

1 William P. Tedards, Jr.  
1101 30th Street, N.W., Suite 500  
2 Washington, DC 20007  
(202) 797-9135  
3 (202) 797-9139

4 Wallace C. Doolittle (Bar No. 158116)  
Law Office of Wallace C. Doolittle  
5 1260 B Street, Suite 220  
Hayward, CA 94541  
6 (510) 888-0600  
(510) 888-0606

7 Ryan F. Perkins (Bar No. 166234)  
8 Britt & Perkins  
319 N. Main Street, Suite B  
9 P.O. Box 2655  
Fort Bragg, CA 95437  
10 (707) 964-4900  
(707) 961-1382

11 Counsel for Defendants  
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF MENDOCINO  
15 Ukiah Branch  
16

17 STATE FARM MUTUAL )  
AUTOMOBILE INSURANCE )  
18 COMPANY, STATE FARM FIRE AND )  
CASUALTY COMPANY, STATE FARM )  
19 LIFE INSURANCE COMPANY, AND )  
STATE FARM GENERAL INSURANCE )  
20 COMPANY, )

21 Plaintiffs,

22 v.

23 JOHN W. WIER and RICHARD L.  
24 PYORRE,

25 Defendants.  
26  
27  
28

General

Civil No. 82819

DECLARATION OF HENRY  
KELLER, JR.

1 I, Henry Keller, Jr., declare:

2 1. I have direct personal knowledge of all of the facts and circumstances set  
3 forth in this declaration and, if called to testify, would testify competently under oath as  
4 to these facts and circumstances.

5 2. I am a former officer of the State Farm group of insurance companies. I  
6 retired in Bloomington, Illinois on October 1, 1976, after a thirty-seven year career with  
7 State Farm. At the time of my retirement, I held the position of Agency Vice President.  
8 I had been in that position since August of 1966.

9 3. I was born in Lincoln, Nebraska and graduated from the University of  
10 Nebraska in 1934, with a bachelor's degree. I received my law degree from that  
11 university in 1936 and entered private law practice in Lincoln in that same year.

12 4. On March 1, 1939, I joined State Farm Mutual Automobile Insurance  
13 Company as a field claims adjuster in Des Moines, Iowa. Two years later, I moved to the  
14 State Farm Agency Field Forces as a special agent in Iowa. In July 1942, I was appointed  
15 assistant state director of that state. During this period, State Farm was operating almost  
16 entirely with part-time agents who had a high turn over rate, many of whom did not  
17 represent us exclusively. The only full time agents were the special agents, who in turn  
18 appointed part-time agents. During my time in Iowa, I began to focus on the idea of  
19 recruiting educated and qualified candidates to be multi-line agents (producing auto, fire,  
20 and life business), who would receive on-the-job training in three-day "schools." I  
21 developed some beginning recruiting materials, including a film and a recruiting kit.

22 5. Wartime service interrupted my State Farm career from 1943 to 1946. My  
23 service included one year in the European Theater of Operations.

24 6. I resumed my State Farm career in 1946, as agency supervisor in the  
25 California State Agency, Berkeley, California. In early 1948, I moved to Pasadena,  
26 California to establish a Southern Branch State Agency Office. I managed all Southern  
27 California agency operations, which included reorganizing metropolitan Los Angeles  
28

1 and Los Angeles County. I was originally invited to come out to California by the  
2 managers in charge there, who had heard about the agency development work that we  
3 had begun in Iowa. They were dissatisfied with the part-time agent arrangements for  
4 many reasons and gave me carte blanche authority to continue to develop the concepts  
5 that I had begun in Iowa. I instituted a comprehensive agent development program, based  
6 on high selectivity, job instruction training for multi-line sales, and an agent commitment  
7 to full-time exclusive representation of State Farm.

8         7. Our California program was highly successful, and word of our high  
9 performance indicators came to the attention of our home office. Representatives of the  
10 home office came out to California to see what was happening and were impressed. A.W.  
11 Tompkins, who was then the chief officer of the company for agency matters, asked me  
12 to move to the home office and put these concepts into operation nation-wide. In 1949  
13 I was brought to the home office in Bloomington, Illinois, as State Farm's first director  
14 of Agency Training. In that post, I began to develop the same approach for the entire  
15 company. In 1953, I was appointed an Agency Director and one year later, in July 1954,  
16 I was elected a Vice President-Agency. I was also appointed a member of the Operating  
17 Management committee at that time. In these positions, I worked closely with A.W.  
18 Tompkins and, together, we developed and put into operation for the company as a  
19 whole the entire agency concept that I had developed in California, including the  
20 selection and recruitment process, the training process, the multi-line approach, and the  
21 exclusive representation commitment. It was A.W. Tompkins who coined the phrase  
22 "career agent", which became the common term to describe this marketing system. The  
23 career agent was the "good neighbor" on which the company's growth, success, and  
24 reputation over the next thirty years were built.

