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Kraszewski, Jackson, and Tipton v. State Farm General Insurance Company, State Farm Mutual Automobile Insurance Company, State Farm Life Insurance Company, and State Farm Fire and Casualty Company (Monetary Relief)

Judge Thelton E. Henderson

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Kraszewski, Jackson, and Tipton v. State Farm General Insurance Company, State Farm Mutual Automobile Insurance Company, State Farm Life Insurance Company, and State Farm Fire and Casualty Company (Monetary Relief)

Keywords

Muriel E. Kraszewski, Daisy O. Jackson, Wilda Tipton, State Farm General Insurance Company, State Farm Mutual Automobile Insurance Company, State Farm Life Insurance Company, State Farm Fire and Casualty Company, C-79-1261 TEH, Disparate Treatment, Assignment, Hiring, Training/Advancement, Sex, Female, Service, Employment Law, Title VII

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 MURIEL E. KRASZEWSKI,)
DAISY O. JACKSON and WILDA)
12 TIPTON, on behalf of them-)
selves and all other persons)
13 similarly situated,)

14 Plaintiffs,)

15 v.)

16 STATE FARM GENERAL INSURANCE)
COMPANY, STATE FARM MUTUAL)
17 AUTOMOBILE INSURANCE COMPANY,)
STATE FARM LIFE INSURANCE)
18 COMPANY, and STATE FARM FIRE)
AND CASUALTY COMPANY,)

19 Defendants.)
20

Case No. C-79-1261 TEH

21
22 CONSENT DECREE REGARDING
23 MONETARY RELIEF, INSTATEMENT
24 RELIEF, AND NOTICE
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21	<u>Initial Claim Form:</u> The Claim Form that a	
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10	<u>Ins. Co., 36 Fair Empl. Prac. (BNA) Cas. 1354</u>	
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11	<u>Liability Period:</u> The period from July 5,	
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1 I. INTRODUCTION

2 Plaintiffs Muriel Kraszewski and Daisy Jackson
3 filed this action on June 1, 1979, on behalf of
4 themselves and a class of women who alleged that
5 the State Farm Insurance Companies ("State Farm" or
6 the "Company") had discriminated against them in
7 the recruitment, selection, hiring, job assignment,
8 and training of insurance sales agents within
9 California on the basis of their sex. On May 1,
10 1980, Wilda Tipton filed a complaint in
11 intervention making substantially the same
12 allegations as were set forth in the initial
13 complaint filed by plaintiffs Kraszewski and
14 Jackson.

15 On November 6, 1981, the Court bifurcated the
16 proceedings into a liability phase (Stage I) and a
17 remedy phase (Stage II). On April 29, 1985, after
18 the Stage I trial, the Court issued Findings of
19 Fact and Conclusions of Law which found State Farm
20 liable for sex discrimination. Kraszewski v. State
21 Farm Ins. Co., 38 Fair Empl. Prac. (BNA) Cas. 197
22 (N.D. Cal. 1985) ("Stage I Findings"). The Court
23 found liability as to "all female applicants and
24 deterred applicants who, at any time since July 5,
25 1974, have been, are, or will be denied
26 recruitment, selection and/or hire as trainee
27 agents by defendant companies within the State of
28

1 California." 38 Fair Empl. Prac. (BNA) Cas.
2 at 258.

3 Following the Stage I Findings, the parties
4 engaged in discovery and litigation to establish
5 the forms and types of relief appropriate for
6 Stage II. On July 17, 1986, the Court issued an
7 order tentatively approving individualized Stage II
8 Claim Hearings for monetary relief, and directing
9 the parties to attempt to reach agreement on the
10 form and extent of class notice. Kraszewski v.
11 State Farm Ins. Co., 41 Fair Empl. Prac. (BNA) Cas.
12 1088 (N.D. Cal. 1986) ("July 17 Order").

13 In the course of the discussions following the
14 July 17 Order, the parties reached agreement on
15 disputed issues concerning injunctive relief. See
16 Consent Decree Regarding Injunctive Relief
17 ("Injunctive Decree"). Thereafter, the parties
18 entered negotiations regarding individualized Claim
19 Hearings and reached agreement on all issues
20 concerning the distribution of monetary relief.
21 These agreements are set forth in this Consent
22 Decree Regarding Monetary Relief, Instatement
23 Relief, and Notice ("Decree").

24 II. PURPOSES OF THIS DECREE

25 The parties have entered into this Decree for the
26 following purposes:

27 A. To provide effective notice to potential
28 claimants for monetary relief.

- 1 B. To provide class members with assistance in the
2 filing and evaluation of claims.
- 3 C. To provide an efficient and expeditious process
4 for hearing or otherwise resolving claims of
5 sex discrimination in the recruitment and hire
6 of Trainee Agents.
- 7 D. To provide stipulated monetary relief and
8 instatement rights for actual victims of sex
9 discrimination.
- 10 E. To avoid unnecessarily protracted, expensive,
11 and disruptive litigation.
- 12 F. To provide finality of decisions.

13 III. STANDARDS OF COMPLIANCE WITH THIS DECREE

14 The parties have entered into this Decree with the
15 following understandings:

- 16 A. The only obligations that shall be imposed on
17 State Farm regarding the distribution of
18 monetary relief in Stage II of this case are
19 expressly set forth in this Decree; no other
20 obligations are to be imposed or implied.
- 21 B. The parties agree, on behalf of themselves and
22 those they represent, that compliance with the
23 terms of this Decree shall constitute
24 compliance with Title VII and Rule 23 of the
25 Federal Rules of Civil Procedure with regard to
26 the distribution of relief to the class and to
27 the representatives of the class.

