

19-5517

1 SUPREME COURT of the  
2 UNITED STATES  
3 No. 18-02328 (18-2328)  
4 DECISION BELOW: 0:15-cv-02313-JMC

6 ERIC ALAN SANDERS  
7 Plaintiff – Appellant

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

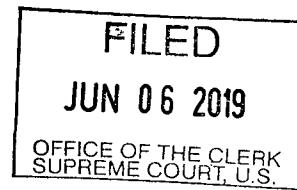
13       ON WRIT OF CERTIORARI to the UNITED STATES  
14       COURT OF APPEALS for the FOURTH CIRCUIT

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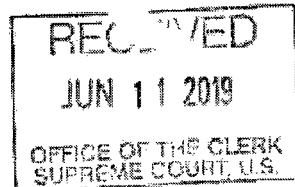
ERIC ALAN SANDERS V. LOWE'S HOME CENTERS, LLC et al

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 discreet acts; (2) and timely moving to amend the complaint within 90 days of receiving a right-to-sue letter from the EEOC.



## STATEMENT OF ADOPTION

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:

## TABLE OF CONTENTS

15	<i>Statement of Adoption by Reference</i> .....	2
16	<i>Table of Authorities</i> .....	2
17	<i>Jurisdiction</i> .....	3
18	<i>Issues for Review</i> .....	3
19	<i>Issue 1</i> .....	4
20	<i>Supporting Facts and Arguments</i> .....	5
21	<i>Relief Requested</i> .....	15
22	<i>Prior Appeals</i> .....	16

## TABLE OF AUTHORITIES

	CASES	PAGE
2	<i>42 U.S.C. § 12117(a)</i> .....	4
3		
4	<i>42 U.S.C. § 1981(a)</i> .....	4
5		
6	<i>42 U.S.C. 2000e-5(f)(3)</i> .....	4
7		
8	<i>Kerr v. United States Dist. Court for Northern Dist. of Cal.</i> , 426 US 394 - Supreme Court 1976	3
9		
10		
11	<i>McDonnell Douglas Corp. v. Green</i> , 411 US 792 - Supreme Court 1973.....	4
12		
13		
14	<i>National Railroad Passenger Corporation v. Morgan</i> , 536 US 101 - Supreme Court 2002	4
15		
16		
17	<i>Rule 15(d)</i> .....	3
18		
19	<i>Wright v. Collins</i> , 766 F. 2d 841 (CA4 1985).....	4
20		
21	Jurisdiction	
22	Name of Court from which review is sought:	
23	United States Court of Appeals for the Fourth Circuit	
24		
25	Date(s) of order or orders for which review is sought:	
26	Per Curiam (Doc. 17), 04/08/19	
27		
28	Issues for Review	
29	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.

## 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        1076

## 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.

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

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).

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

<sup>7</sup> 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.

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.  
25

### *Argument*

3 First, the Appellant contends District Judge

4 Childs's ruling equals an abuse of discretion and error  
5 of law because the adverse actions complained of in his  
6 supplemental pleading did not occur until 9/15/2017, 2  
7 years after the deadline for amending the pleadings,  
8 and he could not possibly forecast the future adverse  
9 actions of Defendant.

10                   Second, although the pleading is titled a Motion  
11                   to Amend Amended Complaint (Dkt. No. 238), it is  
12                   actually a supplemental pleading under *Rule 15(d)*  
13                   that attempts to set out “transaction[s], occurrence[s],  
14                   or event[s] that happened after the date of the  
15                   pleading to be supplemented” and occurring after  
16                   *Scheduling Order* (Dkt. No. 42) was entered into the  
17                   docket, and after the deadline of December 5, 2015 for  
18                   amending the pleadings.

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*

*Dollar Stores of South Carolina, C/A No. 1:15-cv-00586-JMC*

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

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.