25         8. I was named to my final position -- Agency Vice President -- in August  
26 1966. While serving in that position, one of my major responsibilities was guaranteeing  
27 that the spirit and the intent of the contractual relationship between the agents and State  
28

1 Farm was maintained. The independent contractor status of our agents was important.  
2 Our concept called for a substantial investment of time, effort, and money by our agents,  
3 which would be justified only if they had the opportunity to grow and advance as far as  
4 their own efforts could carry them.

5 9. Beginning in 1954, our relationships with the agents were governed by the  
6 contract form called the LA 540. This was the first contract form we used as we  
7 developed and implemented our "career agent" concept, working with full-time agents  
8 who operated as independent contractors.

9 10. The LA 540 contract included a termination provision which stated that  
10 State Farm could terminate the agreement "with or without cause." The contract did not  
11 include any provision for reviewing termination decisions.

12 11. In the early 1960's, we began to develop a new form of independent  
13 contractor agreement. The executive responsibility for evaluating and deciding what  
14 changes should be made was vested in four members of senior management: Edward B.  
15 Rust, Sr. (President); Adlai Rust (past President); A.W. Tompkins Jr. (First Senior  
16 Agency Vice President); and myself (Vice President-Agency).

17 12. Our major purpose in undertaking the development of a new form of  
18 contract was to increase the power and value of our marketing system by strengthening  
19 the independent contractor and career agent concepts that we had been developing for  
20 several years. The result of our effort was a new contract form -- the AA 660 -- which  
21 went into effect in 1966.

22 13. In order to obtain the agent perspective on issues which needed to be  
23 addressed in the new contract, we set up a program to obtain information from the  
24 agents. This informational program revealed a major concern on the part of the agents  
25 that the company might terminate them arbitrarily or capriciously, without good reason.  
26 If that were to occur, then the agent's entire investment in his agency would be lost. We  
27 determined that we needed to address that concern, in order to assure that agents would  
28

1 be willing to make the substantial investment in time, effort, and money contemplated  
2 by our independent contractor/career agent approach.

3 14. We took two steps in the AA 660 contract to address that concern. First, we  
4 removed the words "with or without cause" from the termination provision that was in  
5 the LA 540 form. Second, we added a termination review provision, which would entitle  
6 any agent whose agreement had been terminated by the company to a review of the  
7 decision. We determined that these changes would give the agents assurance that the  
8 company's right to terminate would not be exercised for arbitrary or capricious reasons.

9 15. We considered adding provisions which would specify the reasons for  
10 which terminations would occur, but we concluded it would not be possible to write  
11 provisions to cover all possible reasons under which termination might be justified.  
12 Instead, we opted for the approach described in Paragraph 14, above, which gave the  
13 agents the protection of a due cause contract, but with more flexibility in defining the  
14 cause.

15 16. The removal of the words "with or without cause" from the termination  
16 provision was a necessary part of this exercise. We knew that it would be neither logical  
17 nor consistent to keep a provision stating that we could terminate "with or without cause"  
18 right above a termination review provision to guard against arbitrary and capricious  
19 terminations.  
20

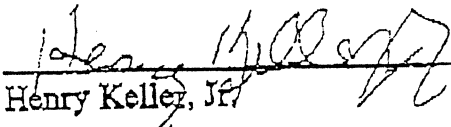
21 17. We were acting genuinely and honestly when we made these changes in the  
22 termination provision. We were not trying to lull the agents into a false sense of security  
23 by adopting a friendlier "tone," suggesting that they were protected from arbitrary  
24 terminations, while secretly intending otherwise. Our independent contractor/career  
25 agents were the backbone of the most successful marketing system in the insurance  
26 industry. They were building the company for us, investing their own time, effort, and  
27 funds, but were expressing concern that their agreements could be terminated at will. We  
28 wanted them to understand clearly that their agreements could no longer be terminated

1 arbitrarily, without good cause -- an understanding which we felt was essential to keep  
2 their motivation and protect our superior marketing system.

3 18. Roger Joslin, a new employee of State Farm, was a staff assistant with a  
4 good writing style whom we used to assist us in reducing the new contract to writing. He  
5 was not involved in our decision-making process in any way. We simply communicated  
6 to him what we wanted him to write.

7 I declare under penalty of perjury, under the laws of the State of Florida that the  
8 foregoing is true and correct.

9 DATED: January 11, 2001.

10  
11  
12   
13 Henry Keller, Jr.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28