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C. The definitions set forth in this Decree are the sole and exclusive definitions of all terms governing notice and the distribution of monetary relief, and shall not be interpreted or construed with reference to parol or written evidence of any kind with the exception of three types of statements offered in any hearings pertaining to the approval of this Decree: (1) joint written statements to the Court; (2) undisputed written statements to the Court; and (3) undisputed oral statements to the Court recorded in notarized hearing transcripts. In resolving any dispute regarding the interpretation of this Decree, the Court or the Special Masters shall interpret the Decree to effectuate its provisions.

D. State Farm is subject to legal obligations under the terms not only of Title VII, but also of other federal and state laws, regulations, rules, and executive orders, as well as other obligations that may be negotiated or ordered by the Court in Stage II of this action. State Farm's compliance with its obligations under this Decree shall in no way be interpreted to conflict with the other legal obligations of the Company set forth in Section III.B
(page 3).

1 E. Should any provision of this Decree be declared
2 or determined by the Court to be illegal or
3 invalid:

- 4 1. The validity of the remaining parts, terms,
5 or provisions shall not be affected thereby;
6 and
7 2. Said illegal or invalid part, term, or
8 provision shall be deemed not to be a part
9 of this Decree; and
10 3. The parties shall have the right to seek
11 modification of the Decree to ensure that
12 its purposes are fully effectuated.

13 IV. EFFECTIVE DATE OF DECREE

14 This Decree shall be effective thirty (30) days
15 after the Court finally approves its terms. Such
16 date shall be referred to as the "Effective Date"
17 of this Decree. Upon approval by the Court, the
18 Decree shall be effective and binding upon the
19 parties and shall not be appealed by Class Counsel
20 or counsel for State Farm, except as expressly set
21 forth in Sections VII.F.4 (page 16), VII.G.4.e.iii
22 (page 61), VIII.B.1.b (page 77), and VIII.B.3.e.ii
23 (page 85).

24 V. GEOGRAPHIC SCOPE OF DECREE

25 The terms of this Decree shall apply only to the
26 Agency Division of State Farm in California.

27 VI. NON-ADMISSION OF LIABILITY

28

1 Neither the terms of this Decree nor the
2 negotiations connected with it shall be construed
3 or used as:

- 4 A. an admission of liability as to any Findings of
5 Fact and Conclusions of Law rendered at
6 Stage I, or any allegations that State Farm has
7 violated Title VII or any other law,
8 regulation, order or rule, provided that
9 nothing in this Decree shall be interpreted to
10 alter the legal significance of the Stage I
11 Findings; or
- 12 B. evidence in any non-Kraszewski proceeding for
13 any purpose, including but not limited to an
14 admission of wrongful or illegal activity on
15 the part of State Farm, or an admission of
16 injury to any claimant.

17 VII. PROCEDURES FOR DISTRIBUTION OF MONETARY
18 RELIEF

- 19 A. Class Counsel: The Court appoints the law firm
20 of Farnsworth, Saperstein & Seligman ("Class
21 Counsel") to represent the class of women who
22 seek monetary relief pursuant to the claim
23 procedure described in this Decree.
- 24 B. Definitions of Applicant and Deterred
25 Applicant:
- 26 1. Applicant: An "Applicant" is any female who
27 establishes that:

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- a. from July 5, 1974 through April 18, 1978, she took an aptitude test known as the AIB ("Aptitude Index Battery") from State Farm or completed any other pre-contract procedure, or sought to take the AIB or to commence any other pre-contract procedure but was denied the opportunity to do so, in connection with a Trainee Agent vacancy or anticipated vacancy in California; or
- b. from April 19, 1978 through December 31, 1987, she took and passed the AIB or the Career Profile Questionnaire ("CPQ") from State Farm or completed any other pre-contract procedure, or sought to take the AIB or CPQ or to commence any other pre-contract procedure but was denied the opportunity to do so, in connection with a Trainee Agent vacancy or anticipated vacancy in California; and, as to either (a) or (b);
- c. she did not voluntarily withdraw her application for the Trainee Agent position that she sought; and
- d. she was not offered a Trainee Agent position that she sought in California during the Liability Period.

1 2. Deterred Applicant: A "Deterred Applicant"
2 is any female who establishes that she
3 either: (a) was employed during the
4 Liability Period by State Farm in California
5 in an Operations position, or by a State
6 Farm Agent or Agency Manager in California
7 in a non-Agent capacity; or (b) applied for
8 an Operations or Agency position in
9 California during the Liability Period; and,
10 as to both (a) and (b), she would have
11 applied for a Trainee Agent position with
12 State Farm in California after July 5, 1974,
13 but for her identification of a State Farm
14 policy or practice that reasonably caused
15 her to believe that her application would be
16 rejected. The phrase "Operations Position"
17 in the previous sentence includes all State
18 Farm employment positions in California
19 other than Trainee Agent.

20 C. Appointment List: The list appended to this
21 Decree as Exhibit 1 ("Appointment List") is the
22 chronological list of Trainee Agent positions
23 that were filled between July 5, 1974 and
24 December 31, 1987 ("Liability Period"). All of
25 the information contained on the Appointment
26 List shall be considered to be true and correct
27 for all purposes under this Decree.

28 D. Appointment and Authority of Special Master(s):

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1. The parties agree that the following Special Masters shall be appointed:
 - a. Chief Special Master: Charles B. Renfrew.
 - b. Discovery and Motion Special Master: Kathy Kelly.
 - c. Attorneys' Fees and Costs Multiplier Special Master: Douglas Young.
 - d. Hearing Special Master: Kathy Kelly.
 - e. Hearing Special Master: Armon Barsamian.
 - f. Hearing Special Master: Barbara Chvany.
 - g. Hearing Special Master: Andria S. Knapp.
 - h. Hearing Special Master: Geraldine Randall.
2. If the parties are unable to agree upon a replacement caused by the unavailability of a Special Master, the Court shall appoint one after receiving suggestions from the parties and holding a hearing. The Special Master designated by the Court shall be the person who best fits the qualifications of being a neutral attorney admitted to practice before the United States District Court for the Northern District of California, and who has experience in employment discrimination litigation.

