

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JODY M. BARTLESON, individually
and on behalf of all other similarly
situated employees,

Plaintiff,

vs.

WINNEBAGO INDUSTRIES, INC.,

Defendant.

No. C02-3008-MWB

**ORDER ON MOTION TO AMEND
COMPLAINT**

On September 11, 2003, the plaintiffs filed a motion (Doc. No. 41) for leave to amend their complaint. The defendant filed a resistance (Doc. No. 43) on September 22, 2003. The court held a hearing on the motion on October 2, 2003, and directed the parties to file briefs in support of their respective positions. The defendant filed its brief on October 14, 2003 (Doc. No. 46), and the plaintiffs filed their brief on October 15, 2003 (Doc. No. 47). The motion is now fully submitted and ready for consideration.

The plaintiffs in this case, who are current and former employees of the defendant, have brought this action for violation of overtime provisions contained in the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”). In their motion to amend, the plaintiffs seek to add a claim “for violations of Iowa Code Chapter 91A, the Iowa Wage Payment Collection Act.” (Doc. No. 41, ¶ 2) The defendant objects on several grounds, discussed below. Among other things, a real “fighting issue” with respect to the motion is that the amendment will add a second potential class of plaintiffs to the case. The FLSA

permits class actions for unpaid wages, but such actions must be “opt in” class actions. In other words, affected employees must elect to opt into the suit and be listed as plaintiffs. *See* 29 U.S.C. § 216. There is no such restriction in the Iowa Wage Payment Collection Act (“IWPCA”), under which a class action would involve a traditional “opt out” class under Federal Rule of Civil Procedure 23, including all affected employees as plaintiffs until they ask to be excluded. The defendant argues the IWPCA does not allow for a separate cause of action, Congress did not intend that FLSA actions should be joined with state wage payment claims, and in any event, the court should decline to exercise supplemental jurisdiction.

Standards for Motion to Amend

Rule 15(a), Federal Rules of Civil Procedure, provides that leave to amend “shall be freely given when justice so requires.” Although, the policy favoring liberal allowance of amendment does not mean the right to amend is absolute, *Thompson-El v. Jones*, 876 F.2d 66, 67 (8th Cir. 1989), the Supreme Court has interpreted Rule 15(a) to mean that “absent a good reason for denial – such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment -- leave to amend should be granted.” *Id.* (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962)); accord *Hanson v. Hancock County Mem. Hosp.*, 938 F. Supp. 1419, 1430 (N.D. Iowa 1996); *Hancock v. Thalacker*, 933 F. Supp. 1449, 1470-71 (N.D. Iowa 1996); *Quality Refrigerated Servs., Inc. v. City of Spencer, Iowa*, 908 F. Supp. 1471, 1488-89 (N.D. Iowa 1995). The court must consider the prejudice to the opponent, whether additional discovery would be required, and whether the court’s docket would be adversely

affected. *Elema-Schonander, Inc. v. K.C.F. Medical Supply*, 869 F.2d 1124 (8th Cir. 1989).

In the present case, the defendant first objects to the amendment on the basis that it is untimely. The defendant notes all deadlines for amendments to the pleadings have passed, notice has been given to potential plaintiffs in the FLSA action, and 21 parties have been added as “opt in” plaintiffs since September 24, 2002. (*See* Doc. No. 46) The defendant further argues the plaintiffs “have come forward with no reason for their delay in seeking this amendment.” (*Id.*, p. 3) The plaintiffs’ counsel explained at the hearing that she filed the motion to amend after learning of the possibility of adding a claim under the IWPCA at a recent continuing legal education seminar, and she previously had not been aware of such a claim as a potential cause of action in this type of case. The court finds the plaintiff has not withheld filing the motion to amend in bad faith, for purposes of delay, or for any other improper purpose. Counsel’s explanation overcomes any implication that the motion to amend was delayed willfully, or that the court’s scheduling orders were “cavalierly disregarded by counsel.” *See Gestetner Corp. v. Case Equip. Co.*, 108 F.R.D. 138, 141 (D. Me. 1985). Further, the amendment is not being sought to cure any deficiency in the pleadings that the plaintiffs previously failed to cure by prior amendments. Although the court is free to find that ignorance of existing law is not a satisfactory excuse for a delayed motion to amend, *see Cresswell v. Sullivan & Cromwell*, 922 F.2d 60, 72 (2d Cir. 1990), the court declines to do so here, where the amendment being sought is based not on ignorance of the law, but ignorance of a creative legal theory applying that law.

