

DOWNEY BRAND LLP

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9 ROGER VICE

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN JOAQUIN

12 ROGER VICE,
13 Plaintiff,

14 v.

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

Case No.

COMPLAINT AND DEMAND FOR JURY TRIAL

26 Plaintiff ROGER VICE for his Complaint against Defendants STATE FARM MUTUAL
27 AUTOMOBILE INSURANCE COMPANY, STATE FARM GENERAL INSURANCE
28 COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, and STATE FARM LIFE
INSURANCE COMPANY (collectively referred to as "State Farm") states and alleges as
follows:

1. Plaintiff is a citizen of the State of California and resides in Lodi, California. He
has been an agent of State Farm since 1987 under a series of so-called "agent agreements."

2. Plaintiff is informed and believes that Defendants are interrelated, interlocking,
and affiliated corporations incorporated under the laws of the State of Illinois, all of which offer

1 various insurance product lines; that STATE FARM MUTUAL AUTOMOBILE INSURANCE
2 COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, and STATE FARM LIFE
3 INSURANCE COMPANY have principal places of business in Illinois; and that STATE FARM
4 GENERAL INSURANCE COMPANY has its principal place of business in California.

5 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
6 DOES 1 through 20, inclusive, and therefore sues these defendants by such fictitious names.
7 Plaintiff will amend the complaint to allege their true names and capacities when ascertained.
8 Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named
9 defendants is responsible in some manner for the conduct herein alleged, and that Plaintiff's
10 injuries herein alleged were proximately caused by their conduct.

11 **I. FACTUAL BACKGROUND AND CONTRACT TERMS**

12 4. Plaintiff is party to an agreement with State Farm entered into in San Joaquin
13 County, California ("Agreement") consisting of the written agreements between him and State
14 Farm, representations that State Farm has made to him over the years, and a course of dealing and
15 practice between the parties. These agreements provide, in essence, that Plaintiff will offer, sell,
16 or distribute State Farm's insurance policies and services pursuant to a marketing plan or system
17 prescribed by State Farm and that is associated with State Farm's logo and trademarks.

18 5. In particular, the written agreements require Plaintiff to conduct field
19 underwriting, solicit insurance from the public, collect premiums, membership fees and charges,
20 countersign policies, deliver policies and assist with claims. State Farm, in fact, does not sell,
21 distribute, or offer its policies or insurance services except through agents. Insurance services
22 include consultation with clients with respect to the extent and types of coverage appropriate to
23 the client's need; field underwriting; and assistance with claims. Plaintiff provides all of these
24 services.

25 6. The written agreements specifically provide Plaintiff with the right to use State
26 Farm's marks:

27 We [State Farm] will advertise, provide promotional materials, and
28 participate in the cost of your advertising, in accordance with
policies determined from time to time by us. You will not use any

1 advertisements referring to us or identifying us in any way without
2 our prior approval.

3 7. Plaintiff as a practical matter has been required to pay for the right to enter into the
4 business, including, but not limited to, making the following payments:

5 (a) Fees paid on behalf of State Farm for bank accounts in which monies
6 belonging to State Farm are deposited and held;

7 (b) Payments for materials, equipment, signage, software and hardware;

8 (c) Payments for advertising;

9 (d) Payments for training materials;

10 (e) Payments incurred in connection with training to become a State Farm
11 agent;

12 (f) Payments for advances made by State Farm during the agent's training
13 period if the actual commissions do not cover such advances.

14 8. The written agreements with Plaintiff provide that State Farm may terminate its
15 agreement with him at any time and without cause. Plaintiff believes that, as a franchisee, under
16 the California Franchise Relations Act, California Business and Professions Code sections 20000
17 *et seq.*, State Farm cannot terminate his agreement except for cause and upon notice.

18 9. State Farm has, over the past decade, terminated agents without cause and has
19 threatened to terminate agents without cause in order to secure their compliance with policies or
20 procedures of State Farm that are not required by the agent agreements. Agents have contested
21 State Farm's purported right to terminate them without cause and specifically have demanded that
22 they be treated as franchises under the law, which would protect them from termination without
23 cause. State Farm has refused to treat them as franchises and has continued to insist that agents
24 are not franchises and that State Farm has the right to terminate them without cause. There is,
25 therefore, a present and concrete controversy between Vice and State Farm in which he believes
26 that he is a franchisee and State Farm refuses to accord him such status and protection, thereby
27 exposing him to the risk of termination of his agency without cause.

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1 15. Because of the existence of this controversy, Plaintiff is entitled to a declaration of
2 his rights, specifically that the contract and relationship between State Farm and him is a
3 “franchise” within the meaning of the CFIL and the CFRA, and State Farm may not lawfully act
4 contrary to such statutes, i.e., State Farm may not terminate or threaten to terminate him without
5 good cause, notice and an opportunity to cure; State Farm may not offer or alter his agreements
6 without registration with the state and disclosure of its offering; and it is otherwise governed by
7 those Acts.

8 **SECOND CAUSE OF ACTION**
9 **(Damages)**
10 **(Against All Defendants)**

11 16. Plaintiff alleges and incorporates by reference the allegations set forth in the
12 preceding paragraphs as though fully set forth herein.

13 17. Plaintiff has been injured by State Farm’s failure to comply with the CFIL and
14 CFRA because the value of his agency has been diminished. That is, as a franchisee, Plaintiff is
15 entitled to statutory protection against termination without cause, and enjoys a statutory right to
16 transfer his franchise under certain circumstances. State Farm’s denial of these rights has
17 diminished the value of his business and franchise.

18 18. Plaintiff is entitled to recover from State Farm the value he has lost as a result of
19 State Farm’s denial of his rights because of State Farm’s conduct.

20 **III. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for the following:

- 22 1. Judgment in Plaintiff’s favor and against State Farm;
- 23 2. For a declaration that the contract and relationship between Plaintiff and State
24 Farm is a “franchise” within the meaning of the CFIL and the CFRA, and State Farm may not
25 lawfully act contrary to such statutes;
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- 3. For actual damages according to proof;
- 4. For costs of suit; and
- 5. For such other and further relief as the Court deems just and proper.

DATED: June 27, 2006

DOWNEY BRAND LLP

By: 
DANIEL J. MCVEIGH
Attorney for Plaintiff
ROGER VICE