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3. State Farm shall be responsible for compensating the Special Masters for their fees and costs.
4. If, in adjudicating any dispute raised by a claimant, a Special Master finds that such dispute was frivolous, unreasonable, or without foundation, even though not brought in bad faith, the claimant shall pay the fees and costs of the Special Master, and claimant's counsel shall not be entitled to their attorneys' fees and costs in connection with the dispute. However, if the claimant does not pay the fees and costs of the Special Master within thirty (30) days, State Farm shall have the right to seek additional sanctions, including, but not limited to, sanctions under Federal Rules of Civil Procedure 11 and 37 as well as a sanction that further processing of the claim of the claimant shall cease until payment of the awarded costs and sanctions are paid.
5. Reciprocally, if in adjudicating any dispute raised by State Farm, a Special Master finds that such dispute was frivolous, unreasonable, or without foundation, even though not brought in bad faith, Class

1 Counsel shall have the right to seek
2 sanctions, including, but not limited to,
3 sanctions under Federal Rules of Civil
4 Procedure 11 and 37.

5 6. The Chief Special Master shall have
6 authority to modify all procedural deadlines
7 set forth in this Decree, except the
8 deadline for filing Initial Claims.

9 E. Conditions Precedent to Distribution of

10 Monetary Relief: In order to participate in
11 the procedures set forth in this Decree for the
12 distribution of monetary relief, an individual
13 or the estate of a deceased individual must
14 have served a Claim Form ("Initial Claim Form")
15 by mail no later than the Claim Deadline. The
16 Initial Claim Form and Claim Deadline are set
17 forth in Exhibit 2. Any potential class member
18 who does not file an Initial Claim by the Claim
19 Deadline forfeits all rights to any monetary
20 and instatement relief under this Decree.
21 Initial Claims shall be served under penalty of
22 perjury upon the Escrow Agent designated in
23 Exhibit 3, which shall serve

1 copies on both parties, but they shall not be
2 used for any purpose in the claim procedure
3 other than establishing the timeliness of the
4 Initial Claim.

5 F. Timetable and Procedures for
6 Establishing Entitlement to Monetary
7 Relief:

8 1. Hold Period: Except as specifically set
9 forth below, during the two hundred seventy
10 (270) day period immediately following the
11 Claim Deadline ("Hold Period"), there shall
12 be no depositions, Claim Hearings, motion
13 practice before the Court, or other
14 adversary proceedings except those before
15 the Discovery and Motion Special Master.
16 The Hold Period shall be reserved for
17 investigation and evaluation of Initial
18 Claims by both parties, and testing of
19 Initial Claimants prior to their filing of
20 Final Claim Forms. If the volume of claims
21 makes completion of the Hold Period tasks
22 impracticable within two hundred seventy
23 (270) days, Class Counsel shall be entitled
24 to extend the Hold Period upon motion to the
25 Chief Special Master. State Farm, however,
26 shall retain the right to seek from the
27 Chief Special Master a ruling that the Hold
28 Period should not be extended unless early

1 claims are investigated and prepared for
2 hearing even if the investigation of later
3 claims is not yet complete. The Hold Period
4 shall be conducted in accordance with the
5 following procedures:

6 a. Discovery of Documents Regarding Trainee
7 Agents: Prior to the Hold Period, State
8 Farm and Class Counsel shall exchange all
9 unprivileged personnel documents in their
10 possession regarding Trainee Agents
11 appointed during the Liability Period, as
12 set forth in Exhibit 4.

13 b. Discovery of Documents Regarding Initial
14 Claimants: Within thirty (30) days after
15 the Claim Deadline, State Farm and Class
16 Counsel shall exchange all unprivileged
17 documents in their possession regarding
18 Initial Claimants, as set forth in
19 Exhibit 5.

20 i. State Farm and Class Counsel shall
21 deliver documents that respond to
22 other reasonable, written discovery
23 requests within twenty-one (21) days
24 of receiving such requests, unless the
25 producing party objects on grounds of
26 privilege, relevance, or
27 burdensomeness.

1 ii. Independent counsel shall secure
2 copies of the documents specified in
3 Exhibits 4 and 5 from Class Counsel,
4 from State Farm, or the Escrow Agent,
5 who shall have the right to charge
6 independent counsel for the reasonable
7 costs of such copying.

8 c. Discovery by State Farm: State Farm
9 agrees that, during the Hold Period, it
10 will not conduct formal discovery other
11 than that set forth above and in the
12 following paragraph regarding any Initial
13 Claimant. However, State Farm may
14 conduct internal analyses of Claim Forms
15 with reference to documents within the
16 possession and control of State Farm.
17 State Farm also may conduct internal
18 analyses of Claim Forms through
19 interviews of non-claimants. Such
20 analyses shall be considered protected by
21 the attorney/client privilege or by the
22 work product privilege to the extent
23 permitted by applicable law.

24 d. Special Discovery To Preserve Witness
25 Testimony: As a limited exception to the
26 Hold Period discovery provisions set
27 forth above, either party may seek to
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1 preserve by deposition the testimony of
2 their witnesses who are likely to be
3 unavailable for hearing or whose memories
4 are likely to fade substantially by the
5 time of any hearing. Disputes regarding
6 such discovery to preserve witness
7 testimony shall be submitted to the
8 Discovery and Motion Special Master as
9 set forth in Section VII.F.5.c (page 23).

10 2. Final Claims Filed By Class Counsel: On or
11 before the final day of the Hold Period,
12 Class Counsel shall file with the Escrow
13 Agent and simultaneously serve on counsel
14 for State Farm a Final Claim for each
15 Initial Claimant whom they seek to represent
16 in the Hearing Procedure described below
17 ("Final Claimant"). At least thirty (30)
18 days prior to the end of the Hold Period,
19 Class Counsel shall notify, in writing, each
20 Initial Claimant whom Class Counsel will not
21 represent in the Hearing Procedure and shall
22 inform such Initial Claimant(s) of their
23 right to obtain independent counsel or
24 proceed in propria persona to file a Final
25 Claim. The Final Claims shall contain the
26 information set forth in Exhibit 6 and shall
27 append all non-privileged documents
28 pertaining to such information.

1 3. Rule 12(b)(6) Motions: At any time after
2 the Hold Period, either party may file a
3 motion to dismiss any Final Claim which
4 fails to state a claim on which relief can
5 be granted, pursuant to the standards
6 applicable to Fed. R. Civ. P. 12(b)(6).
7 Such motion(s) shall: (a) be noticed in
8 accordance with the Local Rules of the
9 Northern District of California; (b) be
10 heard by the Discovery and Motion Special
11 Master within twenty-eight (28) days of the
12 filing of the motion(s); (c) be decided by
13 the Discovery and Motion Special Master
14 within fifteen (15) days of the hearing; and
15 (d) be binding on all parties without right
16 of review by the Court.

17 4. Motion for Reconsideration: If the number
18 of Final Claims including those filed by
19 independent counsel or in propria persona
20 substantially exceeds one thousand (1000) at
21 the end of the Hold Period, State Farm shall
22 have the right to file one Motion for
23 Reconsideration of the Court's July 17 Order
24 within ninety (90) days of the end of the
25 Hold Period, on the ground that formula
26 distribution of monetary relief is more
27 appropriate for Stage II proceedings in this
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1 case. State Farm shall give Class Counsel
2 notice within fourteen days of the end of
3 the Hold Period of its intention to file a
4 Motion for Reconsideration. The ninety (90)
5 day filing period may be extended, but only
6 by the mutual agreement of the parties.
7 Each party shall have full rights of appeal
8 from the decision of the Court.

9
10 If State Farm files a Motion for
11 Reconsideration, the following conditions
12 shall apply:

13 a. No Stay of Proceedings: There shall be
14 no stay of the Claim Procedure without
15 the mutual consent of both parties,
16 except that, during any period of
17 briefing and arguing the Motion, the
18 parties shall conduct the Claim Procedure
19 so as to permit a full opportunity to
20 prepare their filings and arguments.

21 b. Joint Support for Any Appeal: If one
22 party elects to appeal the decision of
23 the District Court, the other party shall
24 support both the request to the District
25 Court for immediate certification for
26 appeal as well as any request to the
27 Ninth Circuit to accept the appeal.

1 c. No Impact Upon Final Approval of Decree:

2 The lodging of any appeal shall not be
3 interpreted to void or modify the Court's
4 final approval of this Decree.

5 d. Final Claim Settlements and Judgments:

6 If, during the period in which either
7 party retains any rights of appeal from
8 the decision of the District Court, any
9 Final Claims proceed to settlement or to
10 judgment, State Farm may withhold payment
11 of such settlements or judgments to Final
12 Claimants until all rights of appeal are
13 exhausted by depositing the settlement or
14 judgment amounts in the Escrow Account
15 within fifteen (15) days of settlement or
16 judgment. If, after all appeal rights
17 are exhausted, State Farm is ordered to
18 pay withheld settlements and judgments,
19 State Farm shall be liable for
20 postjudgment interest on such settlements
21 or judgments from the date of deposit of
22 each settlement or judgment in the Escrow
23 Account through the date that all appeal
24 rights are exhausted and shall pay all
25 withheld settlements and judgments within
26 fifteen (15) days after such exhaustion
27 date. The postjudgment interest
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1 liability of State Farm shall be equal to
2 the rate of interest paid by the Escrow
3 Account on such amounts. State Farm
4 shall have no obligation to pay withheld
5 settlements and judgments for Final
6 Claims which are ordered to be resolved
7 by formula distribution rather than by
8 individual hearing. This paragraph
9 modifies the terms for payment of
10 settlements and judgments set forth in
11 Exhibit 9 of this Decree by permitting
12 State Farm to withhold payments of
13 settlements and judgments at the cost of
14 postjudgment interest.

15 e. Attorneys' Fees and Costs: During the
16 period in which either party retains any
17 rights of appeal from the decision of the
18 District Court, State Farm shall pay
19 Class Counsel their reasonable lodestar
20 Attorneys' Fees and Costs related to
21 preparation for litigation and litigation
22 of Final Claims under Section VIII.A.3.a
23 (page 72) and Section VIII.B.3.a
24 (page 80) as if there were no appeal
25 rights retained, but may withhold any
26 multiplier on such Attorneys' Fees and
27 Costs. If, after the exhaustion of all
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1 rights of appeal, State Farm prevails in
2 whole or in part on its Motion for
3 Reconsideration, it shall have no
4 obligation to pay any withheld multiplier
5 on Final Claims which are ordered to be
6 resolved by formula rather than by
7 individual hearings. State Farm shall
8 pay any withheld multiplier on Final
9 Claims which are ordered to be resolved
10 by individual hearings rather than by
11 formula within fifteen (15) days of the
12 exhaustion of all rights of appeal.

13 5. Post-Hold Period Discovery and Procedures:

14 Post-Hold Period discovery and other
15 procedures shall begin as set forth below:

16 a. Deposition Discovery: Deposition

17 discovery regarding Final Claimants shall
18 proceed as follows:

19 i. State Farm may take the deposition of
20 any Final Claimant on fourteen (14)
21 days' written notice, provided that no
22 more than three (3) depositions per
23 day of such Claimants are scheduled.

24 ii. Class Counsel may, on fourteen
25 (14) days' written notice, take the
26 deposition of present employees or
27 agents of State Farm who have
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knowledge of facts relevant to State Farm's failure to appoint a particular Final Claimant. All counsel may notice and take the depositions of any non-party witnesses who may have knowledge or facts relevant to a Final Claimant in accordance with the Federal Rules of Civil Procedure. However, no more than three (3) depositions per day of such employees, agents, or non-party witnesses may be scheduled. In order to minimize the disruption of the Company's business, the parties shall endeavor to schedule the depositions of such employees, agents, and non-party witnesses on one contiguous series of dates regarding all Final Claimants as to whom he or she has relevant facts. It shall be the responsibility of Class Counsel to coordinate their discovery efforts with any independent counsel representing Final Claimants, so that such independent counsel may participate in the deposition of any State Farm employee, agent, or non-

1 party witness who has knowledge of
2 State Farm's failure to appoint Final
3 Claimants whom independent counsel
4 represent.

5 iii. All depositions of Final Claimants and
6 current agents or employees of State
7 Farm shall be conducted at the offices
8 of Morrison & Foerster, or Farnsworth,
9 Saperstein & Seligman.

10 iv. All counsel shall use their best
11 efforts to agree upon the scheduling
12 and location of all depositions.

13 v. The reasonable cost of all
14 depositions, including transcripts,
15 travel and lodging expenses of
16 witnesses, Final Claimants, and Class
17 Counsel shall be borne by State Farm.

18 vi. If it is necessary to depose an
19 employee or agent of State Farm on
20 more than one occasion regarding the
21 same claim(s) and counsel noticing the
22 subsequent deposition cannot show good
23 cause why the earlier deposition could
24 not practicably have covered the
25 subject matter of the proposed
26 deposition, counsel noticing the
27 subsequent deposition shall bear their

1 own costs in connection with such
2 deposition.

3 b. Document Discovery: The parties shall
4 use their best efforts to comply with the
5 document discovery obligations set forth
6 in Sections VII.F.1.a.-c (page 13)
7 and VII.F.2 (page 15). It is the
8 intention of the parties that such
9 document discovery obligations eliminate
10 or reduce the need for further document
11 discovery during the claim procedure.
12 Should any Final Claimant or State Farm
13 need additional computerized or non-
14 computerized document discovery, however,
15 such requests shall be made in writing.
16 Responsive documents shall be delivered
17 to the requesting party no later than
18 twenty-one (21) days after such request,
19 unless the responding party objects on
20 grounds of privilege, relevance, or
21 burdensomeness.

22 c. Discovery and Law and Motion Procedures:
23 All discovery and law and motion matters
24 relating to the distribution of monetary
25 relief shall be conducted in accordance
26 with the following procedures:
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i. The parties shall use their best efforts to resolve any discovery or law and motion dispute that may arise. If the parties cannot resolve a discovery or law and motion dispute, it shall be heard by the Discovery and Motion Special Master.

ii. Any party seeking a ruling from the Discovery and Motion Special Master regarding a discovery or law and motion dispute shall summarize the dispute in writing and shall simultaneously serve a copy of such summary, along with any supporting points and authorities, on the other party(ies) and the Discovery and Motion Special Master.

(1) The Discovery and Motion Special Master shall conduct an informal hearing within five (5) calendar days of receiving such a filing.

(2) The other party(ies) shall simultaneously serve its (their) written opposition, if any, on the petitioning party and the Discovery and Motion Special Master no later than two (2)

1 calendar days before such
2 hearing.

3 (3) The Discovery and Motion Special
4 Master shall render a decision
5 on each discovery or law and
6 motion dispute within ten (10)
7 calendar days of the hearing,
8 which decision shall be binding
9 on all parties without right of
10 review, except upon motion for
11 reconsideration to the Discovery
12 Master.

13 6. Special Proceedings to Resolve Questions of
14 Claimant Status: At any time after the Hold
15 Period, counsel for either party may notify
16 counsel of record for any Final Claimant
17 that the status of that Final Claimant as an
18 "Applicant" or a "Deterred Applicant" is
19 subject to question. Such questions shall
20 be resolved in accordance with the following
21 procedures before resolution of the merits
22 of the underlying claim:

23 a. For each such Final Claimant, the party
24 raising the question shall set forth in
25 writing the basis for questioning the
26 claimant's status, and shall cite those
27 portions of the Final Claim Form,
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1 deposition testimony, and/or other
2 discovery, which support the need to
3 clarify such claimant's status.

4 b. Counsel for the parties shall use their
5 best efforts to reach agreement as to the
6 status of each such Final Claimant. If
7 the parties cannot reach an informal
8 resolution, the question shall be
9 presented to the Special Master.

10 c. Any party seeking a ruling from the
11 Special Master regarding a dispute about
12 claimant status shall simultaneously
13 summarize the dispute in writing and
14 shall serve a copy of the summary, along
15 with any supporting points and
16 authorities, on the other party and the
17 Special Master.

18 i. The Special Master shall conduct an
19 informal hearing within twenty-eight
20 (28) calendar days of receiving the
21 filing.

22 ii. The other party shall simultaneously
23 serve its written opposition papers,
24 if any, on the moving party and the
25 Special Master no later than fourteen
26 (14) calendar days before the hearing.

1 iii. The moving party shall simultaneously
2 serve its reply papers, if any, on the
3 Special Master and the opposing party
4 no later than seven (7) days before
5 the hearing.

6 iv. The Special Master shall render a
7 written decision on each such dispute
8 within fifteen (15) calendar days of
9 the hearing, which decision shall be
10 binding on all parties without right
11 of review.

12 d. If the matter is submitted to the Special
13 Master on pleadings and affidavits, it
14 shall be determined in accordance with
15 the standards applicable to Fed. R. Civ.
16 P. 56.

17 e. If the matter is presented to the Special
18 Master by motion specifying the need for
19 live testimony and moving party
20 demonstrates the existence of a genuine
21 issue of material fact or credibility
22 regarding status, the hearing shall
23 include such testimony and the moving
24 party shall have the burden of
25 establishing her or its case by a
26 preponderance of the evidence.

27 G. Hearing Procedure:

1 1. List of Challenged Trainee Agent Positions:

2 Within forty-five (45) days after the end of
3 the Hold Period, Class Counsel and State
4 Farm shall stipulate to a chronological list
5 of the male Trainee Agent positions that
6 were filled during the Liability Period,
7 which will be challenged in Claim Hearings
8 ("Challenged Appointment List"). That list
9 shall designate:

- 10 a. the Trainee Agent vacancy(ies) for which
11 each Final Claimant is vying, with
12 reference to the date(s) that each such
13 vacancy was filled and the name of the
14 male appointee(s); and
15 b. the name of every Final Claimant vying
16 for such vacancy(ies), and her identity
17 as an "Applicant" and/or a "Deterred
18 Applicant" for such vacancy(ies); and
19 c. the date on which each Final Claimant
20 applied or was deterred from applying for
21 each such vacancy ("First Contact Date");
22 which First Contact Date must be at least
23 60 days before the date of the
24 appointment to the vacancy, but no more
25 than 420 days before such appointment
26 date.

1 Class members may challenge only those
2 appointments which were filled by men.
3 No challenge to a male Trainee Agent
4 appointment under this Decree may include
5 a claim that the appointment should have
6 been made earlier or later than the date
7 specified on the Appointment List or
8 Challenged Appointment List. For the
9 purposes of this Decree, the location of
10 a Trainee Agent vacancy shall be
11 interpreted to mean the first office
12 address of the male who filled such
13 vacancy.

14 2. Claims Processing Guidelines:

- 15 a. Expedited Processing: It is the intent
16 of the parties that all disputes
17 regarding the timing of discovery,
18 Rule 12(b)(6) motions, status challenges,
19 and Claim Hearings be resolved as
20 expeditiously as possible, consistent
21 with the due process rights of the Final
22 Claimants and with the right of State
23 Farm to be free of additional damages
24 liability caused by unnecessary or
25 unreasonable claims procedure delays.
- 26 b. Hearing Priorities: It is the further
27 intent of the parties that claims be set
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1 for discovery, Rule 12(b)(6) motions,
2 status challenges, and hearings according
3 to two rules of priority. First, early
4 claims shall have priority over later
5 claims unless, as to a particular claim,
6 the parties agree otherwise. Second,
7 claims involving more than one Final
8 Claimant, in which State Farm has
9 tendered the full amount of damages
10 attributable to the claim but in which
11 the Final Claimants have elected to
12 proceed to hearing, shall have priority
13 over early claims unless, as to a
14 particular claim, the parties agree
15 otherwise.

16 c. Commencement of Claim Hearings: Claim
17 Hearings shall commence no earlier than
18 one hundred eighty (180) days after the
19 Hold Period.

20 d. Claim Hearings Velocity: It is the
21 intention of the parties that Claim
22 Hearings be concluded at the following
23 rates:

24 i. First 12 months after the commencement
25 of Claim Hearings: 50 hearings;

26 ii. Second 12 months after the
27 commencement of Claim Hearings:
28 100 hearings; and

1 iii. Third and subsequent 12-month periods
2 after the commencement of Claim
3 Hearings: 125 hearings.

4 e. Number of Hearings for Each Challenged

5 Appointment: Only one Claim Hearing
6 shall be conducted for each challenged
7 appointment, and each Final Claimant who
8 is a contender for that appointment must
9 present her case in that Claim Hearing.

10 f. Number of Final Claimants that Class
11 Counsel May Represent for Each Challenged

12 Appointment: Class Counsel shall
13 represent only one Final Claimant for
14 each challenged appointment.

15 g. Number of Successful Claimants for Each
16 Challenged Appointment: Only one Final

17 Claimant can be the actual victim of sex
18 discrimination who is entitled to full
19 make-whole relief for any challenged
20 Trainee Agent appointment.

21 h. Scheduling Motions: Counsel for the
22 parties shall have the right, at any time
23 following the Hold Period, to file
24 scheduling motions with the Chief Special
25 Master. Such motions may raise any
26 scheduling issue, and may cover any
27 number of Final Claims. In addition,
28 such motions shall be:

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- i. noticed in accordance with the Local Rules of the Northern District of California;
 - ii. heard by the Chief Special Master within twenty-eight (28) days of the filing of the motion;
 - iii. decided by the Chief Special Master within fifteen (15) days of the hearing; and
 - iv. binding on all parties without right of review by the Court.
- i. Comprehensive Issue Resolution: Counsel for the parties shall have the right, at any time following the Hold Period, to file motions with the Discovery and Motion Special Master which seek to resolve any procedural or substantive issues pertaining to the conduct of all or any portion of the Claim Hearings. Such motions shall be:
- i. noticed in accordance with the Local Rules of the Northern District of California;
 - ii. heard by the Discovery and Motion Special Master within twenty-eight (28) days of the filing of the motion;

- 1 iii. decided by the Discovery and Motion
2 Special Master within fifteen
3 (15) days of the hearing;
4 iv. appealable to the Chief Special Master
5 under either or both of two review
6 standards: abuse of discretion and/or
7 failure to comply with the provisions
8 of the Decree; and
9 v. thereafter binding on all parties
10 without right of review by the Court.
11 j. Sanctions for Breach of Claims Processing
12 Guidelines: Nothing in this Section
13 shall be interpreted to bar the parties
14 from seeking (or the Chief Special Master
15 from imposing, on his or her own motion)
16 remedies for unnecessary or unreasonable
17 delay of Claim Hearings beyond scheduling
18 orders or orders resolving procedural and
19 substantive hearing conduct issues. Such
20 additional remedies may include, but are
21 not limited to, issue preclusion,
22 liability termination, attorneys' fees
23 and costs, or other monetary sanctions
24 upon parties or counsel.

25 3. Settlement of Claims:

- 26 a. Where Appointment Is Challenged by One
27 Final Claimant: After the Hold Period,
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1 State Farm may settle the claim of any
2 Final Claimant who is the sole contender
3 for a particular appointment as follows:

4 i. State Farm may deliver to the
5 interest-bearing escrow account
6 identified in Section VII.H.2
7 (page 64) ("Escrow Account") a check
8 for the Claim Amount attributable to
9 the challenged appointment. State
10 Farm's monetary liability for the
11 challenged appointment shall terminate
12 on the ~~date~~ that the Company deposits
13 such Claim ~~Amount~~ in the Escrow
14 Account.

15 ii. On the same date that State Farm
16 deposits the Claim Amount in the
17 Escrow Account, the Company shall
18 notify the Final Claimant in writing
19 that such deposit has been made, and
20 shall enclose a copy of the Settlement
21 Agreement and General Release attached
22 to this Decree as Exhibit 7
23 ("Settlement Agreement").

24 iii. The Claim Amount and any interest
25 accrued on the Claim Amount by the
26 escrow institution shall be mailed to
27 the Final Claimant within fifteen

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1 (15) days of the date that State Farm
2 receives the Final Claimant's executed
3 Settlement Agreement.

4 b. Where Appointment Is Challenged by More
5 Than One Final Claimant: After the Hold
6 Period, State Farm may settle the claims
7 of Final Claimants who are multiple
8 contenders for a particular appointment
9 by interpleader ("Interpleader
10 Settlement") as follows:

11 i. State Farm may simultaneously notify
12 all such contenders or their counsel
13 in writing ("Interpleader Notice")
14 that the Company is prepared to settle
15 their claims for the full Claim Amount
16 attributable to the challenged
17 appointment, to be shared among them.
18 State Farm's monetary liability for
19 the challenged appointment shall
20 terminate as set forth in Exhibit 9,
21 if on the date that Interpleader
22 Notice is sent, the Company deposits
23 in the Escrow Account a check for the
24 Claim Amount attributable to the
25 challenged appointment. Interest on
26 the Claim Amount shall continue to
27 accrue until the Claim Amount is paid

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1 pursuant to Section VII.G.3.b.iii
2 (page 36).

3 ii. State Farm shall enclose a copy of the
4 Settlement Agreement attached to this
5 Decree as Exhibit 7 with the
6 designation of the settlement amount
7 left blank and with instructions that
8 each Final Claimant must sign and
9 return it within thirty (30) days of
10 receiving the Company's written
11 notification to be eligible for
12 payment under this settlement
13 procedure. The settlement amounts for
14 each Final Claimant shall be
15 negotiated amongst their counsel and
16 shall be written into the blanks on
17 the Settlement Agreements.

18 iii. If all Final Claimants in contention
19 for a particular appointment sign and
20 return their Settlement Agreements and
21 the aggregate settlement amounts
22 written into the Settlement Agreements
23 equal the Claim Amount escrowed by
24 State Farm, then State Farm shall,
25 within fifteen days of receiving the
26 last such executed Settlement
27 Agreement, send settlement checks for
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1 the appropriate portions of the Claim
2 Amount to the Final Claimants with
3 interest calculated to the date of the
4 mailing at the rate paid by the Escrow
5 Account. State Farm shall then be
6 entitled to reimbursement from the
7 Escrow Account holder for the
8 identical sum of the settlement
9 checks.

10 iv. If all Final Claimants in contention
11 for a particular appointment do not
12 accept the settlement tendered by
13 State Farm, the Final Claimants shall
14 have the right to seek an expedited
15 hearing on such appointment according
16 to the rules of priority set forth in
17 Section VII.G.2.b (page 29). In the
18 event of such hearing, only pre-
19 judgment interest shall accrue after
20 the Interpleader Notice date.

21 v. Past and pending Interpleader
22 Settlement offers may not be
23 withdrawn, reduced, or refunded in
24 light of any appeals court ruling
25 regarding liability cutoff.
26 Furthermore, whatever such ruling may
27 provide, mandatory interpleader
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1 settlement is available only if the
2 Interpleader Settlement amount is
3 calculated to the date of Interpleader
4 Notice as set forth in Exhibit 9.

5 c. Nothing in this Section VII.G.3 (page 33)
6 shall bar State Farm from making an offer
7 of judgment pursuant to Fed. R. Civ.
8 P. 68 in connection with the claim of any
9 Final Claimant.

10 d. The Settlement Agreement signed by a
11 Final Claimant in settlement of any
12 challenged appointment shall constitute a
13 release as to any and all appointments
14 that she may have challenged.

15 e. Final Claimants whose claims are settled
16 pursuant to this Section VII.G.3
17 (page 33) are prevailing parties for
18 purposes of an award of attorneys' fees
19 and costs under the Hearing Procedure.