As for impact on the court’s docket, the trial of this case has been continued to September 13, 2004, and the discovery deadline is not until April 1, 2004. It seems unlikely the court’s docket will be affected adversely if the amendment is allowed. The

court similarly finds the defendant would not be prejudiced unduly by allowance of the amendment. As the defendant notes in its resistance, the facts underlying both the FLSA claim and the proposed IWPCA claim are identical. (*See* Doc. No. 46, p. 4)

Therefore, the court's ruling on the motion turns on whether or not the amendment would be futile, and, if not, whether the court should exercise supplemental jurisdiction over the IWPCA claim.

Is the Proposed Amendment Futile?

The defendant argues the proposed amendment is futile “because Iowa Code Chapter 91A does not provide a separate cause of action under these facts and because Congress did not intend to allow state wage payment claims to be joined with FLSA claims.” (Doc. No. 46, p. 4) In their Complaint, the plaintiffs allege the defendant improperly classified them as exempt employees under the FLSA. The defendant argues the IWPCA does not contain substantive provisions that define who is an exempt employee or when an employer may not claim an individual as an exempt employee. Rather, the IWPCA relies on “the statutory structure of the FLSA to determined the alleged ‘wage’ due,” and the Iowa law “is purely a remedial statute that, standing alone, cannot support Plaintiffs’ claims.” (Doc. No. 46, pp. 4-5) The defendant argues, “A long line of cases makes clear that the [IWPCA] is only a remedial act adopted as a means of permitting employees to collect ‘wages’ due from an employer.” (Doc. No. 46, p. 5, citing *Runyon v. Kubota Tractor Corp.*, 653 N.W.2d 582, 585 (Iowa 2002); *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 596 (Iowa 2000); *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997); *Maday v. Elview-Stewart Sys. Co.*, 324 N.W.2d 467, 470 (Iowa 1982); *Williams v. Davenport Comm. Ltd. P’ship*, 438 N.W.2d 855, 857 (Iowa Ct. App. 1989))

The defendant's reasoning is flawed. The very fact that the Iowa law looks to the FLSA to determine the wages due under these circumstances lends support to the plaintiff's assertion that the FLSA and IWPCA claims properly may be brought in the same action. As the Iowa Supreme Court noted in *Anthony v. State*, 632 N.W.2d 897 (Iowa 2001), *cert. denied*, 534 U.S. 1129, 122 S. Ct. 1068, 151 L. Ed. 2d 971 (2002), the State of Iowa has acceded to the FLSA's mandate regarding the payment of overtime wages, and the State's "statutory scheme for deriving pay plans has been implemented in a manner that includes FLSA overtime remuneration as compensation owed by an employer." *Id.*, 632 N.W.2d at 902-03. *See also Kartheiser v. American Nat'l Can Co.*, 271 F.3d 1135, 1136 (8th Cir. 2001) (IWPCA "is remedial in nature and is meant to be liberally construed," citing *Hornby v. Iowa*, 559 N.W.2d 23, 26 (Iowa 1997)).

