United States District Court
For the Northern District of California

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7   IN THE UNITED STATES DISTRICT COURT

8   FOR THE NORTHERN DISTRICT OF CALIFORNIA

9   SAN FRANCISCO DIVISION

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13   IGUAÇU, INC.,   No. C 09-0380 RS

14   Plaintiff,
         v.   **ORDER RE *QUANTUM MERUIT***
15   **CLAIM**

16   ANTONIO CABRERA MANO FILHO,

17   Defendant.
      _____/
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19   Plaintiff's request to include a claim for recovery in *quantum meruit*, effectively an informal

20   motion under Rule 15 of the Federal Rules of Civil Procedure for leave to amend its complaint, is

21   denied. Notwithstanding the liberal policy favoring amendments, the prejudice to defendant at this

22   stage of the proceedings is palpable, significant, and not curable. No discovery or preparation of

23   expert testimony has taken place regarding what would be a difficult task, rife with potential

24   disputes, of assigning a dollar value to represent the "reasonable value" of plaintiff's alleged

25   services, in the event the contractual claim fails.

26   Plaintiff argues that its pleading of an unjust enrichment affirmative defense to a counter

27   claim was sufficient to implicate these issues. That argument is unpersuasive. Proving "unjust

28   enrichment" would not require any quantification of the value of the alleged services. Thus,

defendant had no occasion to respond to the pleading of that affirmative defense by conducting the

types of discovery that would have been reasonably necessary to defend against a *quantum meruit*

claim. While plaintiff may be correct that recovery in *quantum meruit* is theoretically available

upon the failure of a contract claim in most instances, that does not excuse it from its obligation to

plead the claim and give defendant notice that it was seeking such recovery in the alternative.

Plaintiff's request on the eve of trial, not even presented as a motion, comes too late.[1]

IT IS SO ORDERED.

Dated: 9/18/13

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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[1] Notably, even plaintiff's proposed special verdict form does not provide for a *quantum meruit* claim.