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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, )

General  
Civil No. 82819

**SECOND DECLARATION OF  
HENRY KELLER, JR.**

21 Plaintiffs,

22 v.

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

25 Defendants.  
26  
27  
28

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 making this second declaration in order to respond to certain  
6 statements directed to my first declaration by counsel for State Farm in a recently-filed  
7 brief and to clarify certain points about which counsel appears to be mistaken.

8 3. For the record, I should note that I received a telephone call from counsel  
9 for State Farm after I filed my first declaration. In that call, counsel suggested to me a  
10 view of the 1966 contract revision which would be consistent with the statements  
11 attributed to counsel set forth below on the role of the courts. I rejected that view in the  
12 conversation and reiterated that the intention of our contract group in 1966 was to make  
13 the contract terminable by the company only for good cause, regardless of what a court  
14 might decide later. I explained to counsel that our task was solely to revise the contract,  
15 and we did not consider, one way or the other, what the courts might do with these  
16 termination issues.

17 4. I understand that counsel for State Farm has included the following  
18 statement in the brief in question: "all members of the group viewed the deletion of the  
19 'with or without cause' language to be a change in form and not in substance." That  
20 statement is not accurate. I discussed the removal of the language "with or without  
21 cause" in Paragraphs 14 and 16 of my first declaration. This was, most definitely,  
22 viewed by our group as a change in substance and, as I explained, a necessary part of our  
23 conversion of the contract from an "at-will" contract to one terminable only for "good  
24 cause."

25 5. I understand that the brief in question also says that the members of our  
26 group did not believe that the 1966 changes "imposed a limitation on the at-will  
27 termination principle." That is not accurate. We specifically intended to convert the  
28 termination provision from an "at-will" basis to a "good cause" basis.

1           6. I understand that the brief in question also says that it was the  
2 “understanding of the contract group that the decision to terminate would not be subject  
3 to review by outside parties.” That is not accurate. As I explained to counsel for State  
4 Farm in our telephone conversation, our group had no “understanding,” one way or the  
5 other, as to what action courts might take toward the contract. Our task was to revise the  
6 contract, not to anticipate the action of courts.

7           7. I understand that the brief in question includes the following statement  
8 directed to Paragraph 14 of my first declaration: “Keller, like everyone else, agrees that  
9 State Farm concluded in the mid-1960s that it was important to have some mechanism  
10 in place to guard against arbitrary termination decisions by local managers. Keller ¶ 14.  
11 ... However, this determination is to remain an internal State Farm matter and not a  
12 matter to be decided by the courts. Keller’s own declaration expressly recognizes this  
13 when he asserts that State Farm retained the ‘legal right to terminate the contract.’ *Id.*”  
14 That statement is not accurate. In Paragraph 13 of my first declaration, I refer to “a  
15 major concern on the part of the agents that the company might terminate them arbitrarily  
16 or capriciously, without good reason.” (Emphasis added.) This concern was not limited  
17 to “local managers,” as the brief in question suggests. It would be illogical to tell an  
18 agent that the local manager could not terminate him arbitrarily but the higher  
19 management could. The contract is either terminable for cause or not. It makes no  
20 difference which level of management takes the action.

21           8. In Paragraph 14 of my first declaration, I described the two steps we took  
22 to address the concern: removal of the words “with or without cause” and addition of  
23 the termination review procedure. I explained that “these changes would give the agents  
24 assurance that the company’s right to terminate would not be exercised for arbitrary or  
25 capricious reasons.” I did not “assert” that State Farm has retained a “legal right” to  
26 terminate the contract, as the brief in question suggests. As I explained above, it was not  
27 our group’s intention to insulate State Farm from court proceedings. We were simply  
28 changing the contractual basis upon which the company could terminate the contract.

1           9.     I understand that the brief also contains this statement: "Keller does not say  
2 that State Farm intended that its right to terminate the agreement with an agent would be  
3 limited to circumstances which the courts concluded constituted good cause for such  
4 decisions." This appears to be designed to suggest that our group had made a  
5 determination that courts could never review termination decisions. That is not accurate.  
6 We did not consider, one way or another, how the courts might deal with termination  
7 issues. Our task, as I've explained, was to revise the contract, not to anticipate what  
8 courts might do.

9           10.    I understand that the brief also contains this statement: "Keller also  
10 expresses no disagreement with the position taken by State Farm in its internal and  
11 public statements and in litigation that the State Farm agent's agreement was terminable  
12 at-will." That is not accurate. Our group specifically converted the contract from an "at-  
13 will" contract to a "good cause" contract by making the changes I described in Paragraph  
14 14 of my first declaration, to ensure that the company would not terminate an agency  
15 contract for arbitrary or capricious reasons, without good cause. Any subsequent  
16 position taken by State Farm in statements or in litigation that the agreement is  
17 terminable "at-will" are contrary to, and inconsistent with, the revision of the 1966  
18 contract.

19           11.    I understand that, in the brief, counsel for State Farm refers to my  
20 declaration as a "belated" declaration. With respect to that statement, I should note the  
21 following for the record. In late 1998, I received a subpoena seeking information in  
22 connection with agent/State Farm litigation taking place in the federal court in  
23 California. Having no familiarity with the litigation, I discussed the matter with State  
24 Farm, and they told me that they would handle the matter. Anticipating that I would be  
25 responding to a subpoena, I reorganized my State Farm files, which include extensive  
26 material on matters such as those that I discussed in my first declaration. However, I  
27 never heard any further from State Farm.

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