

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

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

ORDER

Plaintiff,

3:07-CV-0451-BBC

v.

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

Defendants.

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. Plaintiff Maurice Sjoblom alleges that defendants violated federal and state law by not compensating him for certain work activities related to his assigned vehicle and equipment and failed to properly record the hours that he worked, in violation of state law. Plaintiff seeks to bring his Fair Labor Standards Act claims on behalf of himself and similarly situated current and former employees of defendants. Plaintiff moved for conditional certification of a nationwide collective action on October 5,

2007 and filed a reply brief in support of the motion on November 21, 2007. Before the court is defendants' motion for leave to file a surreply brief. Defendants assert that in the reply brief, plaintiff relied on affidavits, depositions and a revised definition of his proposed collective action obtained after the filing on his motion and initial supporting brief. I agree that plaintiff relied impermissibly on this new evidence and will not consider it in ruling on the motion for conditional certification of a collective action. Therefore, defendants have no need to file a surreply. Their motion to do so is denied.

As defendants note, plaintiff filed a second amended complaint on November 16, 2007, revising the definition of his proposed collective action. Although the preliminary pretrial conference order in this case states that the parties may amend the pleadings by November 16, 2007, dkt. # 23, a party may amend its pleading only once as a matter of course under Fed. R. Civ. P. 15. Because plaintiff amended his complaint once, on August 31, 2007, dkt. # 4, he must first seek the consent of defendants or leave of this court before his second amended complaint will be considered by the court.

ORDER

IT IS ORDERED that defendants' motion for leave to file a surreply is DENIED.

Entered this 5th day of December, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge