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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

ROGER VICE,)	Case No.: CV 029734
)	
Plaintiff,)	RULING ON PLAINTIFF'S MOTION FOR
)	SUMMARY JUDGMENT;
vs.)	
)	RULING ON DEFENDANTS' MOTION FOR
STATE FARM MUTUAL AUTOMOBILE INSURANCE)	SUMMARY JUDGMENT
COMPANY, an Illiinois corporation;)	
STATE FARM GENERAL INSURANCE COMPANY,)	
an Illinois corporation; STATE FARM)	
FIRE AND CASUALTY COMPANY, an Illinois)	
corporation; and STATE FARM LIFE)	
INSURANCE COMPANY, an Illinois)	
corporation; and DOES 1 through 20,)	
inclusive,)	
)	
Defendants.)	
)	

Plaintiff's Motion for Summary Judgment, as well as Defendants' Motion for Summary Judgment, came on regularly for hearing on January 10, 2008, in Department 13 of the above court, before the Honorable Lesley D. Holland. The following appearances were noted: Plaintiff appeared by his attorney of record, Dady & Garner, P.A., by W. Michael Garner (admitted *Pro Hac Vice*); Defendants State Farm Mutual Automobile Insurance Company, an Illinois corporation, State Farm General Insurance Company, an Illinois corporation,

1 State Farm Fire and Casualty Company, an Illinois corporation, and State Farm
2 Life Insurance Company, an Illinois corporation (hereinafter collectively
3 "State Farm"), appeared by their attorney of record, Orrick, Herrington &
4 Sutcliffe, by George A. Yuhas.

5 The court, having read and considered the written points and authorities
6 submitted in support of and in opposition to the parties' respective motions,
7 and having heard and considered the arguments of counsel, and for good cause
8 appearing,

9 Plaintiff's motion is hereby denied. Defendants' motion is hereby
10 granted. A brief statement of the court's reasoning follows:

11 The four categories of payments made by Vice, and which Vice contends
12 qualify as "franchise fees"-- (1) advertising, (2) promotional materials, (3)
13 signage expenses, and (4) computer expenses-- were voluntary¹, not
14 contractually required by State Farm, and/or *de minimus*. Such payments,
15 therefore, do not qualify as either business necessities nor as payments
16 required for the right to conduct the business. Thueson v. U-Haul National,
17 Inc., (2006) 144 Cal.Appl.4th 664, controls this issue. See also, California
18 Business & Professions Code section 20007 which defines a franchise fee as a
19 payment required for the "right" to conduct the subject business. Payment of
20 customary or normal business expenses are not "franchise fees" particularly
21 where, as is the case here, the payments are made to third party vendors
22 (albeit, State Farm apparently acts as a conduit or coordinator for some
23 expenses).

24

25 ¹ Vice admitted in deposition testimony that purchase of promotional brochures,
branded (State Farm logo) items, telephone directory ads, was voluntary.
Signage expenses were also voluntary and, moreover, made directly to a third
party.

1 Insurance is not a "good" or "service". See Civil Service Employees Ins.
2 Co. v. Superior Court (1978) 22 Cal.3rd 362, 376 (dicta: insurance is not a
3 "good or service")².

4 The evidence presented here makes clear that a State Farm agent does not
5 offer, sell, or distribute State Farm insurance products. The evidence is
6 plain that policyholders purchase their insurance from State Farm, not from
7 Plaintiff. Rather, State Farm agents merely solicit applications which are
8 submitted to State Farm for approval. The decision to accept or reject an
9 application is retained by State Farm. If accepted, the policyholder makes
10 payment directly to State Farm. Agents, such as Plaintiff herein, receive a
11 commission. The services offered by Vice-- advice and counseling of existing
12 and prospective policyholders, delivery of policies, etc.-- are ancillary and
13 certainly do not transform insurance into a "service".

14 Defendants' counsel may prepare and submit an order consistent with this
15 ruling.

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17 Further Proceedings:

18 The dates set for Trial (June 16, 2008) and Mandatory Settlement
19 Conference (May 19, 2008), are hereby vacated.

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21 Dated: April 14, 2008



Lesley D. Holland,
Judge of the Superior Court

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² The court notes but does not rely on Fairbanks v. Superior Court (2007) 154 Cal.App.4th 435 (REVIEW GRANTED 11/14/07). Candidly, the court was hoping for a useful development in Fairbanks and delayed its ruling for that reason.