

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MAURICE JAMES SJOBLOM,  
on behalf of himself and a class of employees  
and/or former employees similarly situated,

Plaintiff,

v.

CHARTER COMMUNICATIONS, LLC,  
CHARTER COMMUNICATIONS (CCI),  
INC. and CHARTER COMMUNICATIONS,  
INC.

Defendants.

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OPINION AND ORDER

3:07-cv-0451-bbc

This is a civil action for monetary, declaratory and injunctive relief under the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and Wisconsin wage and hour laws, Wis. Stat. chs. 103 and 104 and §§ 109.01-109.11. Before the court is plaintiff's motion for clarification or alternative motion for reconsideration of this court's December 19, 2007 opinion and order regarding plaintiff's second amended complaint. For the reasons stated below, I am granting plaintiff's motion and allowing further briefing on the motion for conditional certification.

## DISCUSSION

On November 16, 2007, plaintiff filed a second amended complaint without leave of court or defendants' consent. Dkt. # 115. In accordance with Fed. R. Civ. P. 15, this court required plaintiff to seek leave of court or defendants' consent before it would consider the second amended complaint. Order entered December 5, 2007, dkt. # 141. In response, plaintiff filed a motion for leave to amend the complaint, dkt. # 145, which the court granted in an order entered on December 19, 2007, dkt. # 154. In that order, the court stated that it would not consider the second amended complaint for purposes of the motion for conditional certification because it had been filed after the motion had been briefed by the parties.

Plaintiff asserts that although the preliminary pretrial conference order in this case states only generally that the parties may amend the pleadings by November 16, 2007, dkt. # 23, the transcript of the conference makes clear that the Magistrate Judge was allowing plaintiff to amend his complaint again before November 16, 2007 without leave of court or defendants' consent. After more carefully reviewing both the preliminary pretrial conference order and transcript, I agree with plaintiff. As a result, plaintiff was not required to seek leave of court before amending the complaint and the second amended complaint became effective upon filing on November 16, 2007.

Defendants argue that considering the second amended complaint at this point will give plaintiff an unfair advantage and allow him to correct numerous deficiencies in his original motion for conditional certification. As defendants note, the second amended complaint changes plaintiff's definition of the putative Fair Labor Standards Act class from one including all current and former employees of defendants who engage or have engaged in various tasks and activities without receiving proper compensation within the past three years, to the following:

[A]ll current and former employees who, within the applicable time period(s), (i) held one or more of the following positions or equivalent positions: Broadband Technician I, Broadband Technician II, Broadband Technician III, Sr. Broadband Technician, Broadband Technician V-Lead, System Technician I, System Technician II, Sr. System Technician, System Technician-Lead (otherwise known as Service Technician, Installer, Installer Repair Technician), (ii) who [sic] Charter assigned a company vehicle to, and, (iii) who, on one or more occasion [sic], took a company vehicle home and kept that company vehicle overnight at his or her home.

Dkt. # 115 at 5.

I agree with defendants that it is somewhat unfair for plaintiff to change the definition of the proposed class after defendants already had responded to the motion for conditional certification which relied on the old definition. However, even though the second amended complaint clarifies and limits the scope of the putative federal class, I do not agree that it is so different as to correct fatal flaws in the original class definition. Both complaints identify the same position titles and tasks and activities of putative class

members and allege that plaintiff is a Broadband Technician with an assigned company vehicle that he drives to and from home. Dkt. # 4 and # 115. The most significant difference is that the first amended complaint states that putative class members have a company vehicle assigned to them, whereas the second amended complaint allows for the fact that an employee holding one of the identified positions may not have an assigned vehicle that he or she takes home overnight. Id.

I am not persuaded that plaintiff's motion would fail solely because he stated that all field service employees were assigned vehicles that they drove home every night. The purpose of this stage of litigation is to allow the parties to conduct further discovery so that the court may determine whether class certification is in fact appropriate. Flores v. Lifeway Foods, Inc., 289 F. Supp. 2d 1042, 1045 (N.D. Ill. 2003). Plaintiff's burden is not a high one. Once plaintiff has had the opportunity to produce further evidence in support of his motion for conditional certification, the court will determine whether certification is appropriate and if so, how the class should be defined in the notice to putative class members. See Order entered December 19, 2007, Dkt. # 154.

Further, even if the court denied plaintiff's motion for conditional certification on the basis that his original class definition was too broad, plaintiff properly amended his complaint and could file a motion for conditional certification of the revised class. Given this fact and that the court already has reserved ruling on the motion for conditional

certification, I will consider the second amended complaint in deciding that motion. Although I do not believe that further briefing is necessary to inform the court, I will revise the December 19, 2007 order and permit such briefing to ensure a complete and fair record. Plaintiff will have until January 15, 2008 and defendants will have until January 22, 2008 to brief whether a federal class should be conditionally certified given the revised class definition in the second amended complaint and any further evidence submitted by plaintiff. No reply brief will be allowed.

#### ORDER

IT IS ORDERED that plaintiff's motion is GRANTED. This court's December 19, 2007 order is revised to the following extent:

1. The court will consider the second amended complaint in deciding the motion for conditional certification; and
2. Plaintiff has until January 15, 2008 to amend his brief in support of conditional certification. Defendants have until January 22, 2008 to submit a brief in response. No

reply brief will be allowed.

Entered this 2nd day of January, 2008.

BY THE COURT:

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BARBARA B. CRABB  
District Judge