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17 STATE FARM MUTUAL AUTOMOBILE INSURANCE  
18 COMPANY, STATE FARM GENERAL INSURANCE  
19 COMPANY, STATE FARM FIRE AND CASUALTY  
20 COMPANY, STATE FARM LIFE INSURANCE COMPANY  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN

ROGER VICE,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, an Illinois  
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.

CASE NO. CV 029734

**DECLARATION OF THOMAS M.  
CONLEY IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Date: October 31, 2007  
Time: 8:30 a.m.  
Dept. 13

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I, Thomas M. Conley, do hereby declare as follows:

1. I am Agency Vice President of the California Zone for the State Farm Insurance Companies and have been affiliated with State Farm since 1987 in capacities of trainee and independent contractor agent, agency manager and other management positions. If called as a witness I could testify to the following of my own personal knowledge.

2. State Farm Mutual Automobile Company, State Farm General Insurance Company, State Farm Fire & Casualty Company, and State Farm Life Insurance Company (collectively "State Farm") are Illinois corporations which are headquartered in Bloomington, Illinois. Although State Farm sells many lines of insurance and financial service products to the public, its core business is auto and fire (homeowners) insurance which comprises the vast majority of the business of Roger Vice ("Vice"). For many years, State Farm (and other insurance carriers) have been subject to regulation by the California Department of Insurance. Among other things, the California Department of Insurance regulates aspects of the relationship between insurance agents and the insurance carriers that they represent.

3. During my years as a State Farm agent, I became familiar with State Farm's practices and policies regarding its relationship with myself and other agents. Among other things, I was directly involved in how State Farm worked with agents concerning yellow page ads and other forms of advertising. I also was familiar with State Farm's practices and procedures regarding the availability of State Farm branded items and other types of supplies. As an agent, I was connected to State Farm's computer network and was familiar with State Farm's policies and practices relating to such access.

4. In my capacity as an agency manager, I was an employee of State Farm. Since that time, I have been employed by State Farm in various management positions including my current position.

5. In my management position with State Farm, I have worked with hundreds, if not thousands, of State Farm agents. In these positions, I am familiar with State Farm's policies and practices regarding the sale of branded items and supplies, advertising programs such as yellow page ad programs, the terms under which State Farm gives agents access to the State

1 Farm computer network, how State Farm trains and recruits new agents and the terms of its  
2 relationship with agents. I was designated in this case by State Farm to testify on its behalf as a  
3 knowledgeable corporate representative and did so.

4 6. For more than eighty years, State Farm has sold its insurance through  
5 independent contractor agents. And, for more than fifty years, State Farm has used exclusive,  
6 career independent contractor agents to solicit prospective policyholders and to work with  
7 existing State Farm policyholders. Currently, State Farm has more than 16,000 such independent  
8 contractor agents throughout the United States.

9 7. The terms of State Farm's relationship with its independent contractor  
10 agents is set forth in a written Agent's Agreement. The form of Agent's Agreement used when  
11 Vice first became an agent in the 1960s was the AA-660. Attached hereto as Exhibit A is a true  
12 and correct copy of the form AA-660 Agent's Agreement. This standard form of agreement has  
13 changed over the years. The AA-4 form of Agent's Agreement is the version used by State Farm  
14 in the late 1980s and is the form that Vice is currently operating under.

15 8. As reflected in both the AA-660 and the AA-4 forms of Agent's  
16 Agreement, State Farm did not and does not require that prospective agents such as Vice make  
17 any payments to State Farm as a condition of becoming a State Farm agent. There is no  
18 "inventory" that must be purchased and no capital investment that must be paid to State Farm.  
19 Prospective agents are not required to pay any type of sign-up fee or purchase goods from State  
20 Farm.

21 9. State Farm agents are independent contractors who operate their own  
22 business. While State Farm provides a wide variety of support to its agents, it does not require  
23 that any agent pay for any of these support goods or services in order to become or remain a State  
24 Farm agent.

#### **State Farm Computer Support**

25  
26 10. All State Farm agents are connected to the State Farm computer network.  
27 Since the late 1990s, State Farm has provided all of its agents with a free base package consisting  
28 of computer hardware, software, some workstations and ancillary support. This ancillary support

1 includes maintenance, service, and replacement guarantee. Attached as Exhibit B to this  
2 Declaration is a true and correct copy of State Farm's Standard Automation Services Lease  
3 Agreement which it entered into with Vice.

4 11. State Farm does not require that any agent lease or use any workstations or  
5 other equipment beyond those provided for free by State Farm. However, Vice or any other agent  
6 has the option of leasing additional workstations and other equipment from State Farm if they  
7 choose to do so. Some State Farm agents choose to lease additional equipment and some do not.  
8 State Farm's records indicate that Vice currently leases two optional work stations and four  
9 optional monitors at a monthly charge of \$40.00.

10 12. The rate charged by State Farm for the additional workstations and  
11 monitors leased to Vice is determined by State Farm's cost of providing the incremental  
12 equipment and does not include any of the ancillary costs incurred by State Farm or any profit.  
13 For example, the rate charged to Vice does not include any amount to compensate State Farm for  
14 maintenance or the replacement guaranty it provides. Overall, the amounts that State Farm  
15 receives from its agents who choose to lease optional equipment is a small portion of State  
16 Farm's total cost of providing equipment, software and computer services to its agents.

#### 17 Supplies

18 13. The AA-4 Agent's Agreement provides that State Farm will supply Vice  
19 with manuals, forms, records and other materials as State Farm deems suitable to provide at no  
20 charge, and State Farm does so. At no cost, State Farm also provides Vice and other agents with  
21 sales manuals that detail its rules and regulations applicable to the solicitation of insurance  
22 applications and their submission. State Farm also provides, at no charge, claims brochures,  
23 application forms, rate sheets, comparison charts, and, on occasion, promotional materials  
24 associated with the introduction of new insurance programs.

25 14. State Farm also offers brochures, "branded items" and various types of  
26 supplies which agents can purchase. Branded items consist of items that have the State Farm  
27 brand associated with them in some way and include a wide variety of things, ranging from  
28 stuffed animals to business cards to labels to lollipops.



1 Based on State Farm's records, it appears that Vice was included in three types of yellow page  
2 advertisements; between 2002 and 2006: (1) trademark ads; (2) display ads; and (3) his own  
3 personal ads.

4           20. In order to best coordinate yellow page advertising involving thousands of  
5 agents and hundreds of publications across the country, State Farm contracts with a company  
6 called Marquette to do the necessary design work on all yellow page ads, to make arrangements  
7 with publishers, and to handle payments. Marquette makes payment to publishers and then bills  
8 State Farm for the total cost of ads and design work. An agent is responsible for amounts  
9 associated with their own ads, space associated with their listing in trademark ads and (for Non-  
10 Select Agents as explained below) an amount to reimburse State Farm for a portion of the cost for  
11 space associated with the agent's portion of any display ads in which they choose to participate.  
12 These amounts are deducted from the agent's compensation, typically over time, with no finance  
13 charge even where State Farm (through Marquette) pays the publisher before receiving  
14 reimbursement from the agent. The amounts deducted from the compensation paid to agents such  
15 as Vice are less than the amount that publishers charge to State Farm through Marquette for the  
16 ad space devoted to those agents.

17           21. State Farm includes what is sometimes called a "trademark ad" in yellow  
18 pages which features the State Farm name at the top and a list of participating State Farm agents  
19 below. For trademark ads, State Farm pays for the ad space consumed by the trademark portion  
20 of the ad. State Farm gives agents the choice of being included in the list of agents placed below  
21 the trademark portion of the ad but does not require any agent to be included in a trademark ad. If  
22 an agent chooses to be included, State Farm deducts from the agent's compensation the cost  
23 associated with the ad space consumed by the agent's listing and makes the payments (through  
24 Marquette) to the publisher.

25           22. A second type of yellow page ad is sometimes referred to as a "display ad."  
26 A "display ad" is typically larger than the trademark ad and generally consists of a display portion  
27 that features the State Farm name and a listing of participating agents. For a "display ad," State  
28 Farm pays (through Marquette) for the ad space needed for the portion devoted to the State Farm

1 brand and trademark. For agents who meet certain criteria and are therefore deemed "Select  
2 Agents," State Farm also pays for the ad space devoted to the listing of those agents. More than  
3 half of State Farm's California agents are Select Agents.

4           23. Agents who are not Select Agents are offered the opportunity to be listed in  
5 display ads, but are not required to do so. If a non-Select Agent chooses to be listed in a display  
6 ad, the agent is charged a flat amount which was originally \$500 and is now \$600. The amount  
7 charged to non-Select Agents for inclusion in display ads is less than the amount that the  
8 publisher charges State Farm (through Marquette) for the ad space consumed by that agent.

9           24. Vice, like other agents, can also include his own ad in yellow pages. When  
10 an agent such as Vice chooses to include his own ad in yellow pages, the agent is responsible for  
11 the cost of that ad. Rather than making payment directly to the publisher, the payments are  
12 handled through Marquette in the manner described above.

13                           **The Agent's Role In Soliciting Potential Policyholders**

14           25. State Farm agents such as Vice are authorized to solicit prospective and  
15 existing policyholders and submit insurance applications to State Farm if their solicitations are  
16 successful.

17           26. Once an application is submitted, State Farm reviews it for completeness  
18 and determines whether State Farm's underwriting criteria are satisfied and whether it should be  
19 approved. If approved, State Farm issues the appropriate insurance policy. Subject to applicable  
20 insurance regulations, State Farm retains the right to accept or reject any application.

21           27. State Farm establishes the terms of its insurance coverage, the premiums it  
22 will charge, and the underwriting criteria to be applied. The premiums paid by the policyholder  
23 are paid to State Farm, although, in some cases, the payments may be given to the agents to be  
24 placed in an account for State Farm. State Farm bears the risk of non-payment.

25           28. State Farm agents such as Vice are not allowed to change State Farm  
26 coverages, premiums, or underwriting criteria. Nor are they allowed to modify or alter any  
27 insurance policy.

28           29. State Farm, not its agents, bear the risk of loss on policies which it issues



1           35.    On a bi-monthly basis, State Farm pays to agents their earned  
2 compensation, less any deductions. The gross compensation and all deductions from that  
3 compensation are reflected on bi-monthly recaps. Other than deductions reflected on the monthly  
4 recaps, State Farm does not take any deductions on amounts owed to agents.

5           36.    The recap reports attached as Exhibit C to this Declaration are true and  
6 correct copies of the year-end recap reports for the years 2002 through 2006. These reports are  
7 prepared by State Farm in the ordinary course of business at or about the time the actions  
8 reflected therein occurred by persons with duty to record such information. The recap reports  
9 reflect, on an aggregate basis, all deductions taken from Vice's checks for the specified categories  
10 for the periods reflected in the reports. As set forth above, the deductions reflected on the  
11 attached exhibit for computer support, supplies and advertising were all at or below State Farm's  
12 costs and did not include any profit to State Farm.


13           37.    The total deductions for all brochures, branded items or other supplies that  
14 Vice has purchased from State Farm since the beginning of 2002 are reflected in the  
15 compensation/deduction recap reports attached as Exhibit C hereto. The year-end recap reports  
16 show aggregate year-to-date totals for the various deductions but do not identify the specific  
17 items purchased. However, the bi-monthly recap summaries which State Farm provides to all  
18 agents does contain such detail. Attached as Exhibit D hereto are exemplar monthly recap reports  
19 which show such detail. As set forth above, the deductions reflected on the attached exhibit for  
20 computer support, supplies and advertising were all at or below State Farm's costs and did not  
21 include any profit to State Farm.

22           38.    The collection of each bi-monthly monthly recap report covering the period  
23 January 1, 2002 through December 31, 2006 would be voluminous. In lieu of these voluminous  
24 bi-monthly reports, attached hereto as Exhibit E are summaries of information taken directly from  
25 those bi-monthly reports for various deduction categories shown in the recap reports. These  
26 summaries show, on an annual basis, the individual supply items purchased by Vice from State  
27 Farm during those years. As set forth above, the deductions reflected on the attached exhibit for  
28 computer support, supplies and advertising were all at or below State Farm's costs and did not

1 include any profit to State Farm.

2 Executed this 1<sup>st</sup> day of August, 2007 in Bloomington, MN California. TC

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

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6 Thomas M. Conley

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