

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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|------------------------|---|-------------------------|
| DAVID DALL, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| CERTIFIED SALES, INC., | : | CASE NO. 3:08CV19 (DFM) |
| | : | |
| Defendant, | : | |
| | : | |
| v. | : | |
| | : | |
| NORTHERN INS. CO. | : | |
| | : | |
| Third-Party Defendant. | : | |

RULING ON MOTION TO AMEND

Pending before the court is the plaintiff's Motion for Leave to File a First Amended Complaint, doc. #100. The plaintiff filed the motion on February 6, 2011, with jury selection scheduled for February 9, 2011 and trial scheduled to commence on February 15, 2011. The defendant and third-party defendant object to the motion.

Fed. R. Civ. P. 15(a) provides that, once a responsive pleading has been served, a plaintiff may amend his or her complaint only by leave of court or with written consent of the adverse party. "The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). However, where the court has entered a scheduling order, the lenient standard under Rule 15(a) must be balanced against the requirement under Rule 16(b) that the Court's scheduling order "shall not be modified

except upon a showing of good cause." See Grochowski v. Phoenix Construction, 318 F.3d 80, 86 (2d Cir. 2003); Fed. R. Civ. P. 15(a); Fed. R. Civ. P. 16(b). Under Rule 16(b), a court may exercise its discretion to deny a motion to amend due to the moving party's undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by previously allowed amendment, undue prejudice to the opposing party or futility of the amendment. See Parker v. Columbia Pictures Indus., 204 F.3d 326, 339-40 (2d Cir. 2000). See also Zahra v. Town of Southold, 48 F.3d 674, 686 (2d Cir. 1995) (motion to amend filed two and a half years after the commencement of the action and three months prior to trial was properly denied due to undue delay); John Hancock Mut. Life Ins. Co. v. Amerford Int'l Corp., 22 F.3d 458, 462 (2d Cir. 1994) (denial of motion to amend was proper where it was filed more than four months after the court's deadline for amendments).

The plaintiff contends that the amended complaint merely restates the same facts and "overall legal theories" as his original complaint. However, the proposed amended complaint includes entirely new claims of unjust enrichment, "restitution," and quantum meruit. To the extent the proposed amended complaint attempts to change or restate his previously made claims, such an amendment also comes too late. The plaintiff provides no explanation for delaying until the eve of trial to amend, and the

defendant and third party defendant would be prejudiced by adding new issues and theories at such a late date. Therefore, the plaintiff's Motion to Amend, doc. #100, is DENIED.

SO ORDERED at Hartford, Connecticut this 15th day of February, 2011.

_____/s/_____
Donna F. Martinez
United States Magistrate Judge