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11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SAN JOAQUIN

13 ROGER VICE,  
14 Plaintiff,

15 v.

16 STATE FARM MUTUAL  
17 AUTOMOBILE INSURANCE  
18 COMPANY, an Illinois corporation;  
19 STATE FARM GENERAL INSURANCE  
20 COMPANY, an Illinois corporation;  
21 STATE FARM FIRE AND CASUALTY  
22 COMPANY, an Illinois corporation; and  
23 STATE FARM LIFE INSURANCE  
24 COMPANY, an Illinois corporation; and  
25 DOES 1 through 20, inclusive,

26 Defendants.

Case No. CV029734

**PLAINTIFF'S SEPARATE STATEMENT  
OF UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT**

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**Date: October 31, 2007**  
**Time: 9:00 a.m.**  
**Dept: 13, Hon. Lesley D. Holland**

23 Pursuant to California Rules of Court Rule 3.1350, Plaintiff Roger Vice hereby submits  
24 this Separate Statement of Undisputed Material Facts, together with reference to supporting  
25 evidence, in support of his Motion for Summary Judgment.

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1 **Undisputed Material Facts:**

2 1. Plaintiff ("Plaintiff" or "Vice") is an  
3 insurance agent in Lodi, California where he  
has done business for the past 20 years.

4 2. Defendants are affiliated companies  
5 doing business as "State Farm" and are  
6 engaged in the business of providing  
insurance coverage for various types of  
7 risks, at least one of which is incorporated in  
California.

8 3. Vice executed an Agent Agreement,  
9 known as a Form AA4 in approximately  
1987 and has done business under it since  
that time.

10 4. Since he became an agent, Vice has  
11 been authorized by State Farm to use its  
name, signs, and logo and to hold himself  
12 out as a State Farm representative.

13 5. As an agent, Vice offers and sells  
14 policies of insurance, including auto  
insurance, life insurance, fire insurance and  
other policies to prospective clients.

15 6. Vice also provides insurance services  
16 such as advice and consultation with clients.

17 7. Vice also physically delivers policies  
18 to clients when they are delivered to him by  
State Farm, countersigned by an officer of  
the company.

19 8. State Farm, until recently, offered  
20 insurance only through its authorized and  
exclusive agents, such as Vice.

21 9. Vice was trained by State Farm to  
22 sell insurance, was continually urged to sell  
insurance and has been told that his job is to  
23 sell insurance.

24 10. State Farm publishes a magazine  
25 called the *Reflector* in which it has  
continually urged agents to "sell" insurance.

26 11. Vice, as an agent, has the power to  
27 bind policies on insurance. What that means  
is that if he accepts an application and  
28 premium from a prospect, the coverage is  
effective even though the company has not  
yet approved it.

**Supporting Evidence:**

1. Vice Decl., 2:1-2.

2. Vice Decl., 2:8-13; AA4, Ex. 1 to  
Vice Decl.

3. Vice Decl., 2:8-13; AA4, Ex. 1 to  
Vice Decl.

4. Vice Decl., 2:14-15.

5. Vice Decl., 2:16-17.

6. Vice Decl., 2:17-22.

7. Vice Decl., 2:22-23.

8. Vice Decl., 2:25-27.

9. Vice Decl., 2:27-3:1.

10. Vice Decl., 3:1-3; *Reflector*, Ex. 2 to  
Vice Decl.

11. Vice Decl., 3:4-10.

**Undisputed Material Facts:**

**Supporting Evidence:**

12. The Agent Agreement to which Vice is a party gives State Farm the right to prescribe policy premiums, fees and charges for insurance. State Farm provides advertising, promotional materials and participates in the cost of agent's advertising, and agents are required to follow State Farm guidelines with respect to the use of its trademarks, advertising and the offering and marketing of insurance.

12. Vice Decl., 3:11-15.

13. In order to be a State Farm agent and to be successful as a State Farm agent, it is necessary that Vice make certain expenditures for particular items, some of which are paid directly to State Farm and are deducted from commissions that State Farm pays to Vice. For example, in 2004 through 2006, he paid over \$3,000 for Yellow Pages trademark advertising and approximately \$500 a year for computer rental leases to State Farm.

13. Vice Decl. 3:16-24; Compensation Statements, Ex. 3 to Vice Decl.

14. Further expenses that Vice has incurred to be a State Farm agent include expenses for advertising, and specifically Yellow Pages, for which Vice pays State Farm over \$1,000 a year.

14. Vice Decl., 3:25-4:1; Compensation Statements, Ex. 3 to Vice Decl.

15. Part of the expense that Vice incurs for advertising is display advertising in the Yellow Pages so that he can be included with so-called "Select Agents" who receive advertising at no cost, but for which Vice must pay \$600 per year.

15. Vice Decl., 4:1-6.

16. Yellow Pages advertising and participation in display advertising is necessary as a matter of practical business reality to be a State Farm agent.

16. Vice Decl., 4:6-16.

17. In addition to the Yellow Pages advertising, Vice must pay for general advertising in the local newspapers and through direct mail. Historically, for example, he has spent as much as \$30,000 a year on direct mail.

17. Vice Decl., 4:16-18.

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**Undisputed Material Facts:**

**Supporting Evidence:**

18. As an agent, in order to promote his State Farm business and encourage customers to come back, Vice must purchase from State Farm trademark and logoed items such as pencils, calendars, candy and golf balls (promotional items).

18. Vice Decl., 4:19-5:4.

19. The promotional items are not necessary to conduct the business of an insurance agency; the same types of items, without the State Farm logo, are available on the open market at much lower prices. But in order to be a State Farm agent, it is necessary to purchase these items to give to customers to remind them that Vice is a State Farm agent.

19. Vice Decl., 4:21-26.

20. State Farm not only makes promotional items available but encourages agents regularly to buy them in order to maintain customer relations.

20. Vice Decl., 4:26-27.

21. Agents cannot obtain promotional items with the State Farm logo from any source other than State Farm.

21. Vice Decl., 5:3-4.

22. Vice spends over \$100 per year on promotional items.

22. Vice Decl., 5:4.

23. Vice must also make direct expenditures to State Farm for sales brochures to give to prospective customers to assist in selling insurance. He spends over \$100 per year on these brochures.

23. Vice Decl., 5:4-6.

24. Vice also had to purchase and maintain a sign for his agency to announce his presence in his neighborhood. Although he purchased his sign from a third-party supplier, he did so for the benefit of State Farm as well as himself. The sign, and its maintenance cost are over \$500.

24. Vice Decl., 5:7-10.

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**Undisputed Material Facts:**

25. Until 1996, State Farm required agents to lease all of their computer equipment directly from State Farm but since that time, State Farm has supplied a standard computer package and terminal. This, however, is not sufficient for Vice's needs. He needs two additional work stations and must lease them from State Farm. He cannot get these from another supplier and cannot attach his own equipment or software to them. The cost of leasing this additional computer equipment from State Farm runs approximately \$500 per year.

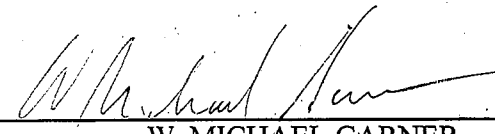
**Supporting Evidence:**

25. Vice Decl., 5:11-19; Compensation Statements, Ex. 3 to Vice Decl.

DATED: August 1, 2007

DADY & GARNER, P.A.

By: \_\_\_\_\_



W. MICHAEL GARNER  
Attorney for Plaintiff  
ROGER VICE