other harsh and discriminatory treatment she endured as one of few female executives at the massive social media company. Ms. Puris led

[1] Ms. Puris alleges she was employed by three entities that should be understood as one company: ByteDance Ltd. ("BDL") and its subsidiaries, ByteDance Inc. ("BDI") and TikTok Inc. ("TTI"). In the district court, BDL identified itself as "the ultimate parent entity of TTI and BDI." SA 83. In this Court, BDL disclosed that it is the parent company of BDI and of TikTok Ltd., the parent company of TTI. Opening Br. at i. In this brief, they are referred to collectively as "TikTok" or "Defendants."

the team that successfully launched the marketing organization for TikTok in North America before managing more than 100 people and developing the company's marketing strategy. At the same time, she was consistently treated worse than her male colleagues: She was subjected to more scrutiny and micromanagement, was held to a breakneck work schedule and unhealthy working conditions, and was pushed out of her role for being an "emotional" leader, while being praised for being an "amazing wife and mother." On top of that treatment, TikTok failed to promptly respond and protect her when she reported being sexually harassed by a key business partner while representing TikTok at an industry event. Throughout, Ms. Puris tried to advocate for herself and her team, reporting her concerns about TikTok's problems with pervasive sexism, unhealthy work expectations, age bias, and failure to respond appropriately to her report of harassment. But, just days after her last complaint, she was fired.

The EFAA was designed precisely to bring sexual harassment and retaliation cases like Ms. Puris's into the light by allowing them to proceed in court. To avoid this outcome, Defendants ignore reality: They boldly assert this is not a sexual harassment case at all, offering a definition of sexual harassment that has been rejected by the U.S. Supreme Court, this Court, and courts in New York. Based on that erroneous premise, they argue this case does not relate to a "sexual harassment

dispute" under the Act. That is wrong. Ms. Puris's allegations that she was sexually harassed and then fired for reporting the harassment are more than enough to bring her case within the scope of the EFAA. The district court correctly found those allegations plausible, so this Court need not answer Defendants' call to decide whether a plaintiff's allegations must survive a motion to dismiss for the Act to apply. But if the Court does reach that question, under the Act's plain language, a plaintiff need only *allege* a sexual harassment dispute, which is consistent with the legislative history and statutory purpose and is the only way to avoid turning a simple threshold forum determination into litigation of the merits. Finally, the plain language and legislative history also confirm that, contrary to Defendants' fallback argument, the EFAA applies to Ms. Puris's *entire* case, not just to her discrete claims for sexual harassment or retaliation.

This Court should reject Defendants' efforts to narrow the EFAA to exclude the very type of conduct it was designed to bring to light and affirm the district court's denial of Defendants' motion to compel arbitration.

STATEMENT OF THE ISSUES

1. Did the district court correctly conclude that the EFAA applies because Ms. Puris plausibly alleged she was retaliated against for reporting and opposing sexual harassment?

2. Alternatively, should the district court's decision be affirmed because Ms. Puris plausibly alleged sexual harassment under applicable law?

3. If this Court finds that Ms. Puris did not state plausible claims for retaliation or sexual harassment, should it nonetheless affirm because the EFAA's application does not depend on whether the allegations of sexual harassment survive a motion to dismiss?

4. Did the district court correctly conclude that the EFAA invalidates the arbitration agreement between Ms. Puris and TikTok as to her entire case, not only the sexual harassment or retaliation claims?

STATEMENT OF THE CASE

I. As one of the few female executives at TikTok, Ms. Puris faced discrimination and impossible work demands

Katie Puris joined TikTok in 2019 as a Managing Director and Head of Business Marketing. JA.108 ¶ 145. Her assignment was big—launch the marketing organization for TikTok in North America—and she was successful from the start. JA.110-11 ¶¶ 161-63; JA.114 ¶ 183. She was quickly promoted to lead the Global Business Marketing team, managing more than 100 people, developing the marketing strategy that put TikTok on the map, and serving as a spokesperson. JA.111 ¶ 164; JA.112 ¶ 169; JA.113 ¶¶ 171, 177; JA.114 ¶ 179.

Ms. Puris's success was even more impressive given that she was enduring a work environment that was hostile to women generally, and older women specifically. Ms. Puris was one of few female executives at TikTok in the United States, JA.141-42, ¶¶ 309-11, and, at 48, older than TikTok's target audience and desired workforce. JA.117-118 ¶¶ 196-200. She frequently heard senior leadership and managers expressing a preference for hiring young people rather than, euphemistically, "senior level people with deep experience." JA.117 ¶ 198; JA.117-118 ¶¶ 196-97, 199; JA.119 ¶ 203; JA.87 ¶ 35. She also received gendered feedback on her management, including that she was overly "emotional," "demanding, defensive and a perfectionist to a fault," while she was praised for being an "amazing

wife [and] mother." JA.128 ¶ 250; JA.129 ¶ 252; *see also* JA.124 ¶ 220 (Ms. Puris was chastised for discussing compensation contrary to the "view that women should not advocate for themselves"). And, when Ms. Puris was invited to meet with Lidong Zhang, BDL's chairman, JA.129 ¶ 253, Mr. Lidong indicated he disapproved of her presentation because she celebrated her team's successes—something he found boastful when she did it, but not when her male colleagues did. JA.129 ¶ 254; *see also* JA.130 ¶ 256; JA.131 ¶ 263. After that, she was no longer permitted to meet with Mr. Lidong, even though he continued to meet with male executives. JA.130 ¶¶ 259, 261. And, although she'd previously received only positive reviews, JA.114 ¶¶ 183-84, in Spring 2021, with influence from Mr. Lidong, Ms. Puris received a lower "M" for meets expectations, notwithstanding the positive reviews she received from her colleagues. JA.132 ¶¶ 266, 268. According to her supervisor, Mr. Lidong wanted to give her an even lower rating. JA.132 ¶ 266.

In mid-2021, this environment of sex and age bias was compounded by a breakneck work schedule and unhealthy working conditions. TikTok emphasized an intense "996" culture of working from 9 am to 9 pm, six days per week, JA.134 ¶ 279, a schedule that favored younger, male employees who did not have the same family obligations as Ms. Puris, JA.134-35 ¶ 280; JA.135 ¶ 281. Ms. Puris also faced more scrutiny and micromanagement than her male colleagues. JA.131 ¶¶ 263-64.

Juggling the intense schedule and her responsibilities outside of work while facing more scrutiny, Ms. Puris's health suffered, and she underwent multiple surgeries and treatments in 2021. JA.135 ¶ 282. Given the extra expectations placed on her, Ms. Puris felt she couldn't take time off—a fear that was confirmed when she did take a short leave and then was assigned a task with a near-impossible turnaround because she'd taken what was mischaracterized as a "vacation." JA.135 ¶ 283.

In May 2021, Ms. Puris was informed that senior leadership in Beijing had lost confidence in her because her leadership style was "a little bit emotional." JA.136 ¶ 287; *see also* JA.137 ¶ 289 (supervisor saying he just couldn't "deal with emotional Katie"). This gendered criticism only added to the hostility that Ms. Puris felt from leadership. JA.136 ¶ 287. As a result of the sex-based stereotypes about her management, she was moved to a new position: Head of Global Brand and Creative Organization. *See* JA.139 ¶ 297. Though she was set up to fail by being handed a team that had been thrown together in a reorganization, *see* JA.139 ¶ 297, she excelled in the new role. For example, her team created acclaimed marketing campaigns—including one named "one of '13 Campaigns That Made Ad Pros Jealous in 2021.'" JA.139 ¶ 300. As a result, she received positive feedback in an October 2021 mid-year performance review, and her supervisor indicated that she was on track for a strong overall review. JA.139 ¶¶ 300-02.

II. Ms. Puris reported discrimination and TikTok retaliated against her

While achieving this success, Ms. Puris still had concerns about the effect that TikTok's working conditions were having on her and her team's health. JA.151 ¶ 343. In February or March 2022, she wrote to the Head of Global Human Resources ("H.R.") to emphasize the "severe stress and pressure" her team was under. JA.151 ¶ 344. She shared that even though her doctor had encouraged her to take a medical leave, she didn't feel she could. JA.151 ¶¶ 344-45. Soon after this complaint, she was informed she would be receiving an "I" or "improvement needed" rating for her 2021 performance review, despite what she'd been told just a few months earlier. JA.152 ¶ 348; JA.155 ¶ 361; JA.139 ¶ 302. She later learned that, during the review process, colleagues were encouraged to write her critical reviews. JA.156 ¶ 365. Ultimately, in April 2022, Ms. Puris received two "I"s and two "M"s. JA.155 ¶ 361. Ms. Puris again contacted H.R. to report her concern that this negative feedback was motivated by her complaints about TikTok's work environment. JA.156 ¶¶ 366-68.

In June 2022, in the midst of navigating this hostile environment and retaliatory performance evaluation, Ms. Puris attended an industry event in France, the Cannes Lions Festival, on behalf of TikTok. JA.162 ¶ 401. This was a big event for TikTok: It "sent over 100 employees to the event and invested millions of dollars

in building out private space, creating events and hosting clients and advertising agencies." JA.162 ¶ 401. As part of the event, Ms. Puris attended a dinner meeting between executives of TikTok and its global media vendor, Zenith Worldwide. JA.162 ¶ 402. A major TikTok vendor, Zenith was responsible for the planning and buying of hundreds of millions of dollars in TikTok advertising annually. JA.162 ¶ 402. At the dinner, Ms. Puris met Zenith's managing director, Christian Lee, who told her he led the team working on TikTok's account. JA.162 ¶ 403. Mr. Lee got too drunk, physically cornered Ms. Puris, touched her arm inappropriately, asked invasive and suggestive questions, and was "relentless" in suggesting they go out dancing together, JA.162-63 ¶¶ 403-04, culminating in another TikTok employee having to intervene, JA.163 ¶¶ 404-05.

Ms. Puris quickly reported this harassment to her supervisor, who was with her in Cannes. JA.163 ¶ 407. His response was "nonchalant," and he simply said it would be addressed by H.R. JA.163 ¶¶ 407-08. H.R., however, canceled the call it had initially scheduled with Ms. Puris to hear about the incident, telling her the "Ethics" team would contact her instead. JA.163 ¶ 410. She heard nothing else for the remaining days of the event. JA.164 ¶ 415. Instead, Ms. Puris's supervisor allowed Mr. Lee to present in TikTok's event space, forcing Ms. Puris to miss out

on an important business opportunity to avoid coming in contact with her harasser again. JA.164 ¶ 419; *see also* JA.164 ¶¶ 411-14.

After Ms. Puris returned from Cannes, she still hadn't heard anything nearly a week after the incident, so she contacted H.R. to report her concern that her report of sexual harassment had not been addressed. JA.164 ¶ 416. It was only the day after that complaint that Ms. Puris finally heard from someone on the Ethics team, who had only just been informed of the complaint that morning. JA.164 ¶¶ 417-18. During their meeting, Ms. Puris again expressed concern that her report was not promptly addressed, explaining that it should have been "resolved when [she] was on the ground" in France not by inviting Mr. Lee to TikTok's space but removing him from any TikTok events. JA.165 ¶ 419. It was five weeks before Ms. Puris was finally informed that Mr. Lee was being removed from the TikTok account. JA.165-66 ¶ 421.

After Ms. Puris reported this harassment, she continued to be targeted for worse treatment than her male colleagues and her colleagues who had not reported discrimination, compounding the hostility she had already been experiencing. For example, she was excluded from creative meetings involving her work, JA.157 ¶ 369, her team was disproportionately targeted for layoffs compared to teams led

by men, JA.158-59 ¶ 383, and she was criticized for being insufficiently "harsh" to employees TikTok was trying to lay off, JA.159 ¶ 389.

In late September 2022, Ms. Puris again contacted H.R. to express her concern about how the harassment by Mr. Lee was handled, especially in the overall context of how women were treated at TikTok. JA.166-67 ¶ 423. She also again raised her opposition to TikTok leaders prioritizing "young, fresh talent" and pushing its workers to the breaking point. JA.166-67 ¶ 423. Just a few days later, she was fired for vague "performance reasons." JA.167 ¶ 424.

III. Ms. Puris sued, and the district court allowed her claims to proceed in court

Ms. Puris filed this action in February 2024 and the operative complaint in August 2024. *See* JA.73. She brought claims of sex discrimination, a sex-based hostile work environment, and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; age discrimination under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*; sex discrimination, sex-based hostile work environment, disability, and age discrimination under both the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.* ("NYSHRL") and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.* ("NYCHRL"); interference with protected rights under the NYCHRL; and

interference with employment-related legal rights under the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq*. *See* JA.172-79.

Defendants moved to dismiss and to compel arbitration and stay the case. *See* Dist. Ct. Dkt. 79, 88. The district court denied in full Defendants' motion to compel arbitration, JA.14-17, and granted in part and denied in part Defendants' motion to dismiss, dismissing her Title VII disparate treatment, NYSHRL and NYCHRL disability discrimination, and NYCHRL interference claims, but allowing her other claims to move forward, JA.17-36.

With regard to the motion to compel, the court first concluded that the EFAA applies because, by plausibly alleging retaliation for reporting sexual harassment, Ms. Puris had alleged a "sexual harassment dispute" within the meaning of the Act under this Court's precedent. JA.15-16, 21. The court then rejected Defendants' argument that Ms. Puris's other claims should be severed and sent to arbitration because, under the plain text of the EFAA, an entire "case" which "relates to" a "sexual harassment dispute" is exempt from arbitration, not just discrete claims. JA.16-17. Finally, in denying Defendants' motion to dismiss, the court held that Ms. Puris had plausibly alleged, among other claims, sexual harassment and retaliation claims under federal, state, and local law. JA.19-24, 27-31.

SUMMARY OF ARGUMENT

Because the district court correctly determined that the EFAA applies to Ms. Puris's case, this Court should affirm the denial of TikTok's motion to compel arbitration.

First, this is a "sexual harassment dispute" within the meaning of the EFAA—two times over. All that requires is a "dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." Defendants are flat wrong that Ms. Puris "does not assert a sexual harassment claim." She does, bringing hostile work environment claims under federal, state, and city law. Under these laws, she plausibly alleges sexual harassment: an environment of sex-based comments and differential treatment that included being praised for being a "good wife and mother" but criticized for being too "emotional" and celebrating her professional accomplishments, being singled out for harsh treatment, micromanagement and scrutiny, and being cornered and harassed by Mr. Lee at the Cannes business dinner. Defendants dismiss all but Mr. Lee's harassment as insufficiently "sexual" or lewd in nature. But none of the applicable laws define sexual harassment that way. Their arguments about Mr. Lee's harassment fall short too. That incident was but a piece of the overall hostile work environment, and, contrary to their protestations, Defendants *can* be liable where, as here, TikTok

failed to appropriately respond to her immediate complaint of harassment, leaving her stranded while her harasser was permitted to present in TikTok's space—a failure that continued to negatively impact Ms. Puris when she returned to New York.

But even without her sexual harassment claims, the district court correctly held that her retaliation claims on their own constitute a "sexual harassment dispute." As this Court recently held, retaliation resulting from a report of sexual harassment is a "sexual harassment dispute" under the EFAA, and that's what Ms. Puris has plausibly alleged: that TikTok retaliated against her when she was fired *just days* after complaining to H.R. about TikTok's improper handling of Mr. Lee's harassment as well as the ongoing hostile work environment for women at the company. That's enough.

Second, this Court need not decide whether the EFAA incorporates the pleading standard for claims on the merits under Fed. R. Civ. P. 12(b)(6) because, as the district court found, Ms. Puris has met it for both her sexual harassment and retaliation claims. But even if she hadn't, the EFAA would apply because Congress intended the Act to apply based solely on the *allegations* in the complaint, and not on whether they plausibly state claims for relief. Any other rule would not only be contrary to the text and legislative history of the statute, but would make no sense

because it would thrust courts into a merits analysis in a case they may have no authority to hear.

Finally, because the EFAA applies based on Ms. Puris's sexual harassment and retaliation claims, the district court correctly denied Defendants' motion to compel arbitration as to her entire case. Under the Act's plain language, an arbitration agreement is unenforceable "with respect to a *case* which . . . relates to [a] . . . sexual harassment dispute." The vast majority of courts to have considered the question have agreed with the court below that an arbitration agreement is unenforceable as to the "entirety of the case," not merely discrete claims that allege or relate to sexual harassment. Defendants' appeals to legislative history and general principles under the FAA can't overcome this plain text and, in any event, counsel in favor of keeping cases whole when they involve allegations of sexual harassment.

ARGUMENT

I. Ms. Puris's sexual harassment claims are plainly a "sexual harassment dispute" under the EFAA

The EFAA defines "sexual harassment dispute" as "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." 9 U.S.C. § 401(4). Defendants assert without citation that this case does not meet that definition because "Puris does not assert a sexual harassment claim against Defendants." Opening Br. at 21; *see also id.* at 16. That's not true. Ms.

Puris's complaint includes claims for sexual harassment under Title VII and New York state and city law. *See* JA.172 ¶ 434; JA.174 ¶ 445; JA.176 ¶ 456 (alleging "a hostile work environment on account of Plaintiff's sex"). And the district court found those allegations to be plausible. JA.27-31. There is thus a "sexual harassment dispute" within the meaning of the EFAA.

A. The EFAA defines "sexual harassment" by reference to applicable laws, all of which recognize a broad range of sex-based harassment

Defendants seek to avoid the allegations of sexual harassment in Ms. Puris's complaint—and the district court's conclusion they are plausible—by arguing (at 22) that she actually alleges "sex discrimination," not "sexual harassment." In their view, the sex-based harassment here was not sufficiently "of a sexual nature" to be sexual harassment. *Id.* at 23. That narrow view is contrary to the EFAA's plain text and decades of New York and federal case law.

The EFAA defines a "sexual harassment dispute" with reference to "sexual harassment *under applicable Federal, Tribal, or State law*." 9 U.S.C. § 401(4) (emphasis added). Thus, as Defendants acknowledge, the EFAA does not adopt its own definition of sexual harassment but instead applies when there are "allegations that make up the elements of a sexual harassment claim under federal, tribal or state law." Opening Br. at 18. Here, then, because Ms. Puris invokes Title VII, the NYSHRL, and the NYCHRL, the Court must analyze the elements of a sexual

harassment claim under those statutes to determine whether this case involves a sexual harassment dispute. None of them adopt Defendants' limited definition of sexual harassment; instead, all of them adopt a definition that includes the harassment alleged by Ms. Puris here.

Begin with the NYCHRL as the "most lenient applicable liability standard." *Owens v. PriceWaterHouseCoopers LLC*, -- F.Supp.3d --, 2025 WL 1677001, at *7 n.2 (S.D.N.Y. June 12, 2025). The NYCHRL does not distinguish between "harassment" and "discrimination" claims. *See* N.Y.C. Admin. Code § 8-107(1)(a). "[T]here is only the provision of the law that proscribes imposing different terms, conditions and privileges of employment based, inter alia, on gender." *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 75 (N.Y. App. Div. 2009). In *Williams*, the First Department addressed the meaning of "sexual harassment" under the NYCHRL given that the law itself does not reference harassment. *Id.* It rejected the "severe or pervasive" test from federal law, finding that it "had sanctioned a significant spectrum of conduct demeaning to women" and "reduce[d] the incentive for employers to create workplaces that have zero tolerance for conduct demeaning to a worker because of protected class status." *Id.* at 76. The court also rejected "the distinction that current federal law makes between" hostile work environment claims and other types of discrimination cases. *Id.* at 79. Instead, "the primary issue for a

trier of fact in harassment cases, as in other terms and conditions cases, is whether the plaintiff has proven by a preponderance of the evidence that she has been treated less well than other employees because of her gender." *Id.* at 78.

Since *Williams*, other New York courts and this Court have routinely applied the "less well" standard to claims of "sexual harassment" under the NYCHRL. *See, e.g.*, *Forrester v. Corizon Health, Inc.*, 752 F. App'x 64, 66 (2d Cir. 2019) ("Whether her claim under the NYCHRL arises from an adverse employment action or harassment, [plaintiff] bore the burden of showing that she was treated less well at least in part because of her membership of a protected class." (emphasis omitted)); *Delo v. Paul Taylor Dance Found., Inc.*, 685 F.Supp.3d 173, 182 (S.D.N.Y. 2023) ("Under the NYCHRL, a plaintiff alleging a hostile work environment theory of sexual harassment only needs show that she has been treated less well than other employees because of her gender, or, put differently, faced unwanted gender-based conduct" (citation modified)); *Golston-Green v. City of New York*, 184 A.D. 24, 42 (N.Y. App. Div. 2020) (similar). Thus, the NYCHRL does not require conduct to "be sexual or lewd in nature" to constitute sexual harassment. *Owens*, 2025 WL 1677001, at *10. Instead, Ms. Puris, need only show that she was treated "less well" than her male coworkers.

Rather than address this well-established definition of "sexual harassment" under the NYCHRL, Defendants largely cite to cases interpreting *other* statutes to argue that sexual harassment is limited to lewd conduct only. Opening Br. at 21-22. They do cite one case interpreting the NYCHRL, but *Singh v. Meetup LLC*, 750 F.Supp.3d 250 (S.D.N.Y. 2024), is both an outlier and contrary to New York courts' own interpretation of local law. *Singh* noted that courts interpreting the NYCHRL had applied the same standard to all "gender discrimination" claims, including "sexual harassment." *Id.* at 255-56. Rather than apply that standard, however, *Singh* concluded it needed to come up with something *new* to differentiate "sexual harassment" from "gender discrimination." *Id.* at 256. To do so, the court looked to educational materials from the New York City Human Rights Commission, which define "sexual harassment" as "unwelcome verbal or physical behavior based on a person's gender." *Id.* at 256-57. Though that definition doesn't require sexualized behavior, either, *Singh* concluded that the plaintiff's allegations of verbal comments and differential treatment compared to male colleagues did not meet that standard because they were not "the kind of inappropriate comments that would rise to what the courts have determined constitutes 'sexual harassment' under the NYCHRL." *Id.* at 259.

Singh's vague-at-best standard contradicts *Williams*, which specifically held that "sexual harassment" under the NYCHRL occurs when a worker is treated "less well" because of their gender. 61 A.D.3d at 75, 78. *Singh* conjured up its new test in part to avoid "collapse[ing] the difference between 'gender discrimination' and 'sexual harassment,' a step too far for this Court absent contrary guidance from the state courts." 750 F.Supp.3d at 259. But there *is* "contrary guidance from the state courts": In no uncertain terms, New York courts have consistently applied the "less well" standard to both types of claims. *Williams*, 61 A.D.3d at 79. *Singh*'s failure to defer to New York courts' interpretation of local law is thus fatal to its test, and it is not surprising that other courts interpreting New York law have declined to adopt *Singh*'s rule. *See, e.g.*, *Owens*, 2025 WL 1677001, at *10 ("To the extent that *Singh* requires that a plaintiff allege romantic, sexual, or lewd conduct to allege conduct constituting sexual harassment, the Court departs from *Singh*."); *Ding v. Structure Therapeutics, Inc.*, 765 F. Supp. 3d 897, 902 (S.D.N.Y. 2025) (rejecting *Singh*'s standard and concluding that "the Court will not stray from the definition of sexual harassment under the NYCHRL as stated by New York and federal courts, as well as the New York Human Rights Commission").

Moreover, any test that would require sexual harassment under the NYCHRL to be lewd or sexualized only for the purposes of the EFAA is unworkable. As

described below, the determination as to whether a case proceeds in arbitration or in court is meant to be a threshold one. *See* Section III(b), *infra*. Yet, whether particular harassment was motivated by sexual desire or something else is not a question that can be resolved on the pleadings. As this Circuit has repeatedly cautioned, courts should not "supplant[] the role of the jury" by making "factual determinations regarding Defendants' motivations." *Rasmy v. Marriott Int'l, Inc.*, 952 F.3d 379, 388 (2d. Cir. 2020). Thus, the test from *Williams*, not *Singh*, should apply when assessing whether Ms. Puris has alleged sexual harassment and, under that test, Ms. Puris need only have alleged that she was treated less well because of her gender.

Defendants' limited definition of "sexual harassment" doesn't hold up under Title VII, either. The Supreme Court and this Court have made clear that sexual harassment claims under Title VII are not limited to conduct that is sexual in nature. *See Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79-80 (1998) (holding that Title VII prohibits "sexual harassment of any kind that meets the statutory requirements," even if it is "motivated by general hostility to the presence of women in the workplace" rather than "sexual desire"); *Kaytor v. Elec. Boat Corp.*, 609 F.3d 537, 547-48 (2d Cir. 2010) (explaining that "[t]he harassing conduct need not be motivated by sexual desire . . . so long as it was motivated by gender" and finding that district court erred by disregarding comments that were not "sexual in nature")

(citation modified)); *Raniola v. Bratton*, 243 F.3d 610, 617 (2d Cir. 2001) ("Although sexual harassment is usually thought of in terms of sexual demands, it can include employer action based on sex but having nothing to do with sexuality." (citation modified)). Indeed, sexual harassment under Title VII can include "facially sex-neutral incidents" if there is circumstantial evidence that they are motivated by sex. *See Kaytor*, 609 F.3d at 547-48.

Defendants' citation (at 21-22) to *Bostock v. Clayton County*'s distinction between "sexual harassment" and "sex discrimination" is not to the contrary. There, the Supreme Court used those terms not to distinguish between harassing conduct of a "sexual nature" and other harassment, *contra* Opening Br. at 23, but to emphasize that both harassment and standalone discriminatory adverse actions are actionable under Title VII. *See* 590 U.S. 644, 669 (2020) (citing *Oncale*, 523 U.S. at 79-80).

Nor does the NYSHRL adopt Defendants' standard. The NYSHRL was amended in 2019 to adopt a more lenient standard for sexual harassment claims that removes the Title VII "severe or pervasive" standard and requires only that the plaintiff show "harassment" based on sex that resulted in "inferior terms, conditions or privileges of employment." N.Y. Exec. L. § 296(1)(h). New York courts have not yet definitively concluded whether that language is equivalent to the "less well" standard of the NYCHRL. *See Mitura v. Finco Servs., Inc.*, 712 F.Supp.3d 442, 452-

53 & n.4 (S.D.N.Y. 2024). But, either way, it contains no requirement that harassment be lewd or sexual in nature. *See Ding*, 765 F.Supp.3d at 902.

In short, all the applicable laws define "sexual harassment" to include all types of sex-based harassment, not only lewd harassment. Indeed, even TikTok's own harassment policy defines it that way. *See* JA.166 ¶ 422 (defining harassment to include "[a]buse constantly targeting at only one sex, even if the content of the abuse is not sexual"). Defendants are therefore simply wrong that this case doesn't include allegations of sexual harassment under applicable law.

B. The district court correctly held that Ms. Puris plausibly alleged a sexual harassment claim under federal, state, and city law

Retreating from their argument that Ms. Puris does not assert sexual harassment claims, Defendants next argue that the EFAA does not apply because Ms. Puris has not alleged *plausible* claims of sexual harassment. To begin with, as described below, the EFAA does not require that allegations of harassment meet the plausibility standard. *See* section III, *infra*. But, even if it does, the district court did not err in holding that Ms. Puris meets that low bar. *See Patane v. Clark*, 508 F.3d 106, 113 (2d Cir. 2007) (cautioning "against setting the bar too high" in the context of a motion to dismiss hostile work environment claims under Title VII).

Ms. Puris alleged that, as one of the few female executives at TikTok, JA.141-42 ¶ 309, she endured frequent comments based on stereotypes about her sex, such

as being chastised by senior leadership and her manager for being overly "emotional," JA.136 ¶ 287; JA.137 ¶ 289, while being praised for being an "amazing wife [and] mother," JA.129 ¶ 252. She was subject to immense pressure to work long hours, which impacted her health and ability to tend to family commitments; when she raised concerns, she was judged more harshly compared to her male peers and again called "emotional." JA.134-36 ¶¶ 280-87. She also alleged that, unlike similarly situated male employees, she was criticized for lacking humility, JA.130 ¶ 260, and subject to more scrutiny and micromanagement, JA.131 ¶¶ 263-64. Eventually, she was pushed out of her role based on stereotypes about her "emotional" leadership style. JA.135 ¶ 287. Then, Ms. Puris was harassed by the managing director of a major TikTok partner at a dinner meeting in France. JA.162-63 ¶¶ 401-05. Because TikTok failed to take prompt action to address the harassment, Ms. Puris was forced to miss an important meeting at which the director was presenting. JA.164 ¶ 419. After she reported the harassment, she continued to experience differential treatment based on her sex, such as being excluded from meetings and having her team disproportionately targeted for layoffs. JA.157 ¶ 369; JA.158-59 ¶ 383.

This conduct is sufficient to establish that Ms. Puris was treated "less well" than her male colleagues such that she has plausibly alleged sexual harassment under

the NYCHRL. *See Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.,* 715 F.3d 102, 111 (2d Cir. 2013) (explaining that even "a single comment" may be actionable under the NYCHRL if "made in circumstances where that comment would, for example, signal views about the role of women in the workplace" (quoting *Williams*, 61 A.D.3d at 80 n.30)). Courts have found similar actions to meet the "less well" standard, even at summary judgment. *See Bacchus v. N.Y. City Dep't of Educ.*, 137 F.Supp.3d 214, 246 (E.D.N.Y. 2015) (plaintiff was given "a disproportionate workload" and disciplined for conduct that other workers were not disciplined for); *Encarcnacion v. Isabella Geriatric Ctr., Inc.*, 2014 WL 7008946, at *11 (S.D.N.Y. Dec. 12, 2014) (conduct including "frequent and unjustified verbal reprimands," singling out plaintiff "by checking over every detail of her work," and "refusing to meet with" plaintiff constituted harassment); *see also Syeed v. Bloomberg L.P.*, 568 F.Supp.3d 314, 342 (S.D.N.Y. 2021) (finding plaintiff had plausibly alleged harassment under NYCHRL where she alleged she was paid less for similar work, "denied resources" that were provided to male colleagues, and not consulted regarding work assignments), *vacated and remanded on other grounds by* 2024 WL 2813563, at *1 (2d Cir. June 3, 2024).

Ms. Puris's allegations are also sufficient to meet the higher Title VII standard, as courts have found that a campaign of sex-based comments and actions

over a period of years can constitute a hostile work environment. *See, e.g.*, *Rasmy*, 952 F.3d at 389 (finding that "numerous incidents of discriminatory harassment over the course of at least three years" combined with management's failure to "respond appropriately" was sufficient to establish hostile work environment at summary judgment); *Pucino v. Verizon Wireless Commc'ns, Inc.*, 618 F.3d 112, 119-20 (2d Cir. 2010) (evidence that supervisors "treated similarly-situated male and female workers differently" when engaging in sex-neutral actions like denying overtime was sufficient to establish hostile work environment at summary judgment); *see also Lindahl v. Air France*, 930 F.2d 1434, 1439 (9th Cir. 1991) (finding comments that reflected "stereotypical images of men and women, specifically that women do not make good leaders because they are too 'emotional,'" to be evidence of discrimination under Title VII).

Likewise, courts have found actions similar to Mr. Lee's at the TikTok business dinner to be actionable as part of a hostile work environment under Title VII. *See, e.g.*, *E.E.O.C. v. Suffolk Laundry Servs., Inc.*, 48 F.Supp.3d 497, 516 (E.D.N.Y. 2014) ("unwelcome touches" to plaintiff's neck and shoulder supported finding of hostile work environment at summary judgment); *Stathatos v. Gala Resources, LLC*, 2010 WL 2024967, at *6 (S.D.N.Y. May 21, 2012) (touching plaintiff's "shoulders and arms" is evidence of hostile work environment); *see also*

Pugni v. Reader's Digest Ass'n, 2007 WL 1087183, at *15-16 (S.D.N.Y. Apr. 9, 2007) (concluding jury could find actions like "uncomfortably close physical proximity," touching plaintiff's hair, "discussing his personal problems," and becoming upset when plaintiff would not drive with him to constitute harassment). Given those cases finding harassment at the summary judgment stage, Ms. Puris's allegations are certainly sufficient to meet the plausibility standard applicable at the motion to dismiss stage, when it is generally "inappropriate to determine" "whether conduct is severe or pervasive enough." *Cano v. SEIU Loc. 32BJ*, 2021 WL 4927166, at *6 (S.D.N.Y. June 15, 2021), *R&R adopted*, 2021 WL 4480274 (S.D.N.Y. Sept. 30, 2021).

Defendants ignore most of Ms. Puris's allegations of sexual harassment as insufficiently sexualized, thus forfeiting any argument that the district court erred when it held those allegations meet the "less well" or "severe or pervasive" standards. Instead, they focus solely on Ms. Puris's allegations regarding the incident in France and TikTok's response. *See* Opening Br. at 25. But, as the district court found, Ms. Puris's claims do not rise and fall on that one incident. *See* JA.28-29; *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993) (whether plaintiff has shown harassment "can be determined only by looking at all the circumstances"); *Rasmy*, 952 F.3d at 388 (explaining that "entire course of conduct," including conduct that

is not "explicitly discriminatory" "is relevant to a hostile work environment claim"). In any event, Defendants' arguments directed to the Cannes incident fail.

First, they argue (at 32-33) that Ms. Puris has not sufficiently alleged that TikTok can be liable for the managing director's harassment because it did not "control" him or "facilitate" his harassment. That is not the standard. An employer can be liable for harassment by a third party when it "knew, or in the exercise of reasonable care should have known, about the harassment yet failed to take appropriate remedial action." *Duch v. Jakubek*, 588 F.3d 757, 762 (2d Cir. 2009); *see also Mucciarone v. Initiative, Inc.*, 2020 WL 1821116, at *9-10 (S.D.N.Y. Apr. 10, 2020) (applying same standard to NYCHRL and NYSHRL claims). That means that, "[o]nce an employer learns of potential sexual harassment, Title VII imposes a duty on the employer to conduct a prompt and thorough investigation of these charges." *Hill v. Children's Vill.*, 196 F.Supp.2d 389, 399 (S.D.N.Y. 2002).

Here, Ms. Puris alleges that her supervisor failed to take any action in response to her immediate complaint of harassment, leading Ms. Puris to miss a TikTok event *at which the harasser was still permitted to present*. JA.164 ¶ 419. It was only after Ms. Puris complained again a week later about the lack of a response that someone finally met with her, and that person had only just learned about her complaint that morning. JA.164 ¶¶ 417-18. And it was only weeks after *that* that any action was

taken. JA.165-66 ¶ 421. That is not "prompt" remedial action. *Cf. Perry v. Ethan Allen, Inc.*, 115 F.3d 143, 153-54 (2d Cir. 1998) (finding that employer took "immediate responsive action by, *on that very day* investigating the complaint, confronting the employees she accused, and warning them that the company would not tolerate harassment" (emphasis added)); *Mucciarone*, 2020 WL 1821116, at *9 (finding employer response to be "appropriate and timely" when employer initiated an investigation of harassment *the same day* it was reported and the next day concluded that third-party harasser would no longer be allowed to work with any employee (emphasis added)). Ms. Puris has thus plausibly alleged that TikTok is liable for the vendor's harassment.

Second, Defendants nonsensically argue (at 33) that they cannot be liable for harassment that took place "on foreign soil," even though they admit that, on its face, "Title VII generally protects U.S. citizens employed abroad." *See* 42 U.S.C. § 2000e(f). Defendants rely on Title VII's statement that it does not apply to "foreign operations" of "an employer that is a foreign person not controlled by an American employer." *Id.* § 2000e-1(c)(2). But that exception clearly doesn't apply here, as both BDI and TTI are incorporated in the United States and are thus not "foreign person[s]." *See* JA.105 ¶ 128; JA.103 ¶ 114. Moreover, Ms. Puris worked for all Defendants in New York, not for their "foreign operations." Thus, Title VII's

obligations plainly apply to TikTok, even when it sends its employees on business trips abroad.

Defendants also admit that the NYSHRL and the NYCHRL apply "to conduct outside New York State and New York City." Opening Br. at 33 (citing *King v. Aramark Servs. Inc.*, 96 F.4th 546, 556-58 (2d Cir. 2024)). But they argue that the conduct had an insufficient "impact" in New York for the statutes to apply. *Id.* at 33-34. Not so. The "impact" requirement applies only to "a nonresident plaintiff" who invokes the NYCHRL. *Hoffman v. Parade Publications*, 933 N.E.2d 744, 290 (N.Y. 2010). And Ms. Puris is a New York City resident. JA.96 ¶ 67. Even if it does apply, it's met here because the harassment in France was just one incident in an overall environment of harassment that largely occurred in New York. Thus, unlike the plaintiff in *King*, "most of the acts that comprise [Ms. Puris's] sex-based hostile work environment claim were directed at her and her work in" New York. 96 F.4th at 558. Moreover, the source of *TikTok's* liability for the harassment—its response (or lack thereof)—occurred both when Ms. Puris was in France *and* when she was back in New York, and it continued to affect Ms. Puris's work environment in New York, culminating in her termination. JA.164 ¶¶ 416-18; JA.166-67 ¶¶ 423-24; *see Int'l Healthcare Exch., Inc. v. Glob. Healthcare Exch., LLC*, 470 F.Supp.2d 345, 362 (S.D.N.Y. 2007) (finding that adverse action that occurred in France was

actionable under NYSHRL and NYCHRL because it "affected [the plaintiff]" at her home office in New York City).

Defendants' cases (at 34) found no impact because the plaintiffs, unlike Ms. Puris, had little connection to New York. *See Hardwick v. Auriemma*, 116 A.D.3d 465, 466-67 (N.Y. App. Div. 2014) (neither plaintiff nor Defendants lived in New York City and all alleged incidents occurred while plaintiff was abroad); *Benham v. eCommission Sols., LLC*, 118 A.D.3d 605, 606 (N.Y. App. Div. 2014) (plaintiff was nonresident and conduct occurred while plaintiff was outside of New York). Thus, the conduct here—a hostile work environment that occurred primarily in New York City alleged by a New York City resident who worked in New York City—plainly falls within the scope of the NYCHRL and NYSHRL.

Finally, Defendants claim (at 34) that the conduct by Mr. Lee in France was, standing alone, insufficient to plausibly state a claim for harassment. But, again, this conduct was one part of the sex-based harassment Ms. Puris endured while at TikTok, and she does not have to show it was sufficient standing alone to establish her claim. Taking into account "all the circumstances" of Ms. Puris's overall work environment, including not only TikTok's failure to respond promptly to the harassment in France but also the pattern of sex-based comments and differential treatment, she has plausibly alleged sexual harassment. *Harris*, 510 U.S. at 23.

II. The district court correctly held that Ms. Puris's retaliation claim is a "sexual harassment dispute"

Even if Ms. Puris's sexual harassment claims do not meet the definition of a "sexual harassment dispute" under the EFAA (and they plainly do), the district court correctly held that her retaliation claim is on its own a "sexual harassment dispute."

A. This Court has held that a retaliation claim based on reporting sexual harassment can be a "sexual harassment dispute" under the EFAA

Ms. Puris's retaliation claim alleges that she was fired at least in part for her complaints about sexually harassing conduct that, as described above, she alleges violated applicable law. JA.164 ¶ 416, JA.166 ¶¶ 423-24. As this Court recently held, "retaliation resulting from a report of sexual harassment is 'relat[ed] to conduct that is alleged to constitute sexual harassment,'" and therefore is itself a "sexual harassment dispute" under the EFAA. *Olivieri v. Stifel, Nicolaus & Co.*, 112 F.4th 74, 92 (2d Cir. 2024) (quoting 9 U.S.C. § 401(4)). That is all that is necessary to decide this case.

Defendants try to distinguish *Olivieri* in two ways, both of which fail. First, while conceding that "*Olivieri* holds that the EFAA encompasses retaliation claims in suits that also include sexual harassment claims," Opening Br. at 25 (emphasis omitted), they say that doesn't apply here by renewing their argument that Ms. Puris has not asserted sexual harassment claims. *Id.* at 23-24. As described above, that is

simply false. So, under even Defendants' metric, Ms. Puris's retaliation claim constitutes a "sexual harassment dispute" because this case *does* include a plausible sexual harassment claim. *See* section I(b), *supra*.

The EFAA would apply here even in the absence of a plausible sexual harassment claim. As described below, the EFAA does not impose a plausibility standard. *See* section III, *infra*. But, in any event, it is well-established that, to prove retaliation, "a plaintiff need not prove the merit of his underlying discrimination complaint, but only that he was acting under a good faith, reasonable belief that a violation existed." *Sumner v. U.S. Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990). Consistent with that rule, in *Olivieri*, neither the district court nor this Court analyzed whether the plaintiff had plausibly alleged the employer was liable for the underlying harassment by the plaintiff's supervisor before holding that the retaliation claim against the employer was a "sexual harassment dispute" to which the EFAA applied. *Olivieri*, 112 F.4th at 77, 79-81, 92. To the contrary, because the allegations of sexual harassment occurred well before the EFAA's enactment, this Court focused only on whether the plaintiff had alleged a *retaliatory* hostile work environment that continued after the Act's effective date. *See id.* at 91. So, "[i]t would be inconsistent with" both *Olivieri* and the well-established elements of a retaliation claim "to require a plaintiff alleging retaliation to plead a claim of sexual harassment sufficient

to state a claim for relief." *Diaz-Roa v. Hermes L., P.C.*, 757 F.Supp.3d 498, 537 (S.D.N.Y. 2024).

Applying *Olivieri*'s reasoning, district courts in this Circuit have held that retaliation claims are covered by the EFAA without requiring a corresponding plausible sexual harassment claim (or any sexual harassment claim at all). *See, e.g.*, *id.* at 536 ("a plaintiff need not state a claim for sexual harassment to be considered to have made allegations relating to conduct that is alleged to constitute sexual harassment.") (citation modified); *Newton v. LVMH Moet Hennessy Louis Vuitton Inc.*, 746 F.Supp.3d 135, 151 (S.D.N.Y. 2024) (holding that a standalone complaint for retaliation, unaccompanied by a sexual harassment claim, fell within the EFAA because it was based on "reporting and speaking out" about earlier sexual harassment), *vacated in part on other grounds by Newton v. LVMH Moet Hennessy Louis Vuitton Inc*, 2025 WL 1826583 (S.D.N.Y July 2, 2025); *Clay v. FGO Logistics., Inc.*, 751 F.Supp.3d 3, 17-18 (D. Conn. 2024) (concluding that retaliation claim was covered by EFAA even though sexual harassment claims were outside Act's temporal scope). On the other hand, Defendants do not cite to any case that has adopted their interpretation of *Olivieri* as being limited to cases that contain plausible sexual harassment claims. *See* Opening Br. at 25.

Second, Defendants attempt to minimize the holding in *Olivieri* as "not an authoritative decision on the meaning of the statute" because "the parties did not dispute the question here." *Id.* at 24-25. That's not true either: the Court found the defendants had waived the argument that retaliation was not a sexual harassment dispute because they raised it only in their reply brief, not because they did not raise it at all. *Olivieri*, 112 F.4th at 92. With the benefit of that briefing, the Court found the waived argument to be "meritless." *Id.* Moreover, though this Court's opinion focused on the temporal scope of the EFAA, it had to decide that the retaliation claims were a "sexual harassment dispute" covered by the EFAA, or else there would have been no occasion to address the temporal scope question. Thus, *Olivieri*'s holding that the EFAA applies to standalone retaliation claims controls here.

In sum, the district court, like other district courts in this Circuit, properly applied *Olivieri*'s holding to conclude that Ms. Puris's retaliation claim brings her case within the scope of the EFAA because it is based on her reports of sexual harassment, regardless of the plausibility of the underlying sexual harassment claim.

B. The district court correctly held that Ms. Puris plausibly alleged a retaliation claim

Even though the EFAA does not impose a plausibility standard, *see* section III, *infra*, Ms. Puris's retaliation claim meets it. Ms. Puris alleged that after she was sexually harassed at the industry event in France, she reported it to her supervisor,

who responded with apathy, JA.163 ¶ 407, and, even worse, still allowed Mr. Lee to present in TikTok's event space, forcing Ms. Puris to miss out on the important event to avoid her harasser, JA.164 ¶¶ 413-14. And although she also reported the harassment to H.R., H.R. cancelled a scheduled meeting it had set for the next day. JA.163 ¶ 410. No one else followed up with her even as she was still at the industry event and concerned about running into Mr. Lee. JA.164 ¶¶ 411-14.

When Ms. Puris returned to New York, she still hadn't heard from anyone about her complaint, nor had she been informed of any steps being taken to address Mr. Lee's conduct. JA.164 ¶ 415. So she contacted H.R. again, writing that she was "disappointed" her concerns had not been taken "seriously" and that she wanted to know that "TikTok takes real action when one of their employees experiences sexual harassment." JA.164 ¶ 416. It was only after she made this complaint about how her report of harassment was handled that she finally heard from an attorney on TikTok's Ethics team, who had learned of Ms. Puris's report only that day. JA.164-65 ¶¶ 417-18. During their call, Ms. Puris shared that she felt "our company did nothing to protect me, even though I had voiced concerns." JA.165 ¶ 419. She explained how she wasn't able to attend Mr. Lee's presentation, which was especially wrong because "he was in our space and I couldn't even be there." JA.165 ¶ 419; *see also*

JA.165 ¶ 419. (describing remaining "worried" for the remainder of the industry event that she'd "bump into this person again").

Ms. Puris did not hear anything until more than a week later, when she was told that TikTok had asked Zenith not to have Mr. Lee participate in future TikTok meetings or business, but there was no follow up about how the harassment was handled in France. JA.165-66 ¶ 421. On September 23, 2022, Ms. Puris again contacted H.R. "about the treatment of women at TikTok, age discrimination, the sexual harassment at Cannes Lion and the overall work environment." JA.166 ¶ 423. Just days later, Ms. Puris was fired. JA.167 ¶ 424.

Defendants do not dispute that the district court correctly held that Ms. Puris's June and September 2022 reports were protected activity under Title VII, the NYSHRL, and the NYCHRL. *See* Opening Br. at 39. They dispute only the causation between those reports and her termination. *Id.* But her termination occurred only a few days after her September report, and "an adverse action that occurs within two months or less of a protected activity . . . is sufficient to survive a motion to dismiss on the issue of causation." *Day v. City of New York*, 2015 WL 10530081, at *13 (S.D.N.Y. Nov. 30, 2015), *R&R adopted,* 2016 WL 1171584 (S.D.N.Y. Mar. 22, 2016) (citing *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 90 (2d Cir. 2015)); *see also, e.g.*, *Gorzynski v. JetBlue Airways Corp.*, 596

F.3d 93, 110 (2d Cir. 2010) ("A plaintiff can indirectly establish a causal connection to support a discrimination or retaliation claim by showing that the protected activity was closely followed in time by the adverse employment action." (citation modified)).

While Defendants claim (at 40) that "[t]hree months is too distant" to establish causation, that's not the relevant time period. Ms. Puris last reported discrimination, including TikTok's inadequate response to her report of sexual harassment, in September 2022—*days* before she was fired. JA.166-67 ¶¶ 423-24. The district court correctly found that alone is sufficient to state a claim for retaliation. *See* JA.21-22 (citing *Banks v. Gen. Motors, LLC*, 81 F.4th 242, 277 (2d Cir. 2023)). In any event, Defendants are wrong that three months between protected activity and an adverse action cannot show causation: Even "five months is not too long to find the causal relationship." *Gorzynski*, 596 F.3d at 110.

Next, Defendants are wrong that the temporal proximity between Ms. Puris's complaint and her firing is undercut by "favorable treatment" after the protected activity. Opening Br. at 40-41. The only such treatment Defendants identify is that they eventually took some action in response to her report of Mr. Lee's harassment, *id.* at 39, 40-41—*i.e.*, their minimum legal duty, not "favorable treatment." Their argument that responding (slowly) to a complaint of harassment means there can be

no retaliatory animus is not only unsupported by the law but especially inapplicable here where the September 2022 complaint that precipitated Ms. Puris's termination was based not just on the harassment in France, but also TikTok's inadequate response and the hostile work environment at TikTok generally. JA.166-67 ¶ 423.

The cases Defendants cite (at 40-41) are therefore readily distinguishable. For example, in *Ronen v. RedRoute Inc.*, 763 F.Supp.3d 319, 334-35 (E.D.N.Y. 2025), the plaintiff was given a $20,000 raise and promised a promotion to the role of Chief Operating Officer after the protected activity but before the adverse action. Because "temporal proximity is undercut when protected activity was followed by a promotion or pay raise," there was no causation. *Id.* at 334.[2] Here, Ms. Puris was fired immediately after making her September complaint, and even between the June complaint and her termination she did not receive "a promotion or pay raise." *Ronen*, 763 F.Supp.3d at 334. To the contrary, she endured more harassment: her team was

[2] The other case cited by Defendants, *Gallimore-Wright v. Long Island R. Co.*, 354 F.Supp.2d 478, 490 (S.D.N.Y. 2005), is also inapposite. There, the plaintiff argued there was close temporal proximity between the settlement of a court case against the employer and disciplinary action against him. *Id.* at 489. The court rejected that argument because the agency and court complaints in the case had been filed years earlier, and the plaintiff had not been retaliated against in all the time the case was pending. *Id.* at 490.

singled out for layoffs, and she was excluded from important meetings. *See* JA.157 ¶ 369; JA.158-59 ¶¶ 383, 389.

In short, the allegation that Ms. Puris was fired directly after reporting discrimination and harassment is sufficient to find that she plausibly alleged retaliation. And because retaliation for reporting conduct alleged to constitute sexual harassment is a "sexual harassment dispute," the EFAA applies, regardless of whether Ms. Puris has plausibly alleged a separate sexual harassment claim.

III. Even if Ms. Puris's retaliation and sexual harassment claims do not meet a plausibility standard, the EFAA still applies

Because the district court found that Ms. Puris plausibly alleged her retaliation claims, it did not decide whether the EFAA imposes such a standard. JA.15-16 & 16 n.3. This Court need not either because, as described above, Ms. Puris has plausibly alleged both sexual harassment and retaliation claims. *See* sections I & II, *supra*. But if the Court concludes that Ms. Puris has not plausibly alleged either one, the EFAA still applies because, on the face of the complaint, her case involves "conduct alleged to constitute sexual harassment." 9 U.S.C. § 401(4). Both the plain language and the legislative history demonstrate that nothing more is required: Congress intended the Act's application to depend solely on the allegations in the complaint.

A. Under the plain text of the EFAA, a plaintiff need only "allege[]," not state a claim for, sexual harassment

Begin with the text. First, it refers to "conduct that *is alleged to constitute* sexual harassment." 9 U.S.C. § 401(4) (emphasis added); *see also* 9 U.S.C. § 402(a). The use of the word "alleged" means the focus is what the complaint says, not whether it ultimately states a claim. *See Allege*, *Black's Law Dictionary* (12th ed. 2024) (defining "allege" to mean "[t]o assert as true, esp. that someone has done something wrong, though no occasion for definitive proof has yet occurred"). On the other hand, if the statute had used the phrase "is" sexual harassment, it would mean "an actual fact must be established" under the applicable standard, here, a motion to dismiss. *See Coleman v. Estes Exp. Lines, Inc.*, 631 F.3d 1010, 1015 (9th Cir. 2011) (contrasting use of words "alleged" and "is"). This Court must read the statute to "give effect, if possible, to every word Congress used." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). Thus, the emphasis on allegations must mean something other than establishing a sexual harassment claim. *See Coleman*, 631 F.3d at 1015.

Defendants counter (at 26) that the word "alleged" incorporates the plausibility standard. To the contrary, Congress's choice of the word "alleged" suggests it did *not* mean to invoke that standard. In *Iqbal*, the Supreme Court explained that, when a complaint doesn't meet the plausibility standard, "it has alleged—but it has not shown—that the pleader is entitled to relief." *Ashcroft v.*

Iqbal, 556 U.S. 662, 679 (2009) (citation modified). That's consistent with the phrasing of the plausibility requirement itself: The Supreme Court requires a "plausible claim for relief," not plausible "allegations." *Id.*; *see also Bayerische Landesbank, N.Y. Branch v. Aladdin Cap. Mgmt. LLC*, 692 F.3d 42, 64 (2d Cir. 2012) ("facts alleged" must "give rise to a plausible claim for relief"). Thus, the EFAA's plain language shows it was intended to apply to sexual harassment that is "alleged" on the face of the complaint, without regard to whether those allegations are ultimately "show[n]." *Iqbal*, 556 U.S. at 679; *see Diaz-Roa*, 757 F.Supp.3d at 535 ("[T]he EFAA speaks to 'allegations,' *i.e.* the content of a pleading, and not to the conclusion that those allegations plausibly state a claim for relief if the pleading is challenged under Rule 12(b)(6).").

Ignoring how the Supreme Court has used "alleged," Defendants instead misleadingly cite (at 26) *Whiteside v. Hover-Davis, Inc.*, 995 F.3d 315, 323 (2d Cir. 2021) for their interpretation. But "alleged" appears nowhere in the statute at issue in that case—29 U.S.C. § 255(a)—and the Court did not base its holding on its interpretation of that word. Instead, it held that, to take advantage of the statute of limitations for "willful" violations of the Fair Labor Standards Act, plaintiffs must plausibly allege willfulness because willfulness is an element of the affirmative case and thus subject to the same standard as other elements. *Whiteside*, 995 F.3d at 323.

That simply has nothing to do with the meaning of the EFAA's language. Nor do the other cases cited by Defendants, neither of which interpret the word "alleged" and both of which involve defining an ongoing violation of the Clean Water Act. *See S. Rd. Assocs. v. Int'l Bus. Machs. Corp.*, 216 F.3d 251, 255-57 (2d Cir. 2000); *Conn. Coastal Fishermen's Ass'n v. Remington Arms Co., Inc.*, 989 F.2d 1305, 1315 (2d Cir. 1993). Indeed, *Connecticut Coastal Fishermen's Association* was decided on summary judgment and so truly has nothing to do with pleading standards. 989 F.2d at 1310.

Courts actually interpreting "alleged" have concluded that it does not impose a requirement that the allegations be able to survive a motion to dismiss. For example, the Ninth Circuit has interpreted the nearly identical phrase "alleged conduct" in the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4)(A)(i)(II)(bb), as a directive to look at "what is alleged in the complaint," rather than what would meet the motion to dismiss standard, which there was a Rule 12(b)(1) motion for lack of subject matter jurisdiction. *Coleman*, 631 F.3d at 1015. In rejecting the Rule 12(b)(1) standard, *Coleman* concluded that "nothing" "indicates a congressional intention to turn a jurisdictional determination concerning the . . . 'alleged conduct' into a mini-trial on the merits of the plaintiff's claims." *Id.* at 1017.

Second, that the statute applies when there is a "sexual harassment *dispute*," 9 U.S.C. § 402(a) (emphasis added), also underscores that a plaintiff doesn't have to state a plausible *claim* for the EFAA to apply. The plain meaning of "dispute" is broader than a claim for relief. *See Dispute*, *Black's Law Dictionary* (12th ed. 2024) (defining "dispute" as "[a] conflict or controversy, esp[ecially] one that has given rise to a particular lawsuit"). And courts have concluded that, when Congress used the word "dispute" in the EFAA, it did *not* mean "claim." *See, e.g.*, *Memmer v. United Wholesale Mortg. LLC*, 135 F.4th 398, 408 (6th Cir. 2025) (a "dispute" under the EFAA is distinct from a "claim" and "denote[s] a controversy between the parties regarding certain kinds of conduct, conduct which *may* support claims under state and federal law" (emphasis added)). "'Disputes,' unlike claims, are not subject to motions to dismiss." *Diaz-Roa*, 757 F.Supp.3d at 534. So, in using "dispute," "Congress elected to refer to the nature of the disagreement between the parties rather than to its legal substance in a form that is readily measured by a motion to dismiss." *Id.* Thus, "the statutory language does not require the person seeking to avoid the effect of an otherwise applicable arbitration clause to plead a claim for sexual assault or sexual harassment much less require the courts to determine that such person pleaded a claim upon which relief can be granted." *Id*.

Defendants' final textual argument (at 26) is that the EFAA's phrase "under Federal, Tribal, or State law" somehow suggests a plausibility standard. If anything, it suggests the opposite. Of course, states do not apply the Federal Rules of Civil Procedure, nor do some states apply the *Iqbal*/*Twombly* plausibility standard. For example, under New York law, an employment discrimination plaintiff "need only give fair notice of the nature of the claim and its grounds." *Vig v. New York Hairspray Co., L.P.*, 67 A.D.3d 140, 145 (N.Y. Ct. App. 2009) (citation modified). Thus, because the EFAA is designed to incorporate the legal standards for sexual harassment under state law and to apply in both state and federal court, it wouldn't make sense for Congress, in using the word "alleged," to impliedly incorporate only the *federal* pleading standard.

B. The legislative history also shows that a plaintiff need not plausibly allege her sexual harassment claims to proceed in court

To the extent the EFAA's language is ambiguous (and it's not), the legislative history also shows that Congress did not intend to make plaintiffs litigate the plausibility of their claims on the merits before the determination whether their case must be arbitrated. As Senator Durbin, Chair of the Judiciary Committee, explained on the Senate floor, "the bill text does not require . . . that victims have to prove a sexual assault or harassment claim before the rest of their related case can proceed in court." 168 Cong. Rec. S626 (daily ed. Feb. 10, 2022). If that statement wasn't

clear enough, Congress declined to move forward with a bill introduced in the House that would have accomplished what Defendants seek. Specifically, that bill provided that, if a plaintiff's sexual assault claim were dismissed, all other claims would also be dismissed and sent to arbitration. *See* Carrie's Law, H.R. 2906, 117th Cong. § 402(b)(2)(A) (2021). The EFAA, by contrast, does not contain a dismissal mechanism, demonstrating that Congress did not intend to require a plaintiff's sexual harassment claim to survive dismissal for the case to proceed in court.

Ignoring this legislative history, Defendants reprise their incorporation argument, saying (at 26-27) that we should assume Congress was thinking of the plausibility standard when it used the phrase "conduct alleged." That assumption is contradicted by both how the word "alleged" is used by the Supreme Court and the actual legislative record. But it also does not reflect the full scope of background legal principles against which Congress was legislating. True, Congress can be presumed to know about the plausibility standard for determining whether a complaint states a claim on the *merits*, but it also would know there is a different standard for *jurisdictional* determinations. The well-established principle for federal question jurisdiction, for example, is to look to the "face" of the complaint, not whether the allegations in the complaint state a claim. *See, e.g.*, *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

Whether the EFAA applies, and thus whether a plaintiff's claims can proceed in court, is more like a determination whether claims should proceed in state or federal court than it is to deciding whether a complaint states a claim on the merits. As *Diaz-Roa* explained, "a motion to compel arbitration is designed to test who—a judge and jury or an arbitrator—is to decide the case on the merits," not to test whether the plaintiff has stated a claim. 757 F.Supp.3d at 537. Indeed, the Supreme Court has emphasized that courts are "not to rule on the potential merits of the underlying claims" when deciding whether to compel arbitration. *AT & T Techs. Inc. v. Commc'ns. Workers of America*, 475 U.S. 643, 649 (1986). That's because a court lacks "adjudicative capacity" when the case is to be decided by an arbitrator, and so "should not be making substantive decisions." *Diaz-Roa*, 757 F.Supp.3d at 538. It would thus be equally consistent with background legal principles for Congress to decide that the application of the EFAA depends on the allegations "on the face of the plaintiff's properly pleaded complaint," *Williams*, 482 U.S. at 392, *not* whether she has plausibly alleged a claim on the merits.

C. Defendants' remaining arguments fall short

Not applying a plausibility standard makes sense as a practical matter, too. A motion to dismiss tests the sufficiency of a complaint, but it is "often not the last word on the merits of a claim." 757 F.Supp.3d at 538. If a plaintiff's claim is

dismissed for failure to state a claim, they may amend their complaint, Fed. R. Civ. P. 15(a), or appeal the dismissal, 28 U.S.C. § 1291. On the other hand, a defendant ordinarily cannot appeal the denial of a motion to dismiss, preventing "piecemeal appeals" on the merits. *Koehler v. Bank of Bermuda Ltd.,* 101 F.3d 863, 865 (2d Cir. 1996). Deciding plausibility in the course of deciding a motion to compel arbitration flips that on its head. If the court grants a motion to compel because a plaintiff's claims are not plausible, the plaintiff cannot appeal the court's plausibility finding. 9 U.S.C. § 16(b). But that finding will likely prevent the plaintiff from having the plausibility of her claims adjudicated in the first instance by the arbitrator, who is likely to defer to the court's finding if not find it preclusive. *See State Farm Mut. Auto. Ins. Co. v. Tri-Borough N.Y. Med. Prac.*, 120 F.4th 59, 81 (2d Cir. 2024). Moreover, as this case illustrates, when a motion to compel arbitration is denied based on the plaintiff having stated a plausible claim, the defendant has an automatic right to appeal, thus allowing for an appeal on the merits and creating an end-run around "the final judgment rule that generally prohibits piecemeal appeals." *Koehler*, 101 F.3d at 865. Interpreting the EFAA to require only *allegations* of sexual harassment preserves the respective roles of the court and the arbitrator and avoids inundating federal courts of appeals with interlocutory disputes.

Defendants emphasize (at 27-28) that district courts in this Circuit and others have applied a plausibility standard when determining the application of the EFAA. But as Defendants acknowledge, courts in this Circuit are in fact split on the issue, with Judge Engelmeyer in *Yost* concluding that it does and Judge Liman in *Diaz-Roa* concluding that it does not. *See Yost*, 657 F.Supp.3d at 582-88; *Diaz-Roa*, 757 F.Supp.3d at 537. True, in the time between the opinions in *Yost* and *Diaz-Roa*, some courts followed *Yost*. *See* Opening Br. at 28 (listing cases). But recently, after *Diaz-Roa*, numerous courts—more than the three of which "Defendants are aware," Opening Br. 20 n.5—have gone the other way. *See, e.g.*, *Holland-Thielen v. Space Expl. Techs. Corp.*, 2025 WL 2190619, at *12 (C.D. Cal. July 11, 2025) (finding *Diaz-Roa* "persuasive" and collecting four cases in the Ninth Circuit that have followed it); *Thomas v. Pooh Bah Enters., Inc.*, 2025 WL 2084159, at *4 (N.D. Ill. July 24, 2025) (finding *Diaz-Roa*'s reasoning "most persuasive"). Like those courts, this Court should adopt Judge Liman's detailed and well-reasoned approach to the EFAA.

Finally, Defendants fall back on what they characterize as the "liberal federal policy favoring arbitration" in the FAA. Opening Br. at 27. But as *Diaz-Roa* pointed out, "The EFAA is not in conflict with the FAA. It is part of the FAA." 757 F.Supp.3d at 540 (citation modified). Interpreting the broad language of the statute

to mean what it says—that anyone with a dispute relating to conduct alleged to constitute sexual harassment can choose to have their day in court—is the only way to achieve the EFAA's purpose, which is to "restore access to justice" for survivors of sexual assault and harassment. H.R. Rep. No. 117-234, at 4 (2022). Not all survivors will succeed in proving their claims, but the EFAA gives them access to court to try to do so. "The fact that the victim of sexual harassment who fails to state a legally sufficient claim for sexual harassment is nonetheless relieved of forced arbitration in a case that relates to the sexual harassment is not an affront to Congress' intent but rather is a feature of the congressional design." *Diaz-Roa*, 757 F.Supp.3d at 541.

IV. The arbitration agreement is invalid as to the entire case

Finally, Defendants argue (at 42) that even if the EFAA applies here, it applies only to the "sexual harassment dispute," and not to the entire case. They say such a result is required by the text of the EFAA, but under the EFAA, a predispute arbitration agreement is unenforceable "with respect to a *case* which . . . relates to [a] . . . sexual harassment dispute," not *claims* in a case which relate to a sexual harassment dispute. 9 U.S.C. § 402(a) (emphasis added). This unequivocal text has led the majority of courts to have considered the question to conclude that an arbitration agreement is unenforceable as to "the entirety of the case relating to the

sexual harassment dispute, not merely the discrete claims in that case that themselves either allege such harassment or relate to a sexual harassment dispute." *Johnson v. Everyrealm, Inc.*, 657 F.Supp.3d 535, 559 (S.D.N.Y. 2023); *see also Baldwin v. TPML Lexington LLC*, 2024 WL 3862150, at *7 (S.D.N.Y. Aug. 19, 2024) (collecting cases). Thus, so long as some allegations in the complaint meet the definition of a "sexual harassment dispute," the entire case is exempt from arbitration. Defendants' appeals to general principles under the FAA and the legislative history can't overcome the text of the statute, and, in any event, also support keeping cases whole.

A. Under its plain text, the EFAA applies to an entire "case"

This Court's analysis of the scope of the EFAA must start, and can end, with the "statutory text." *United States v. Bedi*, 15 F.4th 222, 226 (2d Cir. 2021). "When the statutory text is plain and unambiguous," as it is here, a court's "sole function is to enforce it according to its terms." *Id.* (citation modified). Because the statute does not define "case," the Court should give the term its "ordinary meaning at the time Congress adopted" the EFAA." *Id.* Congress intentionally used "case" to expand the scope of the EFAA beyond just claims of sexual assault or harassment. The "term 'case' is familiar in the law." *Johnson*, 657 F.Supp.3d at 558-59. In ordinary parlance, "case" refers to "a suit or action in law or equity," not the individual causes

of action that make up an entire suit. *Id.* (quoting *Case*, Merriam-Webster, https://www.merriam-webster.com/dictionary/case). The legal definition of "case" is consistent with this contemporary usage. A case is "[a] civil or criminal proceeding, action, suit, or controversy at law or in equity." *Case*, *Black's Law Dictionary* (12th ed. 2024). In other words, "case" "captures the legal proceeding as an undivided whole. It does not differentiate among causes of action within it." *Johnson*, 657 F.Supp.3d at 559.

Ignoring this ordinary meaning, Defendants assert (at 42) that Congress uses "action" or "civil action," not "case," when it wants to refer to "an entire lawsuit." But legal sources *equate* a case with an action, *see, e.g.*, *Case*, *Black's Law Dictionary* (12th ed. 2024); *Hohn v. United States*, 524 U.S. 236, 241 (1998) ("The words 'case' and 'cause' are constantly used as synonyms in statutes, each meaning a proceeding in court, a suit, or action.") (citation modified), and, indeed, Congress uses those terms interchangeably, even elsewhere in the FAA. For example, § 205 of the FAA is titled, "Removal of *cases* from State courts," but the text addresses the removal of "an *action* or proceeding pending in a State court" that may be subject to arbitration. 9 U.S.C. § 205 (emphases added); *see also, e.g.*, 28 U.S.C. § 1452 (using "cases" and "civil action" interchangeably and distinguishing those from "any claim or cause of action in a civil action"). And while Defendants suggest (at 43)

that Congress has used "'case' in a claim-specific manner elsewhere in the FAA," their example falls short. Section 4 of the FAA authorizes a jury trial on the "making of the arbitration agreement . . . except in cases of admiralty." 9 U.S.C. § 4. The phrase "in cases of" is not the same as "case," and Congress used the former phrase elsewhere in the FAA to mean "in the event of." *See* 9 U.S.C. § 10 (authorizing "vacatur *in cases of* misconduct") (emphasis added).

United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966), on which Defendants rely (at 42) is not to the contrary. There, the Court considered the test for pendant jurisdiction over state-law claims, concluding it had jurisdiction if there was a federal claim and "the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.'" *Gibbs*, 383 U.S. at 725. Thus, *Gibbs* recognized that multiple "claims" make up a "case," so it does not support Defendants' contention that "case" means a claim. *Id.* Moreover, though the court held that a federal "case" specifically for pendant jurisdiction is one in which the state and federal claims share "a common nucleus of operative fact," *id.*, that does not mean, in general, the common meaning of "case" requires claims to *always* share a common nucleus of operative fact.

Had Congress wanted to differentiate among causes of action within a particular suit, it could have easily done so, either by omitting "case" altogether and invalidating arbitration agreements only "with respect to the sexual harassment dispute," or by using "claim" or "cause of action" instead of "case." Under ordinary legal parlance, *those* terms are not the same as "case" and instead refer to "the part of a complaint in a civil action specifying what relief the plaintiff asks for." *Claim, Black's Law Dictionary* (12th ed. 2024); *see also Johnson*, 657 F.Supp.3d at 559-60 (citing dictionary definitions and cases defining "claim" and "cause of action"). Indeed, Congress used the word "claim" in another part of the EFAA, clarifying that it applies only to "dispute[s] or claim[s] that arise[] or accrue[]" after its effective date. Pub. L. No. 117-90, § 3, 136 Stat. 26, 28. And it's well established that "when Congress includes particular language in one section of a statute but omits it in another," a court "presumes that Congress intended a difference in meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 161 (2018). (citation modified). So, instead of reading out the word "case" or reading in the words "claim" or "cause of action," this Court should give effect to the actual words in the statute and take Congress at its word that "case" means "case," not just the subset of a case that constitutes the "sexual harassment dispute." *See Simmons v. Himmelreich*, 578 U.S. 621, 627 (2016) ("Congress says what it means and means what it says.").

Defendants protest (at 43) that this straightforward reading would "render the statute's 'relates to' phrase superfluous." A reminder: The EFAA provides that, "at the election of the person alleging conduct constituting a sexual harassment dispute," the agreement shall be invalid "with respect to a case which is filed under Federal, Tribal, or State law and relates to . . . the sexual harassment dispute." 9 U.S.C. § 402(a). Defendants argue the reference to the person "alleging conduct constituting a sexual harassment dispute," combined with the "case which is filed" language would alone be sufficient to sweep in all claims in a case. So, the argument goes, the "relates to" phrase as Ms. Puris and the majority of district courts read it is superfluous. Not so. Without that phrase, the statute would be too broad: It would apply to *any* case brought by someone who had alleged or was alleging a sexual harassment dispute against anyone, regardless of whether that case included or had any relation to the sexual harassment dispute. The limiting language thus clarifies that the statute applies only when the case *at issue* "relates to" the sexual harassment dispute. At the same time, Congress specifically chose a phrase understood to have "expansive effect," intending to sweep in not just cases that involve a sexual harassment dispute, but also cases that do not themselves involve a sexual harassment dispute but relate to one. *See Diaz-Roa*, 757 F.Supp.3d at 536 n.12

(listing cases interpreting phrases like "relates to" and "relating to" and concluding that the EFAA's "relates to" requirement "does not present a high bar").

It thus makes sense that the majority of courts to address the issue agree that, as *Johnson* described, the EFAA's "text is clear, unambiguous, and decisive" as to the scope of the "invalidation of the arbitration clause," which applies "to the entire 'case' relating to the sexual harassment dispute," rather than just "the claim or claims in which that dispute plays a part." 657 F.Supp.3d at 558; *see Baldwin* 2024 WL 3862150, at *7 (collecting cases). To go against this wall of authority, Defendants rely on *Mera v. SA Hospitality Group, LLC*, 675 F. Supp. 3d 442 (S.D.N.Y. 2023) (Aaron, Magistrate J.), *objections to R&R docketed at* Dkt. 38, Civ. No. 1:23-cv-03492. *Mera* read in a requirement that each claim relate to sexual assault or harassment on policy grounds: "To hold otherwise would permit a plaintiff to elude a binding arbitration agreement with respect to wholly unrelated claims . . . having nothing to do with the particular sexual harassment affecting the plaintiff." *Id.* at 447. Even if policy concerns could override the plain text of a statute (and they can't), as another court in this Circuit explained, this concern "appears to be overstated," *Diaz-Roa*, 757 F.Supp.3d at 533, particularly because generally applicable rules of joinder protect against plaintiffs being able to tack on unrelated claims, *see Johnson*, 657 F.Supp.3d at 562 n.23.

B. The statutory context of the FAA does not require the EFAA to apply on a piecemeal basis

Nor does the "broader statutory context" support Defendants' argument that the EFAA applies on a claim-by-claim basis. Defendants are correct that the FAA generally requires "piecemeal litigation" when only some claims in a case are subject to arbitration. Opening Br. at 44 (quoting *KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011)). And when Congress has amended other federal statutory provisions to preclude arbitration, courts infer that Congress did not intend to override the FAA's background rule of claim splitting. *See Daly v. Citigroup, Inc.*, 939 F.3d 415, 423 (2d Cir. 2019). But here, the EFAA "directly" amended the FAA, evincing Congress's express "intent to override" that background rule, particularly when coupled with Congress's choice to use the word "case" instead of "claim." *Johnson*, 657 F.Supp.3d at 560.

And while Defendants again cite (at 44) the supposed presumption in favor of arbitration, that presumption is rooted in § 2 of the FAA, which the EFAA amended directly, and therefore applies, if at all, only if the EFAA does not. *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (identifying "Section 2" as the source of the "liberal federal policy favoring arbitration agreements"); 9 U.S.C. § 2 (providing that arbitration agreements "shall be valid, irrevocable, and enforceable," except "as otherwise provided in [the EFAA]"). That presumption has

no bearing when, as here, the question is whether the FAA applies at all. *See New Prime Inc. v. Oliveira*, 586 U.S. 105, 111 (2019) ("[T]o invoke its statutory powers under §§ 3 and 4 to stay litigation and compel arbitration according to a contract's terms, a court must first know whether the contract itself falls within or beyond the boundaries of §§ 1 and 2.").

C. The legislative history confirms the EFAA applies to an entire case

Finally, the legislative record confirms what is written in the statutory text: Congress intended the EFAA to have a broad scope, covering any *case* related to conduct alleged to constitute a sexual assault or sexual harassment dispute. As Senator Durbin explained, the "premise of this legislation is simple: Survivors of sexual assault or harassment . . . should be able to choose whether to bring a case forward [in court], instead of being forced into a secret arbitration proceeding where the deck is stacked against them." 168 Cong. Rec. S626 (daily ed. Feb. 10, 2022). And to give plaintiffs a meaningful opportunity to air their allegations of sexual assault or harassment in court, Congress understood that the EFAA would need to apply to an entire case. Senator Durbin put it plainly: "for *cases* which involve conduct that is related to a sexual harassment dispute or sexual assault dispute, survivors should be allowed to proceed with their *full case* in court regardless of

which claims are ultimately proven. I am glad that is what this bill provides." *Id.* at S626-27 (emphases added).

Senator Gillibrand echoed this sentiment: "When a sexual assault or sexual harassment survivor files a court case in order to seek accountability, her single case may include multiple claims." *Id.* at S627. Rather than force a survivor to "relive that experience in multiple jurisdictions," claims must be able to "proceed together" so that she can "realize the rights and protections intended to be restored to her by this legislation." *Id.*

Defendants read other parts of the legislative record to say exactly the opposite. *See* Opening Br. at 44-45. They don't. *See* Brief of Public Justice *et al.* as *Amici Curiae* at 11-14, *Diaz-Roa v. Hermes Law P.C.*, No. 24-3223 (2d Cir. July 7, 2025), Dkt. 48.1 (contextualizing statements by Senators Ernst and Graham, on which Defendants here rely). But even if there were any ambiguity in the statements of members of Congress, its actions provide clarity. Congress declined to move forward on another bill during the same session that would have accomplished what Defendants seek: a limitation to *claims* of sexual assault and a requirement that all other claims proceed in arbitration. *See* Resolving Sexual Assault and Harassment Disputes Act of 2021, S. 3143, 117th Cong. (2021). Instead, Congress enacted the EFAA, which expressly rejects claim-splitting by exempting whole cases that relate

to sexual assault or harassment disputes. The district court therefore correctly denied Defendants' motion to compel arbitration as to Ms. Puris's entire case.

CONCLUSION

For these reasons, the Court should affirm the district court's order denying Defendants' motion to compel arbitration.

Respectfully submitted,

August 26, 2025

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) and Local Rule 32.1(a)(4)(A) because this brief contains 13,963 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), as calculated by Microsoft Office 365.

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August 26, 2025

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CERTIFICATE OF SERVICE

I certify that on August 26, 2025, I electronically filed this brief with the Clerk of the U.S. Court of Appeals for the Second Circuit via ACMS. I further certify that all participants in the case are registered ACMS users and that service will be accomplished by ACMS.

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