

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO. 5:15-CV-576-FL

MIGUEL CONTRERAS, individually and)
on behalf of all similarly situated)
individuals,)
)
Plaintiff,)
)
v.)
)
TRICOMM UTILITY SERVICES LLC)
and NICHOLAS BONEY,)
)
Defendants.)

ORDER


This matter is before the court on plaintiff’s motion for default judgment (DE 31) and motion for leave to file first amended complaint (DE 36). On August 31, 2016, the court held in abeyance consideration of the motion for default judgment, while directing plaintiff to file a supplemental affidavit of counsel and a breakdown of time expenditures, excluding time spent for two opt-in claimants who were not named in the complaint, to enable the court to accurately calculate attorney’s fees to be included with the judgment in this case. (See DE 33).

Plaintiff’s counsel now has filed said affidavit, but also argues therein, and in the instant motion to amend complaint, that the complaint should be amended to include the two previously omitted opt-in claimants now as named plaintiffs. Pursuant to Federal Rule of Civil Procedure 15(a)(2), for good cause shown, where such two opt-in claimants were subject of plaintiff’s earlier motion for conditional class certification, the motion to amend is ALLOWED, with one exception. As noted in the court’s prior order, on the basis of notice filed by plaintiff, claims against defendant

Michael Sweat are futile in light of the Chapter 7 bankruptcy discharge injunction, and claims therefore may not proceed against defendant Michael Sweat. Accordingly, plaintiff is DIRECTED to file the amended complaint, removing defendant Michael Sweat as defendant, within **5 days** of the date of this order.

In addition, because the amended complaint asserts new claims for relief against remaining defendants, where new plaintiffs Carlos Aguilar and Rene Salvatierra now assert their own claims against defendants, plaintiffs must serve their amended complaint on defendants in accordance with Federal Rule of Civil Procedure 5(a)(2). Likewise, because the amended complaint supersedes the complaint upon which the motion for default judgment was based, plaintiff's original motion for default judgment (DE 31) is DENIED without prejudice. Upon service of the amended complaint, if remaining defendants continue to be in default, plaintiffs may take steps then to reduce the matter to judgment.

SO ORDERED, this the 24th day of October, 2016.


LOUISE W. FLANAGAN
United States District Judge