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1 SUPREME COURT of the  
2 UNITED STATES

3 No. 18-02328 (18-2328)

4 DECISION BELOW: 0:15-cv-02313-JMC

5  
6 ERIC ALAN SANDERS  
7 Plaintiff – Appellant

8  
9 v.  
10 LOWE'S HOME CENTERS, LLC et al.  
11 Defendant – Appellee

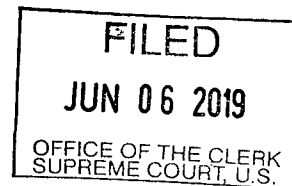
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13 ON WRIT OF CERTIORARI to the UNITED STATES  
14 COURT OF APPEALS for the FOURTH CIRCUIT

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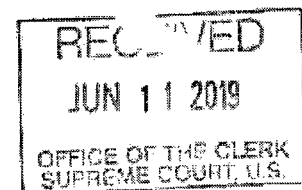
ERIC ALAN SANDERS V. LOWE'S HOME CENTERS, LLC et al

DECISION BELOW: C/A No. 0:15-cv-02313-JMC

LOWER COURT CASE NUMBER: 18-2328

QUESTION PRESENTED:

1. Whether an aggrieved person, under Title VII or the ADA, can amend a complaint under Rule 15; or supplement his/her complaint under Rule 15(d), after the deadline for amending pleadings has passed, to set out additional discrete discriminatory acts by a Defendant already proceeded against in a suit, after: (1) filing a timely *EEOC Charge* based on the discrete acts; (2) and timely moving to amend the complaint within 90 days of receiving a right-to-sue letter from the EEOC.



1                                    STATEMENT OF ADOPTION

2  
3                    The Appellant adopts by reference the following  
4    motions, and all factual statements, legal arguments,  
5    and attachments to those motions, as if quoted  
6    verbatim here:

- 7            1. *Verified Complaint (Dkt. No. 1)*  
8            2. *Amended Complaint (Dkt. No. 16)*  
9            3. *Amended Complaint (Dkt. No. 238)*  
10          4. *Amended Notice of Appeal (Dkt. No. 265)*  
11          5. *Motion for Leave to File Interlocutory*  
12             *Appeal (Dkt. No. 267)*

13  
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## Jurisdiction

Name of Court from which review is sought:  
United States Court of Appeals for the Fourth Circuit

Date(s) of order or orders for which review is sought:  
Per Curiam (Doc. 17), 04/08/19

## Issues for Review

Issue 1.

1           1. Whether an aggrieved person can amend a  
2           complaint or supplement his/her complaint,  
3           after the deadline for amending pleadings has  
4           passed, to set out additional discrete  
5           discriminatory acts by a Defendant already  
6           proceeded against in a suit, after filing a timely  
7           *EEOC Charge* based on the discreet acts, and  
8           timely moving to amend the complaint within  
9           90 days of receiving a right-to-sue letter from  
10          the EEOC.

11  
12           In accordance with this Court's Rule 10, the  
  
13          Petitioner asserts the following compelling reasons for  
  
14          the Court to consider this Petition:

15           a)       The United States Court of Appeals for  
16           the Fourth Circuit has so far departed from the  
17           accepted and usual course of judicial  
18           proceedings, or sanctioned such a departure by  
19           a lower court, as to call for an exercise of this  
20           Court's supervisory power by refusing to apply  
21           this Court's decision in *National Railroad*  
22           *Passenger Corporation v. Morgan*, 536 US 101 -  
23           Supreme Court 2002 relating to "discrete acts of  
24           discrimination" under Title VI and the ADA. In  
25           doing so the Court of Appeals for the Fourth  
26           Circuit "has decided an important federal  
27           question in a way that conflicts with relevant  
28           decisions of this Court. Rule 10(c).

29           b)       The United States Court of Appeals has  
30           decided an important question of federal law  
31           that has not been, but should be, settled by this  
32           Court: The proper application of Federal Rules  
33           of Civil Procedure 15(d) and Rule 16(b)(4), in

1 the context of a Title VII or ADA suit, when an  
2 aggrieved person is/has: (1) already proceeding  
3 under 42 U.S.C. § or 42 U.S.C. § 12117(a); (2)  
4 the deadline for amending pleadings has passed  
5 according to the scheduling order; (3) the  
6 aggrieved person has exhausted administrative  
7 remedies on alleged discrete acts of  
8 discrimination occurring after the deadline for  
9 amending pleadings has passed according to the  
10 scheduling order; (4) the aggrieved person files  
11 a Motion to Amend to include new claims  
12 involving the alleged discrete acts of  
13 discrimination.

14  
15 Supporting Facts and Argument

16 *Legal Standard*

17 Writ of Mandamus Standard

18 “[T]he writ ‘has traditionally been used in the  
19 federal courts only ‘to confine an inferior court to a  
20 lawful exercise of its prescribed jurisdiction or to  
21 compel it to exercise its authority when it is its duty  
22 to do so.’ ‘ *Kerr v. United States Dist. Court for*  
23 *Northern Dist. of Cal.*, 426 US 394 - Supreme Court  
24 1976.

25 Supplemental Pleadings and Rule 15(d)’s Standard

1           *Rule 15(d)* states:

2           On motion and reasonable notice, the court  
3           may, on just terms, permit a party to serve a  
4           supplemental pleading setting out any transaction,  
5           occurrence, or event that happened after the date of  
6           the pleading to be supplemented. The court may  
7           permit supplementation even though the original  
8           pleading is defective in stating a claim or defense. The  
9           court may order that the opposing party plead to the  
10          supplemental pleading within a specified time.

11  
12          Fair Notification to Pro Se Litigants to File Objections  
13                           to A Magistrate Judge's Report  
14

15           "[A] pro se litigant must receive fair notification  
16          of the consequences of failure to object to a magistrate  
17          judge's report before such a procedural default will  
18          result in waiver of the right to appeal...[t]he notice  
19          must be 'sufficiently understandable to one in  
20          appellant's circumstances fairly to apprise him of what  
21          is required." *Wright v. Collins*, 766 F. 2d 841 (CA4  
22          1985)

23          Prerequisites for Filing Suit Under 42 U.S.C. §  
24                           12117(a) and 42 U.S.C. § 2000e-5(f).  
25

1            “[The jurisdictional prerequisites] to a federal  
2    action [are satisfied] (i) by filing timely charges of  
3    employment discrimination with the Commission and  
4    (ii) by receiving and acting upon the Commission's  
5    statutory notice of the right to sue, 42 U. S. C. §§  
6    2000e-5 (a) and 2000e-5 (e).” Citing *McDonnell*  
7    *Douglas Corp. v. Green*, 411 US 792 - Supreme Court  
8    1973.

9            Discrete Discriminatory Act Doctrine

10           “Each discrete discriminatory act starts a new  
11    clock for filing charges alleging that act... [t]he charge,  
12    therefore, must be filed within the 180- or 300-day  
13    time period after the discrete discriminatory act  
14    occurred.” *National Railroad Passenger Corporation v.*  
15    *Morgan*, 536 US 101 - Supreme Court 2002

16           42 U.S.C. § 1981(a) Granting Rights to Sue, Be A  
17           Party, and Give Evidence

18  
19           42 U.S.C. § 1981(a) states, “All persons within  
20    the jurisdiction of the United States **shall** have the



1 same right in every State and Territory to make and  
2 enforce contracts, to sue, be parties, give evidence, and  
3 to the full and equal benefit of all laws...”

4 Mandatory Duty of District Courts To Exercise  
5 Jurisdiction Over Title VII/Title I and V Actions

6  
7 42 U.S.C.2000e-5(f) (3), and 42 U.S.C. §

8 12117(a), states:

9 Each United States district court and each  
10 United States court of a place subject to the  
11 jurisdiction of the United States ***shall have***  
12 ***jurisdiction*** of actions brought under this  
13 subchapter.

14  
15 Factual Background

16 On 06/08/15, Appellant filed his initial *Verified*  
17 *Complaint* (Dkt. No. 1), under 42 U.S.C. 12117(a) and  
18 42 U.S.C. 2000e, against the above-named  
19 Defendants. On 08/13/2015, Appellant filed his  
20 *Amended Complaint* (Dkt. No. 16).

21 Magistrate Gossett construed the *Verified*  
22 *Complaint* (Dkt. No. 1) as asserting the following  
23 federal and state claims against the Defendants:

1           • Violation of *Titles I and V of the Americans*  
2 *with Disabilities Act* (“ADA”), 42 U.S.C. §§ 12101, et  
3 seq., to include the alleged failure to provide  
4 reasonable accommodation and retaliation; • Violation  
5 of *Title VII of the Civil Rights Act of 1964*, 42 U.S.C. §§  
6 2000e, et seq., to include discrimination based on  
7 Plaintiff’s sex and race, creation of a hostile work  
8 environment, retaliation, and constructive discharge;  
9 and • Violation of Plaintiff’s constitutional rights  
10 under 42 U.S.C. § 1983... • Violation of the South  
11 Carolina Human Affairs Law, S.C. Code Ann. §§ 1-13-  
12 10, et seq...

13  
14           Magistrate Gossett failed to include a *Rule 72*  
15 *(pro se)* notification to Appellant of his right to object  
16 to the rulings of *Order 27*. On 11/09/15, without  
17 allowing the parties to confer in accordance with *Rules*  
18 *16* and *26*, orally or in writing, Magistrate Gossett,  
19 entered *SCHEDULING ORDER (Dkt. No. 42)*  
20 establishing a deadline of December 7, 2015 for  
21 “[m]otions to join other parties and amend the  
22 pleadings...”

23           Appellant asserts that on 9/15/2017, Defendants  
24 Rayvon Irby, Michael Angelo Calzaretta, McNair Law  
25 Firm, and Lowe’s Home Centers, LLC committed an

1 additional discreet act of discrimination/retaliation by  
2 filing affidavits, during summary judgment  
3 proceedings, containing perjured evidence on a  
4 material fact in controversy. Appellant alleges that the  
5 above-named Defendants conspired together, to  
6 commit fraud on the Lower Court, to interfere with the  
7 Appellant's rights under *42 U.S.C. 12117(a)*,  
8 incorporating *42 U.S.C. § 2000e-5(f)*, to proceed in  
9 district court on his claims and to have a jury to hear  
10 said claims (by having his claims dismissed during  
11 summary judgment).

12 Appellant promptly filed an additional charge of  
13 discrimination with the U.S. EEOC (*Dkt. No. 238-1 at*  
14 *1-16*) on December 5, 2017, within the 180 day  
15 deadline of *42 U.S.C. 12117(a)* and *42 U.S.C. § 2000e-*  
16 *5(e)(1)*, and the U.S. EEOC issued right-to-sue letters  
17 on all charges filed on 3/26/2018. (*Dkt. No. 17 – 20*).

1 Appellant filed a *Motion to Amend Complaint*  
2 (*Dkt. No. 238*), within 90 days, of the issuance of the  
3 U.S EEOC's *right-to-sue letters* on 5/04/18, satisfying  
4 all of the prerequisites articulated by 42 U.S.C. §  
5 12117(a), 42 U.S.C. 2000e-5(f), and *McDonnell*  
6 *Douglas Corp. v. Green*, 411 US 792 - Supreme Court  
7 1973.

8 However, District Judge Childs entered *Text*  
9 *Order 261*, and relying on *Rule 16(b)*, refused to  
10 exercise jurisdiction over Appellant's supplemental  
11 pleading, ruling:

12 In the instant case, the court filed its  
13 *Scheduling Order* on November 9, 2015. (*ECF No. 42.*)  
14 The *Scheduling Order* indicates that "[m]otions to...  
15 amend the pleadings... shall be filed no later than  
16 December 7, 2015." (*Id. at 1.*) Plaintiff's *Motion to*  
17 *Amend Amended Complaint* was filed on May 4, 2018,  
18 which is years after December 7, 2015. (Compare *ECF*  
19 *No. 238*, with *ECF No. 42.*) Additionally, upon review,  
20 Plaintiff's *Motion to Amend Amended Complaint* does  
21 not purport to show any cause and does not suggest  
22 any reasons for why it is untimely. (See *ECF No. 238.*)  
23 Therefore, Plaintiff's *Motion to Amend Amended*  
24 *Complaint 238* is DENIED with prejudice.

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1           Most importantly, the Supreme Court's ruling  
2   in *National Railroad Passenger Corporation v.*  
3   *Morgan*, 536 US 101 - Supreme Court 2002 (the  
4   Discreet Discriminatory Act Doctrine), required the  
5   Appellant to file a new charge and go through the  
6   charge filing process again for the additional alleged,  
7   discreet discriminatory acts taken by the Defendants  
8   in 9/15/2017.

9           Most importantly, Appellant asserts the  
10   tandem of Magistrate Gossett and District Judge  
11   Childs have an established and undisputed history of  
12   refusing to exercise jurisdictions over actions, under  
13   42 U.S.C. 2000e-5(f)(1) and 42 U.S.C. § 12117(a), filed  
14   by the Appellant, including, but not limited to:

- 15       1. Refusing to exercise jurisdiction over  
16       Appellant's disparate treatment claim based on  
17       race/gender – *Sanders v. Wal-Mart Stores East,*  
18       *LP*, C/A No. 1:14-cv-03509-JMC, Order 22 at 1  
19       *n. 1.*
- 20       2. Refusing to exercise jurisdiction over  
21       Appellant's claims of hostile work environment  
22       based on disability/gender – *Sanders v. Family*

- 1           *Dollar Stores of South Carolina, C/A No. 1:15-*  
2           *cv-00586-JMC*
- 3       3. Also, refusing to exercise jurisdiction over  
4       Appellant's state law claim of violation of *SC*  
5       *Code 41-1-80*, a claim explicitly raised in  
6       Appellant's *Amended Complaint (Dkt. No. 16 at*  
7       *7 ¶ 32)*, and refusing to reconsider the failure to  
8       construe the claim as raised. *Sanders v. Lowe's*  
9       *Home Centers, LLC et al, C/A No. 0:15-cv-*  
10       *02313-JMC*.
- 11       4. Refusing to exercise jurisdiction over  
12       Appellant's federal claim of conspiracy to  
13       deprive of substantial rights under 42 U.S.C. §  
14       1985(3), Count 9, explicitly raised in his  
15       *Verified Complaint. Sanders v. SC WCC et al,*  
16       *C/A No. 0:18-cv-02601-JMC (Compare App.'s*  
17       *Verified Complaint (Dkt. No. 1-1 at 12, lines 23-*  
18       *27) with Magistrate Gossett's omitting of Count*  
19       *9 in her Order 8 at 1).*
- 20

21           The Appellant asserts the Lower Court had a  
22       mandatory duty to, under 42 U.S.C. § 1981, to permit  
23       the Appellant, to sue, be party, and present evidence  
24       on his supplemental claims, and to, under 42 U.S.C.  
25       12117(a) and 42 U.S.C. § 2000e-5(e)(1), exercise  
26       jurisdiction over his action and the claims raised in his  
27       supplemental pleading.

1 Appellant asserts it is in the best interest of the  
2 parties involved and to conserve judicial resources for  
3 the Lower Court, to allow the claims raised in  
4 Appellant's supplemental pleading (*Motion to Amend*  
5 *Amended Complaint – Dkt. No. 238*) to be raised in  
6 this claim as opposed to requiring Appellant to file a  
7 separate claim altogether.

8 Relief Requested

9 THEREFORE, Appellant moves this Court to enter a  
10 Writ of Mandamus/Prohibition against the Lower  
11 Court, Magistrate Gossett and District Judge Childs,  
12 to cease and desist from refusing to exercise  
13 jurisdiction over Appellant's properly raised claims in  
14 any present or future proceeding before them.

15 Appellant also moves the Court to enter a Writ  
16 of Mandamus establishing that a person; filing a  
17 supplemental pleading, setting out additional discreet,  
18 discriminatory acts by a Defendant in any action



1 under 42 U.S.C. § 12117(a) or 42 U.S.C. § 2000e-  
2 5(f)(1), and after going through the charge process of  
3 the U.S. EEOC, is allowed to do so for adverse acts  
4 occurring after a deadline to amend pleadings has  
5 passed.

6 Prior Appeals

7 A. Have you filed other cases in this court? Yes

8 B. If you checked YES, what are the case names

9 and docket numbers for those appeals and what

10 was the ultimate disposition of each?

- 11 1. Sanders v. WAL-MART STORES EAST, LP –  
12 No. 18-1063 – Dismissed.  
13 2. Sanders v. LOWE's HOME CENTERS, INC. –  
14 Nos. 17-2242, 18-1500, 18-2495 – Dismissed.  
15 3. Sanders v. FAMILY DOLLAR STORES OF  
16 SOUTH CAROLINA – No. 17-2375 –  
17 Dismissed.

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