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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
56
7 GREGORY BUONOCORE,

No. C 08-0184 PJH

8 Plaintiff,

**ORDER RE PLAINTIFF'S
NOTICE OF DISMISSAL**

9 v.

10 STATE FARM MUTUAL AUTOMOBILE
11 INSURANCE COMPANY,12 Defendant.
13 _____/

14 On January 10, 2008, plaintiff commenced this action on behalf of himself and all
15 others similarly situated, against defendant, alleging causes of action for breach of contract,
16 declaratory relief, violation of Bus. & Prof.Code § 17200 *et seq.* and breach of the implied
17 covenant of good faith and fair dealing. On September 8, 2008, this case was stayed
18 pending completion of arbitration. On April 9, 2009, plaintiff filed a Notice of Dismissal,
19 seeking to voluntarily dismiss his individual claims, but not those of the putative class
20 members, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure.
21 However, because an answer has been filed in this case, voluntary dismissal pursuant to
22 Rule 41(a)(1)(A)(i) is improper.

23 Under Rule 41(a)(1)(A), a "plaintiff may dismiss an action without a court order by
24 filing: (i) a notice of dismissal before the opposing party serves either an answer or a
25 motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who
26 have appeared. If a plaintiff no longer has the right to voluntarily dismiss the action, Rule
27 41(a)(2) allows a plaintiff to dismiss the action only by court order, subject to any terms and
28 conditions the court deems proper. Fed.R.Civ.P. 41(a)(2). Accordingly, because plaintiff's
Notice of Dismissal is improper, his individual claims are not dismissed. In order for plaintiff

1 to properly dismiss his individual claims, he must comply with either Rule 41(a)(1)(A)(ii) or
2 Rule 41(a)(2). The court cautions plaintiff that if he is permitted to dismiss his individual
3 claims, the class claims will not be viable without a representative plaintiff. A case
4 management conference is set for April 30, 2009, at 2:30 p.m. to address this issue.

5 **IT IS SO ORDERED.**

6 Dated: April 13, 2009

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PHYLLIS J. HAMILTON
United States District Judge