

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

CYNTHIA LARSON,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

WISCONSIN PHYSICIANS SERVICE
INSURANCE CORPORATION,

Defendant.

ORDER

14-cv-215-bbc

In this proposed class action, plaintiff Cynthia Larson contends that the copayment defendant Wisconsin Physicians Service Insurance Corporation charges its insureds for chiropractic care violates Wis. Stat. § 632.87(3). Defendant has filed a motion to dismiss that focuses on the question whether the lawsuit is barred by the doctrine of claim preclusion. However, in its reply brief, defendant develops an argument on the merits for the first time, saying that it did not do so before because it did not fully understand plaintiff's legal theory until she filed her brief in opposition to the motion to dismiss.

Now plaintiff has filed a motion in which she asks the court to disregard defendant's new argument, or, in the alternative, to allow her to file a surreply brief. Although the general rule is that arguments raised for the first time in a reply brief are forfeited, it makes sense to address defendant's merits argument now because it relates to a question of law that

may not need further factual development to resolve. Accordingly, I will grant plaintiff's alternative request for leave to file a surreply brief.

ORDER

IT IS ORDERED that plaintiff Cynthia Larson's motion for leave to file a surreply brief, dkt. #34, is GRANTED. Plaintiff may have until August 4, 2014, to file the brief.

Entered this 25th day of July, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge