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11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SAN JOAQUIN

13 ROGER VICE,  
14 Plaintiff,  
15 v.

Case No. CV029734

**DECLARATION OF ROGER VICE IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

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,

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

26 Defendants.

27 I, Roger Vice, declare:

28 1. I am the Plaintiff in this action, and I make this Declaration in support of Plaintiff's Motion for Summary Judgment on this declaratory relief action for a declaration that Plaintiff's relationship with State Farm is a franchise under California law. I have personal knowledge of the matters contained herein and if called upon to do so, I could and would competently testify to the following facts.

1           2.       I own a State Farm agency in Lodi, California where I have done business for the  
2 past 20 years. I originally became a State Farm agent in 1969 after 2 years of training by State  
3 Farm. I became a State Farm trainee largely because my then-supervisor, Vern Galloway, told  
4 me that a State Farm agency was a "franchise" and it was just like a "McDonald's." I understood  
5 by this that I would have a business of my own, that I would be dependent upon State Farm as my  
6 franchisor and that I would be able to make substantial money as a State Farm agent. My office  
7 at that time was in San Jose, California.

8           3.       I executed a Form AA4, the Agent Agreement, in approximately 1987. A true and  
9 correct copy of the form of this Agreement is attached as Exhibit 1. Although I do not possess a  
10 signed copy of Form AA4, I have reviewed Exhibit 1 and it is identical to the Form AA4 that I  
11 executed in 1987. Nonetheless, State Farm and I have done business according to its provisions  
12 since 1987. I have not signed any subsequent agreements or any other documents that I  
13 understand change this agreement.

14           4.       Since I became an agent, State Farm has authorized me to use its name, signs and  
15 logo and to hold myself out as a "State Farm" representative.

16           5.       In my role as an agent, I must offer and sell policies of insurance - auto insurance,  
17 life insurance, fire insurance and other policies - to prospective clients. Also in my role as a State  
18 Farm agent, I must follow the contract's directive to "assist policyholders and cooperate with  
19 adjusters." That means, among other things, that I must, and do, advise prospective clients on the  
20 availability of different types of policies, their costs, and whether they are appropriate for that  
21 prospective policyholder's needs, and I must provide assistance when a policyholder has  
22 sustained a loss and seeks coverage. Additionally, I physically deliver policies to clients when  
23 they are delivered to me by State Farm, countersigned by an officer of the Company.

24           6.       My role, as has been the role of agents for many years, has been to be the "face" of  
25 State Farm to the public. Significantly, until recently, State Farm offered insurance only through  
26 its authorized and exclusive agents, such as myself; there was no other way for a member of the  
27 public to obtain a State Farm policy of insurance. As the face of State Farm, I was trained to  
28 "sell" insurance, have continually been urged to "sell" insurance; and have been told that my job

1 is to sell insurance. State Farm, in fact, publishes a magazine called the "*Reflector*" in which it  
2 has continuously urged us, as agents, to "sell" insurance. True and correct copies of the *Reflector*  
3 with articles on this subject are annexed hereto as Exhibit 2.

4 7. I also have the power to "bind" policies of insurance. What that means is that if,  
5 for example, a person comes to my office for liability insurance on their automobile, and they  
6 complete an application, pay the premium, and have an automobile accident immediately after  
7 leaving my office, they are covered by the policy regardless of whether our Company has  
8 reviewed their application. In the ordinary course, the application for the policy will be passed on  
9 to State Farm, which will review it, and if it meets the underwriting criteria, State Farm will  
10 formally issue a policy.

11 8. The Agent Agreement to which I am party contains various provisions that give  
12 State Farm the right to prescribe policy premiums, fees and charges for insurance. State Farm  
13 provides advertising, promotional materials and participates in the cost of our advertising, and we  
14 are required to follow its guidelines with respect to the use of its trademarks, advertising and the  
15 offering and marketing of insurance.

16 9. In order to remain a State Farm agent and to be successful as a State Farm agent, it  
17 is necessary that I make certain expenditures for particular items. Some of these expenditures are  
18 made directly to State Farm and are deducted from commissions that State Farm pays me.  
19 Attached as Exhibit 3 are true and correct copies of the pages of the compensation statements I  
20 received from State Farm showing such deductions for the six months ending June 30, 2006 and  
21 the years ending 2005 and 2004. I direct the Court specifically to the lines entitled "Yellow  
22 Pages Trademark Advertising," which shows amounts I paid to State Farm for Yellow Pages  
23 advertising, and to the line "Agents Computer Rental Lease" which reflects amounts I have paid  
24 to State Farm for leasing computers and related equipment.

25 10. Expenses I have incurred to be a State Farm agent include the following:

26 a. As an agent, I must advertise in a number of ways. A central way in which  
27 we advertise, that is absolutely necessary and that State Farm requests that we do, is in the local  
28 Yellow Pages, where customers look to find an insurance agent. As shown on Exhibit 3, I incur

1 well over a thousand dollars a year in payments to State Farm for Yellow Pages advertising. A  
2 portion of this advertising is for display advertising that State Farm provides. This advertising  
3 shows photographs of agents and a prominent State Farm logo. This advertising is provided free  
4 to so-called "Select Agents," who are agents that have satisfied certain criteria of State Farm. I  
5 am not a Select Agent, and because of that, and I must pay at least \$600 a year in order to include  
6 my name and listing in this display advertising. Yellow pages advertising and participation in  
7 this display advertising in particular is necessary as a matter of practical necessity to be a State  
8 Farm agent, as opposed to an independent agent or an agent for another company. An  
9 independent agent typically purchases only a listing in the Yellow Pages - not a display ad - at a  
10 much lower cost. While I could do that, it would lump my State Farm agency with independents  
11 and those of other companies, and I would not enjoy the prominence that the display ad creates,  
12 nor would I have my picture in it. It is worth pointing out, in this regard, that agents cannot use  
13 the State Farm mark and logos in Yellow Pages advertising without State Farm's express  
14 permission. Thus, the advertising in State Farm's display advertising in the local Yellow Pages is  
15 a practical necessity for me to remain a State Farm agent and requires expenditures that go well  
16 beyond those that would be required to simply be an independent agent. In addition to Yellow  
17 Pages advertising, I must pay for general advertising in local newspapers and through direct mail.  
18 Historically I have spent, for example, as much as \$30,000 a year on direct mail.

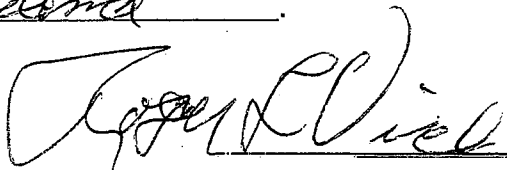
19           b.       Similarly, as an agent, in order to promote my State Farm business and to  
20 encourage customers to come back, I must purchase from State Farm trademarked and logoed  
21 items such as pencils, calendars, candy and golf balls. These items are not at all necessary to  
22 conduct the business of the agency - we do not play golf in the agency; we have our own pencils  
23 that we can buy at Staples or Office Depot (at a much lower price) and we can use an ordinary  
24 calendar. Nonetheless, in order to be a State Farm agent, we must purchase these logoed items to  
25 give to customers and insured persons in order to remind them that we are not simply an  
26 insurance agent, but a State Farm insurance agent. State Farm not only makes these items  
27 available, but encourages us regularly to buy them in order to maintain customer relations. Use  
28 of these logoed items not only includes the prominent display of the State Farm name and mark

1 but also the tag line "Like a Good Neighbor, State Farm is There." Consistent with this  
 2 neighborly approach, we furnish customers and prospective customers with these logoed items so  
 3 that they will come back to us and renew policies with us or purchase new policies with us. We  
 4 cannot obtain them elsewhere. I spend over \$100 per year on these items. In a similar vein, we  
 5 must make direct expenditures to State Farm for sales brochures to give to prospective customers  
 6 to assist us in selling insurance. I spend over \$100 per year on sales brochures.

7 c. It was also necessary for me to purchase and maintain a sign to announce  
 8 the presence of my agency in the neighborhood. While I purchased this sign from a third party  
 9 supplier, I did so for the benefit of myself and for the benefit of State Farm. The cost of the sign,  
 10 and its maintenance, exceeded \$500.

11 d. Until 1996, State Farm required agents to lease all of their computer  
 12 equipment directly from State Farm. Since that time, State Farm has supplied, at no charge, a  
 13 standard computer package and terminal. However, this is not sufficient for my needs. I need  
 14 two additional workstations, and I am required to lease those workstations from State Farm. I  
 15 cannot get the computers from another supplier; I cannot attach my own equipment to that  
 16 supplied by State Farm, and I cannot run my own software on them. I must lease the additional  
 17 computer equipment from State Farm. As shown on Exhibit 3, my computer leasing expenses  
 18 from State Farm run approximately \$500 per year. Additionally, I must buy printer cartridges and  
 19 supplies for all of my computers, and incur that additional expense, through State Farm.

20 I declare under penalty of perjury under the laws of the State of California that the  
 21 foregoing is true and correct of my own knowledge, and that this Declaration was executed this  
 22 26 day of July, 2007, at Scottville, Illinois.

23  
 24 

25 Roger Vice