Indeed, although the Eighth Circuit Court of Appeals has not considered this particular issue,¹ numerous courts have recognized that joinder of claims under the FLSA and state wage payment laws is appropriate. *See, e.g., De Asencio v. Tyson Foods, Inc.*, 342 F.3d 301, 308 (3d Cir. 2003) (noting FLSA and Pennsylvania Wage Payment and Collection Law "are parallel federal and state laws," and the plaintiffs' claims sufficiently demonstrated common nucleus of operative facts, but declining to exercise supplemental jurisdiction on other grounds); *Goldman v. Radioshack Corp.*, slip op., 2003 WL

¹The defendant recognizes there is "no case on point in the Eighth Circuit," but asserts the decision in *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031 (8th Cir. 1999), "provides some guidance when confronting a state law claim and a federal law claim in the same case." (Doc. No. 46, p. 7) The defendant claims, "In *Fielder*[,] the Eighth Circuit reversed a district court's certification of two distinct classes because the second class had only state law claims. 188 F.3d at 1038." (*Id.*) The defendant misstates the holding in *Fielder*, where the court was considering whether it "should exercise supplemental jurisdiction *after* all federal claims [were] resolved." 188 F.3d at 1037 (emphasis in original). The court noted the *remaining* state law claims raised "novel, complex, and important issues of state law" that were "precisely the types of issues as to which federal courts should hesitate to exercise § 1367 supplemental jurisdiction." 188 F.3d at 1038 (citations omitted). *Fielder* is not instructive in the court's consideration of the plaintiff's motion to amend in the present case.

21250571 (E.D. Pa. Apr. 16, 2003) (recognizing claims under FLSA and Pennsylvania wage payment laws; FLSA class certified but certification of Rule 23 class postponed pending further discovery); *Beltran-Benitez v. Sea Safari, Ltd.*, 180 F. Supp. 2d 772, 774 (E.D.N.C. 2001) (recognizing claims under FLSA and North Carolina wage payment statute, and holding “FLSA’s prohibition of Rule 23 class actions does not bar the application of Rule 23 to a separate cause of action in the same complaint. *See Zelaya v. J.M. Macias, Inc.*, 175 F.R.D. 625, 626 (E.D.N.C. 1997).”); *Robinson v. Sizes Unlimited, Inc.*, 685 F. Supp. 442 (D.N.J. 1988) (recognizing claims under ADEA, which adopts FLSA’s class action procedure, and New Jersey age discrimination statute). *See also Sperling v. Hoffman-LaRoche, Inc.*, 118 F.R.D. 392, 411-12 (D.N.J. 1988) (recognizing claims under ADEA and New Jersey age discrimination statute, in case discussing appropriate notice procedures), *aff’d in pertinent part*, 862 F.2d 439 (3d Cir. 1988), *aff’d on other grounds*, 493 U.S. 165, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989).

Rather than questioning whether FLSA and state-law claims appropriately may be brought in the same case, the issue that most often arises is whether the state-law plaintiffs have met the requirements for class certification under Rule 23. *See, e.g., Goldman, supra; Muecke v. A-Reliable Auto Parts & Wreckers, Inc.*, 2002 WL 1359411 (N.D. Ill. 2002) (mem.) (recognizing actions under FLSA and Illinois wage payment statutes, but declining to certify class on state law claims for failure to make required showing under Rule 23); *Thiebes v. Wal-Mart Stores, Inc.*, 1999 WL 1081357 (D. Or. 1999) (allowing joinder of FLSA and state law claims for purposes of notice and discovery, but denying Rule 23 motion to certify class, without prejudice to reassertion after opt-in period closed for FLSA claim); *Robinson, supra* (exercising pendent jurisdiction over ADEA and state law claims, but limiting scope of opt-out class); *Sperling, supra*. The court finds it is

appropriate for FLSA and state-law claims with the same factual basis to be joined in a single action.

The defendant further claims that because “the Plaintiffs must rely on the statutory structure of the FLSA to determine the alleged ‘wage’ due and to be collected under the FLSA,” the plaintiffs also should be bound by the FLSA’s enforcement provisions, including the requirement for an “opt in” class action. (Doc. No. 46, p. 5) Courts uniformly have found the Rule 23 factors for “opt out” class actions to be inapplicable to the FLSA’s “opt in” requirement. *See, e.g., LaChapelle v. Owens-Illinois, Inc.*, 513 F.2d 286, 288 (5th Cir. 1975) (concluding suit under ADEA, which adopts FLSA’s “opt-in” class action provisions, could not be brought as a Rule 23-type class action; noting “fundamental, irreconcilable difference between the class action described by Rule 23 and that provided for by FLSA § 16(b)”); *accord Owens v. Bethlehem Mines Corp.*, 108 F.R.D. 207, 209-10 (S.D.W. Va. 1985) (citing *LaChapelle* for proposition that FLSA-type class actions and Rule 23-type class actions are “mutually exclusive and irreconcilable”); *Sheffield v. Orius Corp.*, 211 F.R.D. 411 (D. Or. 2002) (“The majority of courts have concluded that Rule 23 factors are inapplicable to § 216(b) actions.”) (citing *Kinney Shoe Corp. v. Vorhes*, 564 F.2d 859, 862 (9th Cir. 1977); *Daggett v. Blind Ent. of Oregon*, 1996 U.S. Dist. LEXIS 22465, at *14 (D. Or. 1996); *Bayles v. American Med. Response of Colo., Inc.*, 950 F. Supp. 1053, 1067 (D. Colo. 1996); and *Mete v. N.Y. Office of Mental Retardation & Developmental Disabilities*, 1993 WL 226434, at *2 (N.D.N.Y. 1993)); *Wyatt v. Pride Offshore, Inc.*, 1996 WL 509654 (E.D. La. 1996) (noting Rule 23 provisions “are inapplicable to any action brought under the FLSA”); *see also Sushan v. Univ. of Colo.*, 132 F.R.D. 263 (D. Colo. 1990) (discussing “manifestly ‘irreconcilable’” features of section 216’s opt-in provisions and Rule 23’s opt-out provisions in case where ADEA class-action plaintiff sought to avoid completely all requirements of Rule 23).

However, whether Rule 23's class action requirements can be applied to a plaintiff's FLSA-based claims is not the issue here. The plaintiffs are not seeking to graft the requirements of Rule 23 onto their FLSA action. Instead, they seek to add a separate claim for violation of the IWPCA, which would fall within the scope of the Rule 23 requirements.

The defendant argues at length that the proposed amendment would be futile because certification of the state-law claim under Rule 23 would be inappropriate. That issue is not presently before the court. Whether the plaintiffs can make the necessary showing for certification of their state-law claim under Rule 23 is an issue that is separate and distinct from whether they should be permitted to amend their Complaint to assert the state-law claim in the first instance. The court finds the proposed amendment is proper on its face and is not futile. However, this does not resolve the question of whether the court should exercise supplemental jurisdiction over the proposed IWPCA claim.

Should the Court Exercise Supplemental Jurisdiction?

In an action predicated upon federal law, supplemental jurisdiction allows federal courts to hear and decide state-law claims along with federal-law claims when they “derive from a common nucleus of operative fact, such that the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional case.” *Chicago v. Int’l College of Surgeons*, 522 U.S. 156, 164-65, 118 S. Ct. 523, 529-30, 139 L. Ed. 2d 525 (1997) (internal quotation marks omitted) (citing *Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S. Ct. 1130, 1138, 15 L. Ed. 2d 218 (1966); other citations omitted); 28 U.S.C. § 1367(a) (state-law claims must be “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy”); accord *Wisconsin Dept. of Corrections v. Schacht*, 524

U.S. 381, 387, 118 S. Ct. 2047, 2051-52, 141 L. Ed. 2d 364 (1998) (quoting 28 U.S.C. § 1367(a); citing *Chicago*, 522 U.S. at 163-66, 118 S. Ct. at 528-30). *See Chicago*, 522 U.S. at 167, 118 S. Ct. at 531 (“The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking.”) In this case, there is no question that the proposed IWPCA claim involves the same nucleus of operative fact as the FLSA claim.

However, a court may decline to exercise supplemental jurisdiction in four distinct circumstances:

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). The Supreme Court, in *Chicago*, explained factors the courts should consider in exercising the discretion afforded by section 1367(c):

Depending on a host of factors, then -- including the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims -- district courts may decline to exercise jurisdiction over supplemental state law claims. The statute thereby reflects the understanding that, when deciding whether to exercise supplemental jurisdiction, “a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.”

Chicago, 522 U.S. at 173, 118 S. Ct. at 534 (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350, 108 S. Ct. 614, 619, 98 L. Ed. 2d 720 (1988)).

In the present case, the defendant argues the court should decline to exercise supplemental jurisdiction on the grounds set forth in subsections (2) and (4) of section 1367(c). In particular, the defendant asserts “the state law claim may predominate over the federal claim if there are more persons who are in the ‘opt out’ class than are in the ‘opt in’ class.” (Doc. No. 46, p. 10, citing *De Asencio*, 342 F.3d at 311) The defendant also argues “there could be two distinct ‘classes’ in this case because there is no assurance that members of the Rule 23 class would opt in to the FLSA class.” (*Id.*, citing *Zelaya v. Macias*, 999 F. Supp. 778, 782 (E.D.N.C. 1998))

In *Goldman, supra*, a case involving claims under the FLSA and Pennsylvania wage statutes, the court considered arguments virtually identical to those advanced by the defendant here, and expressly declined to follow *Zelaya*, noting the case had “not received a welcomed reception in federal courts.” *Goldman*, at *4 (citing cases). This court finds persuasive the reasoning of the *Goldman* court, and the court in *Ansoumana v. Gristede’s Operating Corp.*, 201 F.R.D. 81 (S.D.N.Y. 2001).² The *Goldman* court found considerations of judicial economy warranted trying the related FLSA and state-law claims together, noting the claims were premised on the same facts, parallel to one another, and likely would succeed or fail together. *Goldman*, at *5. The court opined that if the state-law claims were tried in state court while the FLSA claims were tried in federal court, “the two cases would be so related that any decision on the merits on one action would have preclusive effects on the other action. If the preclusive effects did not come to fruition,

²*Ansoumana* was distinguished on other grounds by Chief Judge Mark W. Bennett in *Sanft v. Winnebago Indus., Inc.*, 216 F.R.D. 453, 459 (N.D. Iowa 2003).

the cases [could] result in conflicting findings or judgment. Proceeding in both forums would needlessly increase litigation expenses for both parties.” *Id.*

The *Goldman* court adopted the reasoning of the court in *Ansoumana*, where the court explained:

Indeed, in contrast to the objections raised by the Defendants, this case demonstrates why supplemental jurisdiction should be exercised. If the related FLSA and [state-law] claims were to be litigated in parallel fashion, in this court and in the New York Supreme Court, there would be great potential for confusion of issues; considerable unnecessary costs, inefficiency and inconsistency of proceedings and results; and other problems inherent in parallel class action litigation. . . . Congress enacted Section 1367 to avoid such problems. Defendants short-sightedly argue to reverse the Congressional wisdom. I decline to do so.

Ansoumana, 201 F.R.D. at 96; *see Goldman*, at *5 n.3. This court similarly adopts the position set forth by the courts in *Ansoumana* and *Goldman*, and finds the state-law claim does not predominate over the federal claim.

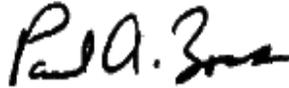
Similarly, the court finds unpersuasive the defendant’s argument that “the purported conflict between 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23 constitutes . . . an exception circumstance” sufficient for this court to decline to assume supplemental jurisdiction over the IWPCA claim. *See Beltran-Benitez*, 180 F. Supp. 2d at 773-74.

For the reasons stated above, the court will exercise its discretion to assume supplemental jurisdiction over the plaintiffs’ IWPCA claim. The plaintiffs’ motion to

amend their Complaint is **granted**. The Clerk of Court is directed to file the Amended and Substituted Complaint submitted with the motion.

IT IS SO ORDERED.

DATED this 24th day of October, 2003.



PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT