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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Paula C. Lorona, Plaintiff, vs. Arizona Summit Law School LLC, a Delaware limited liability company; Infilaw Corporation, a Delaware corporation; Jane and Johns Doe 1-100; Black Corporation 1-100; White Partnership 1-100, Defendant(s),	Case No.: 2:15-cv-00972-NVW **PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS** **(ORAL ARGUMENT REQUESTED)** (Assigned to the Honorable Neil V. Wake)

Plaintiff Paula Lorona (hereinafter "Lorona"), hereby submits her Response to the Motion to Dismiss filed by Defendants Infilaw Corporation (hereinafter "Infilaw") and Arizona Summit Law School (hereinafter "ASLS"). Defendants' Motion to Dismiss should be denied. Lorona has adequately pled claims for relief. This Response is supported by the following memorandum of points and authorities:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises from Lorona's roles as both a student and an employee of ASLS. ASLS and Infilaw deceived and misled Lorona regarding the bar examination passage rates of ASLS graduates and regarding the academic caliber (LSAT scores and undergraduate GPAs) of students enrolled at ASLS. As a result, Lorona remained a student at ASLS, paid Defendants hundreds of thousands of dollars in tuition and fees, and incurred enormous debt. In reality, while Defendants in their marketing materials and emails touted bar passage rates exceeding 80% for ASLS graduates, Defendants knew that the actual bar examination pass rates of ASLS graduates was substantially and materially lower and would continue to decline. Defendants knew this because they had adopted a program of admission of students whose LSAT scores and/or undergraduate GPAs were so low that they would not qualify for law school admission on these bases alone. Defendants knew from the application of their own pass rate formula that few of these students would ever be able to pass the bar examination. The practical impact of the admission of an ever-increasing number and percentage of such students has been the utter collapse of the bar pass rates of ASLS graduates. In an effort to curtail the free-fall of reported bar pass rates and to protect its ABA accreditation, ASLS now resorts to a program whereby it actually pays its graduates to refrain from taking the bar examination. Yet, ASLS continues to collect from each of its students hundreds of thousands of dollars of tuition and fees.

As an employee of Defendants, Lorona was subjected to repeated acts of discrimination based upon her need to care for her minor children who have a disability, and based upon her sex, all in violation of the Americans with Disabilities Act, 42 U.S.C. §12111, *et seq.* ("ADA") and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* ("Title VII"). Lorona's Second Amended Complaint ("SAC") sufficiently pleads claims based on discrimination and retaliation.

II. ARGUMENT

A. Standard for Motion to Dismiss.

Motions to dismiss are disfavored by the courts. *See Williams v. Gorton*, 529 F2d 668, 672 (9th Cir, 1976). A motion to dismiss cannot be granted if the plaintiff could be entitled to relief under any set of facts that could be proved consistent with the allegations. *See Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). Dismissal is proper only where there is no cognizable legal theory or an absence of specific facts alleged to support a cognizable legal theory. *Id.* In considering whether a complaint should survive a motion to dismiss under Rule 12(b)(6), "the issue before the Court is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to offer evidence to support his claims." *Scheuer v. Rhodes*, 416 U.S. 232,236 (1974).

In reviewing a motion to dismiss, the Court may consider only those facts alleged in the complaint. *See Allied Signal, Inc. v. City of Phoenix*, 182 F.3d 692, 696 (9th Cir. 1999). In deciding a motion to dismiss, the court accepts all material allegations of the complaint as true, as well as all reasonable inferences to be drawn from them. *See Navarro v. Block*, 250 F.3rd 729, 732 (9th Cir. 2001) (*citing Cahill v. Liberty Mut Ins. Co.*, 80 F.3d. 336, 338 (9th Cir. 1996)). The court must construe the facts in the light most favorable to the plaintiff. *See NL Industries v. Kaplan*, 792 F2d 896, 898 (9th Cir. 1986). For that reason, when the Court considers a motion to dismiss, it "construe[s] pleading to do substantial justice" and gives the plaintiff "the benefit of the doubt if his pleading makes out any claim for relief." *Charfauros v. Board of Elections*, 249 F.3d 941, 956-57 (9th Cir. 2001).

B. Lorona Has Adequately Pled Claims for Fraud in Counts I and II.

Through at least 2014, ASLS continued to make explicit representations in its marketing materials to students, like Lorona, and prospective students that ASLS graduates had a bar passage rate exceeding 80%. SAC ¶¶ 85-86, 134-35. For example, ASLS' "Viewbook" marketing brochure which ASLS used to attract students to ASLS for at least the years 2013 and 2014 prominently touts an "Ultimate Bar Pass Rate" of 86%. SAC ¶ 85.

In an October 16, 2014, email to ASLS students, Dean Mays again confirmed an ultimate bar pass rate exceeding 80%. SAC ¶ 86. ASLS also represented in its marketing materials that its program created "well rounded lawyers who will add immediate value to their firms and employers," and that by graduation, "lawyers should enter the workforce professionally prepared to practice law in a variety of diverse settings and industries."

ASLS made these representations at a time when ASLS had actual knowledge that: (a) the actual bar passage rates for ASLS graduates was substantially and materially less than 80% (for example, 49.5% for the July 2014 bar examination), SAC ¶¶ 79-81[1]; (b) ASLS was admitting ever-increasing numbers of students through a program known as the Alternative Admissions Model for Legal Education ("AAMPLE"), and ASLS knew (by virtue of its own bar examination failure predictor formula) that these students had very little chance of ever passing the bar examination[2]; SAC ¶¶ 74, 102-104, 131, and (c) as the percentage of ASLS graduates who had been admitted through AAMPLE increased (to approximately 80% by 2011), the bar passage rate of ASLS graduates began to plummet dramatically, prompting ASLS to adopt a program whereby it actually paid graduates to refrain from taking the bar examination in an effort to prevent ASLS' bar passage rates from declining even further. SAC ¶¶ 102-106, 108, 113, 115-120, 131.

At the same time, ASLS also provided to students and potential students, as well as governmental agencies, false and misleading admission statistics including LSAT scores and undergraduate GPAs on incoming students. The reported statistics excluded the LSAT scores and undergraduate GPAs of AAMPLE students, but ASLS did not disclose this fact. SAC ¶ 131. ASLS' reported enrollment statistics, based on only approximately 20% of incoming students were thus materially false and misleading. SAC ¶¶ 132-33. All the while, ASLS continued to collect from each of its students (including the ones it knew would likely

[1] During 2012 and 2013, the bar examination pass rate for ASLS graduates never reached 80%. SAC ¶¶82-84.

[2] AAMPLE students generally have lower LSAT scores and/or lower undergraduate GPAs than are necessary to gain admission to law school by traditional standards. SAC ¶ 130.

never pass the bar examination) hundreds of thousands of dollars in tuition and fees. SAC ¶¶ 142-43.

Lorona in fact relied upon ASLS' representations regarding the quality of its educational program in deciding to continue to remain a student at ASLS and to incur substantial debt. SAC ¶¶ 144-46. As ASLS bar passage rates continue to plummet and as ASLS continues to admit an ever-increasing percentage of students who have little chance of ever passing the bar examination, the value of Lorona's ASLS law degree continues to decrease dramatically as does the chance of her finding employment as a lawyer. SAC ¶¶ 147, 157, 166. Indeed, the plummeting bar passage rates place at risk ASLS ABA accreditation. SAC ¶ 118. The ABA generally requires that a law school maintain a bar passage rate of 75% or better to maintain accreditation.[3] It was extremely deceptive and misleading for ASLS to continue to tout a bar pass rate exceeding 80% when it knew not only that actual bar pass rates were substantially less than that but that they would almost certainly continue to decline. It is entirely plausible that Lorona would have chosen to stop the incursion of debt and the expenditure of substantial sums of cash had she known these facts. Defendants' arguments that Lorona has failed to adequately plead fraud claims are meritless.

1. Lorona's Fraud Claims Do Not Constitute Improper "Group Pleading."

The SAC identifies the individuals and entities who made the representations and were engaged in the conduct upon which Lorona's fraud/negligent misrepresentation claims are based. *See, e.g.*, SAC ¶¶ 85 (ASLS' Viewbook marketing brochure), 86 (Dean Mays email), 102-03 (Infilaw and ASLS bar exam failure predictor formula), 130-31 (ASLS and Infilaw reports of admissions statistics), 138 (ASLS marketing material). At any rate, Infilaw dominated the business operations of ASLS and controlled ASLS' finances. SAC ¶¶

[3] See ABA Standard 316(a)(1)(i).

15-19. Infilaw, by virtue of its control of key aspects of the operation of ASLS, is responsible for the conduct of ASLS alleged in the SAC. SAC ¶ 20.[4]

2. Lorona's SAC Adequately Pleads Misrepresentations.

Defendants argue at pp. 5-6 of their Motion that Lorona's fraud claims are not based on misrepresentations, but mere statements of opinion. Defendants are wrong.

Certainly, Defendants' specific representations that the bar examination passage rate of ASLS graduates exceeded 80% were not mere statements of opinion. In fact, Defendants do not even suggest that they were. Nor can Defendants dispute that their repeated touting of bar exam passage rates exceeding 80% strongly suggested to students and potential students that similar rates would be achieved in the future. And yet, Defendants knew the actual rates were much lower, and knew the reason why. By virtue of this knowledge Defendants knew the bar passage rates would remain well below 80%.

Moreover, Defendants had gone to the trouble of developing their own bar examination failure predictor formula based on numerous factors pertinent to the likelihood a given student will pass the bar examination. SAC ¶¶ 102-04 Defendants knew by application of this formula that fewer than half its students were likely to ever pass the bar examination. SAC ¶¶ 115-16. Even apart from the formula, ASLS knew that it was admitting as an ever-increasing percentage of its student population individuals with low LSAT scores and low undergraduate GPAs. It thus knew that the bar pass rate would almost certainly continue to decline.

Armed with knowledge of abysmal bar pass rates that were virtually certain to continue to decline, Defendants had absolutely no factual basis, let alone any reasonable

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[4] A parent corporation may be held liable for the acts of its subsidiary "when the individuality or separateness of the subsidiary corporation has ceased." *See Gatecliff v. Great Republic Life Ins. Co.*, 170 Ariz. 34, 37, 821 P.2d 725, 728 (1991). See also *Los Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App.3d 1220, 1249,1 Cal. Rptr. 2d 301 (1991) (corporate entity disregarded where "it is so organized and controlled, and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit, or adjunct of another corporation…".)

basis, to continue to represent that they were creating "well-rounded lawyers" who were "professionally prepared to practice law in a variety of diverse settings and industries." These representations are not mere statements of opinion. They cannot even plausibly constitute Defendants' actual opinions. Even statements of purported opinion or belief can be actionable if they lack an adequate factual basis. *See, e.g., Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1093 (1991) ("Conclusory terms in a commercial context are reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading."). The Ninth Circuit has recognized that projections and optimistic statements actionable if not genuinely and reasonably believed, or if the speaker is aware of undisclosed facts that tend to seriously undermine the statement's accuracy. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 501 (9th Cir. 1992). Had Lorona known the truth, she would not have continued to enroll at ASLS and to incur massive debt as a result. SAC ¶ 144-46,150, 154, 160, 164.

3. Lorona's SAC Adequately Pleads Detrimental Reliance.

Lorona incurred hundreds of thousands of dollars of debt by remaining enrolled at ASLS through her graduation in December 2014. SAC ¶ 143. Had Lorona known that the influx of AAMPLE students would cause bar pass rates, as well as the value of her ASLS legal education in the job market, to plummet, it is entirely plausible, in fact common sense, that she would have chosen to stop the bleeding of cash and the incursion of massive debt by simply walking away from ASLS. Defendants' argue at pp. 6-7 of their Motion that, in their opinion, it is unlikely Lorona would have dropped out of law school had she known the truth regarding the caliber and admission requirements applicable to incoming students. But this is merely Defendants' self-serving opinion, and it defies the reality that Lorona obtained something far less valuable than that which she had been led to believe based upon Defendants' representations. In fact, as the truth of ASLS' actual bar pass rates, its efforts to manipulate those reported rates, and the caliber of its student body continue to be revealed the value of Lorona's degree continues to plummet in the attorney job market.

4. Lorona's SAC Adequately Pleads Damages From Reliance on Defendants' Misrepresentations.

Defendants completely mischaracterize the allegations of the SAC in their argument that Lorona failed to adequately plead damages from Defendants' fraud. Defendant's representations regarding ASLS' high bar passage rates and the high caliber of students admitted to ASLS prompted her to incur enormous debt, which she would otherwise have avoided. Having incurred that debt, she is left with a degree that, if anything, will serve as an impediment to her ability to find a job as a lawyer in the Phoenix market.

C. <u>Lorona Has Adequately Pled Negligent Misrepresentation.</u>

Arizona follows the Restatement (Second) of Torts definition of negligent misrepresentation:

> (1) One who, in the course of his business, profession, or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

St. Joseph's Hosp.& Med. Ctr. v. Reserve Life Ins. Co., 154 Ariz. 307, 312, 742 P.2d 808, 813 (1987), quoting RESTATEMENT (SECOND) OF TORTS § 552(1). The elements of a cause of action for negligent misrepresentation are:

1. Defendant provided false or incorrect information, or omitted or failed to disclose material information, to plaintiff or to a group of reasonably foreseeable users of the information of which plaintiff was a member;

2. Defendant intended that plaintiff or members of the group rely on the information and provided it for that purpose;

3. Defendant failed to exercise reasonable care or competence in obtaining or communicating the information;

4. Plaintiff relied on the information;

5. Plaintiff's reliance was justified; and

6. As a result, plaintiff was damaged.

See, e.g., Revised Arizona Jury Instructions (Civil) 5th, Commercial Torts 23, Negligent Misrepresentation. Lorona's SAC adequately pleads negligent misrepresentation.

Defendants provided false and misleading information to Lorona and to a reasonably foreseeable group of users of the information – namely students and prospective students of ASLS. SAC ¶¶ 85-86, 130, 133, 138. Defendants intended that Lorona and other members of the group rely on the information in enrolling and continuing to enroll at ASLS and to pay ASLS tuition and fees. SAC ¶ 162. Defendants failed to exercise reasonable care or competence in communication the information. SAC ¶ 163. Lorona justifiably relied on the information and was damaged as a result. SAC ¶¶ 164-66. Defendants' assertions that Lorona failed to adequately plead negligent misrepresentation are meritless.

1. Lorona's SAC Does Not Improperly "Group Plead" Negligent Misrepresentation.

For the reasons set forth above, the SAC does not improperly "group plead" against Defendants. The individuals and entities who made the misrepresentations and engaged in the misconduct alleged are identified in the SAC.

2. The SAC Pleads Misrepresentations.

Discussed above, Defendants' misrepresentations were not merely non-actionable "opinions, predictions as to future events, and subjective characterizations." Defendants' Memo. at p. 8. These were statements of fact and statements, which Defendants knew to be false, and without any factual, let alone reasonable, basis whatsoever, designed to induce Lorona and others to pay ASLS substantial tuition and fees.

3. The SAC Pleads Facts Establishing Defendants' Duty and Breach.

The SAC pleads facts establishing a duty and breach on the part of Defendants for purposes of Lorona's negligent misrepresentation claim. As discussed above, Defendants in the course of their business provided information to students and prospective students in an effort to induce them to enroll at ASLS and pay ASLS substantial tuition and fees. As such,

Defendants owed to Plaintiff the duty to exercise reasonable care and competence in doing so. *St. Joseph's Hosp.*, 154 Ariz. at 312. Defendants breached this duty by providing to Plaintiff and others information which was false and which Defendants knew to be false. *See, e.g.*, SAC ¶¶ 79-86, 139. The Court should reject Defendants' suggestion that the SAC fails to plead duty and breach with respect to Lorona's negligent misrepresentation claim.

D. Lorona Has Adequately Pled Her Employment Discrimination Claims.

1. Lorona Has Adequately Pled the Liability of Infilaw.

The SAC alleges that Infilaw not only owned ASLS, but also dominated the business operations and controlled the finances of ASLS and ASLS' two sister law schools. SAC ¶ 15. Infilaw controlled and managed ASLS' budget, as well as promotions, raises for performance reviews and other incentives of ASLS employees. SAC ¶ 16. Infilaw managed and controlled ASLS' payroll, reimbursement of employee expenses, 401k and other employee benefits, including tuition waivers. SAC ¶¶ 17-19. In addition, Infilaw had actual notice of the EEOC proceedings while the EEOC's investigation of Lorona's charges was still pending. SAC ¶ 21. Infilaw is responsible for the conduct of ASLS.

The Ninth Circuit has recognized that a parent corporation can be liable for the Title VII violations of its wholly-owned subsidiary in "special circumstances" including circumstances in which: (1) the parent-subsidiary relationship is a sham; (2) *the parent participated in or influenced the employment policies of the subsidiary*; or (3) the parent has under-capitalized the subsidiary to defeat recovery under Title VII. *Association of Mexican-Am. Educators v. California*, 231 F.3d 572, 582 (9th Cir. 2000) (emphasis added) (quoting *Watson v. Gulf W. Industry.*, 650 F.2d 990, 993 (9th Cir. 1981)).

In addition, the Ninth Circuit has recognized that a parent and subsidiary may *both* be deemed employers for purposes of liability under the ADA and Tile VII. Under the "integrated enterprise test," the Court considers four factors in determining whether two or more entities are a single employer: (1) common management; (2) interrelationship between operations; (3) centralized control over labor relations; and (4) common ownership. *Kang v.*

U. Lim America, Inc., 296 F.3d 810, 815 (9th Cir. 2002). *See also EEOC v. Pac. Mar. Ass'n*, 351 F.3d 1270, 1275-76 (9th Cir. 2003). Even the Court in *Brown v. Arizona*, CV-09-2272-PHX-GMS, 2010 WL 396387, at *1, 2 (D. Ariz. Jan. 28, 2010), cited by Defendants, recognized that the question of joint employment by two entities is "generally a question of fact" inappropriate for resolution on a motion to dismiss.

2. Lorona Exhausted All Requisite Administrative Remedies Vis a Vis Infilaw.

Infilaw argues that it cannot be a proper party to this case because it was not named as a respondent on Lorona's charge of discrimination. However, the Ninth Circuit has held that an employer entity's appearance on the face of an administrative is not dispositive of whether an entity may be held liable for civil rights violations. *Sosa v. Hiraoka*, 920 F.2d 1451(9th Cir. 1990). A party not named in the original charge may still be liable under Title VII and ADA where (1) the unnamed party was involved in the acts giving rise to the EEOC charge; (2) the EEOC or the unnamed party should have anticipated a Title VII suit against the unnamed party; (3) the unnamed party is a principal or agent of a named party or if they are substantially identical; (4) the EEOC could have inferred that the unnamed party violated Title VII; or (5) the unnamed party had notice of the EEOC conciliation efforts and participated in the EEOC proceedings. *Id.* at 1459. In identifying these factors, the Ninth Circuit acknowledged that courts are particularly likely to invoke one of these exceptions when "the initial EEOC charge was filed without the assistance of counsel, since the charging party may not understand the need to name all parties in the charge, or may be unable to appreciate the separate legal identities of, for instance, a corporation and its officers." *Id.* In the present case, Lorona was not represented by counsel when she prepared and submitted her forms to the EEOC. As discussed above, Infilaw dominated and controlled ASLS, and Infilaw had actual notice of the EEOC charge while the EEOC's investigations was still pending. SAC ¶ 21.

3. Lorona Has Pled a Claim Under the ADA.

The ADA prohibits discrimination on the basis of disability, including:

> (4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

42 U.S.C. § 12112 (b). Defendants do not dispute that Lorona is a qualified individual within the meaning of the ADA. Lorona informed both ASLS and Infilaw that Lorona's minor children suffered from a disability, specifically chronic severe asthma. SAC ¶ 177.

The SAC pleads in detail the ways in which ASLS discriminated against Lorona because of her disabled children, and, contrary to Defendants' suggestion, demonstrates the causal connection between this discrimination and Lorona's role as caregiver of her disabled children. For example, Lorona was frequently denied the opportunity to work remotely and was criticized and harassed when she did work remotely. SAC ¶ 183. At the same time, other ASLS employees who did not have disabled children were allowed to work remotely as they desired.[5] *Id*. Unlike employees without disabled children, Lorona was charged paid time off when she did work remotely and was not advised of or offered FMLA leave. SAC ¶184. In addition, ASLS did not allow Lorona to bring her children on campus, while at the same time other ASLS employees, including Lee, were allowed to bring their children on campus. SAC ¶ 272. Defendants denied Lorona promotions despite the fact that several ASLS supervisors had recommended her for a promotion. SAC ¶¶ 185, 187.

In April 2012, Lorona was denied even an interview for a promotion for which she had applied.[6] The connection between Defendants' discrimination and Lorona's disabled children was so obvious that Lorona actually confronted ASLS HR Director Stephanie Lee,

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[5] Defendants mischaracterize this as merely a request for accommodation under the ADA. It is not. This is outright discrimination -- a denial of equal jobs or benefits -- based upon Lorona's relationship with her disabled children.

[6] ASLS later attempted to deceive the EEOC as to the qualifications for the position Lorona had applied for. ASLS provided the EEOC with a job posting for a "CPA required" position. The position Lorona actually applied for was not restricted to CPA's. SAC ¶¶ 189-192.

and asked her whether she was being denied the interview because she had complained about being charged paid time off to care for her disabled children. SAC ¶ 186. Lee did not deny the discrimination, but simply responded that Lorona would just not be receiving an interview, "period".[7] *Id.* Lorona has adequately pled that she was denied equal jobs or benefits because of the known disability of her children.[8]

4. Lorona Has Pled Claims for Discrimination and Retaliation on the Basis of Sex Under Title VII.

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against their employees "with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's …sex…," or from limiting, segregating or classifying employees or applicants for employment "in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's ….sex…." 42 U.S.C. § 2000e-2 (a).

The SAC pleads in detail that Lorona was subjected to discrimination because of her gender. The SAC alleges that ASLS hired male executives without posting positions or interviewing potential candidates, whereas female candidates were forced to follow standard hiring procedures. SAC ¶ 255, 263. Indeed, Lorona was replaced by a male employee who was far less qualified than Lorona. SAC ¶¶ 256-58. ASLS required Lorona to work until at least 5 p.m. whereas ASLS allowed other male employees, including her replacement, to leave work early. SAC ¶¶ 260, 264-65. Moreover, ASLS failed to offer FMLA leave to

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[7] Lee, like other employees of ASLS, was specifically aware that Lorona's children suffered from severe chronic asthma. SAC ¶ 177. While Lorona was discriminated against for attempting to facilitate the care of her disabled children, Lee was allowed to "work" remotely in order to shop, attend appointments or simply stay at home. SAC ¶ 183. At any rate, ASLS was aware of the disability of Lorona's children, and ASLS refused to even allow Lorona to interview for a promotion. Defendants cite absolutely no authority for their bald suggestion that Plaintiff, at the pleading stage, must specifically identify the exact person within ASLS who made the decision not to promote her.

[8] Defendants' suggestion that their discrimination could only be based on Lorona's refusal to assist ASLS in defrauding the IRS, Defendants' Motion at p. 11, simply ignores the allegations of the SAC discussed above.

Lorona in the same manner it offered such leave to Lorona's male colleagues. SAC ¶¶ 210-219, 266. These allegations are more than sufficient to state a claim of sex discrimination under Title VII. *See generally McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973).*

In their Motion Defendants assert that Lorona's Title VII claim should be dismissed because Lorona did not include certain allegations of "sexual harassment" in her EEOC charge.[9] But Lorona's Title VII claims are not based solely on sexual harassment, but rather on *discrimination* on the basis of sex. At any rate, the allegations cited by Defendants are part of the pattern of discrimination to which Lorona was subjected, and are "reasonably related" to Lorona's EEOC charge. *See Mathirampuzha v. Potter,* 548 F.3d 70, 76–77 (2d Cir.2008) (Claims not raised in an EEOC complaint may still be brought in federal court if they are "reasonably related" to the claims asserted in the EEOC complaint.).

Moreover, the SAC alleges in detail that Defendants retaliated against Lorona by firing her because she complained to ASLS that she was being discriminated against and treated unfairly because she is a woman. The SAC specifically alleges for example that Lorona complained to supervisors and superiors that her male coworkers were not subjected to harassment and denied promotions and the opportunities for promotions in the same or similar manner as Lorona, and that male ASLS employees were advanced and promoted in the company while Lorona was not ¶ 270. This is protected activity under Title VII. See 42 U.S.C. § 2000e-3 (a). The SAC also specifically alleges that but for these complaints, ASLS would not have terminated her employment. SAC ¶ 274. Lorona has adequately pled a claim for retaliation under Title VII.[10]

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[9] Defendants cite an occasion in which Dean Mays and Stephanie Lee, in the presence of ASLS senior management, commented that Lorona has a great butt, and an occasion in which Lorona's supervisor commented to Lorona that Lorona looked like a Barbie doll and drew a naked female body. SAC ¶¶ 230-32, 237-38, 239-40.

[10] Defendants' hyper-technical objection that Lorona did not check the "retaliation box" on the EEOC form she filled out is bogus. The forms Lorona submitted to the EEOC clearly indicate that she was discriminated against on the basis of sex, that she was fired and that a less qualified male was given a promotion for which Lorona had applied. See Exhibit "A"

III. CONCLUSION

For the reasons set forth herein, Lorona respectfully requests that Defendants' Motion to Dismiss be denied. However, should the Court find the SAC insufficiently pled in any respect, then Lorona requests leave to re-plead in order to cure such deficiency.

DATED this 27 day of August 2015.

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attached hereto. This was sufficient to place Defendants on notice of the charge against them.

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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