20 4. Claim Hearings: Final Claimants whose
21 claims are not settled in accordance with
22 Section VII.G.3 (page 33), are entitled to
23 participate in a Claim Hearing.

24 a. Sequence of Hearings: The Special
25 Masters shall arbitrate all claims,
26 pursuant to the rules of priority set
27 forth in Section VII.G.2.b (page 29).

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1 The Special Masters also shall determine
2 which one of the Final Claimants vying
3 for a particular Trainee Agent vacancy,
4 if any, is entitled to monetary relief
5 before proceeding to arbitrate the next
6 challenged vacancy in the sequence. The
7 appointments in dispute shall be
8 allocated to the Special Masters for
9 hearing on a random basis. No later than
10 seven (7) calendar days before each Claim
11 Hearing, a Special Master other than the
12 Special Master scheduled to hear a claim
13 shall conduct a pre-hearing settlement
14 conference in person or by telephone.
15 Counsel for the parties shall attend the
16 settlement conference with authority to
17 negotiate settlement and with concurrent
18 access to their clients.

19 i. All Claim Hearings of Final Claimants
20 and current agents or employees of
21 State Farm shall be conducted at the
22 offices of Morrison & Foerster, or
23 Farnsworth, Saperstein & Seligman, or
24 the Special Master.

25 ii. All counsel shall use their best
26 efforts to agree upon the scheduling
27 and location of all Claim Hearings.

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1 iii. The reasonable cost of all Claim
2 Hearings, including transcripts,
3 travel and lodging expenses of
4 witnesses, Final Claimants, and Class
5 Counsel shall be borne by State Farm.

6 b. Order and Burden of Proof: The Special
7 Master shall determine which one of the
8 Final Claimants, if any, should have been
9 appointed to a particular Trainee Agent
10 position. The Special Master shall make
11 this determination, as well as the amount
12 of any entitlement to relief, based upon
13 the following order and burden of proof:

14 i. A prima facie case of entitlement will
15 be established if a Final Claimant
16 successfully demonstrates by a
17 preponderance of the evidence that:
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1 (1) if she was an applicant,* she
2 made written or oral application
3 for a Trainee Agent position
4 with State Farm in California
5 after July 5, 1974, including
6 the date and place of such
7 application, the person to whom
8 the application was made, and
9 the male(s) whose placement(s)
10 she is challenging; or

11 (2) if she was a deterred
12 applicant,* she either: (a) was
13 employed during the liability
14 period by State Farm in
15 California in an Operations
16 position, or by a State Farm
17 Agent or Agency Manager in
18 California in a non-Agent
19 capacity; or (b) applied for an
20 Operations or Agency position in

21 _____
22 * If the Final Claimant was an applicant for an Operations
23 position, she may seek to establish that she was either an
24 "Applicant" or a "Deterred Applicant" in accordance with
25 the criteria set forth above, in Sections VII.G.4.b. (1)
26 and (2) (page 41). The definitions of "Applicant" and
27 "Deterred Applicant" set forth in Sections VII.B.1 (page 6)
28 and VII.B.2 (page 8) of this Decree are the sole and
exclusive definitions of these terms and may not be
interpreted or construed with reference to parol or written
evidence of any kind, with the exception of that parol or
written evidence set forth in Section III.C (page 4).

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California during the liability period; and, as to both (a) and (b), she would have applied for a Trainee Agent position with State Farm in California after July 5, 1974 but for her identification of a State Farm policy or practice that reasonably caused her to believe that her application would be rejected; and

(3) she was not offered a Trainee Agent position that she sought or was deterred from seeking in California after July 5, 1974; and

(4) if she failed to complete the application process before taking the California insurance sales licensing examination, she did so as a result of a policy or practice which she identifies, that reasonably caused her to believe that her application would be rejected; and

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- (5) she was in good health at the time of her application or deterred application; and
- (6) she was an insurable driver based upon State Farm underwriting standards at the time of her application or deterred application; and
- (7) she was at least 21 years old at the time of her application or deterred application; and
- (8) she had, or had access to, adequate financial resources to invest in the Agent opportunity with State Farm. While a specified amount of financial resources is not a guarantee of success as an Agent, a Final Claimant may show that she had or had access to adequate financial resources by demonstrating that she had or had access to the amount of money specified on the following schedule which pertains to her year of application or deterred application apart from the

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financial requirements of other
ongoing business and personal
expenses.

Years of Application or
Deterred Application

1974-1975	\$1500
1976-1977	\$2000
1978-1979	\$2500
1980-1983	\$3000
1984	\$4000
1985	\$5000
1986	\$6000
1987	\$7000

(9) If she was an applicant or a
deterred applicant for a
position filled on or after
April 19, 1978, she took and
passed the AIB or CPQ from State
Farm in accordance with the
following specifications:

(a) If she took the AIB or CPQ
at the time of her
application or deterred
application, she is bound
by the score she attained
at that time.

(b) If she did not take the
AIB or CPQ at the time of
her application or
deterred application, and
she is not deceased at the

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time of the filing of her Final Claim, she must have taken and passed it by the date on which her Final Claim was filed. If she takes the CPQ during the Hold Period and does not pass on the first attempt, she may have two additional opportunities to take the test, but each such failure shall advance the date on which she may be considered for a vacancy by one hundred eighty (180) days, and State Farm shall have no obligation to pay for the third attempt. State Farm will make the test available without cost and at reasonable times and places to permit scores to be recorded on Final Claim Forms. Scores shall be reported to Class Counsel, the claimant, and to State Farm.

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(c) If she is contesting a male placement between April 19, 1978 and April 29, 1982, a passing score is eleven (11) or higher.

(d) If she is contesting a male placement between April 30, 1982 and December 31, 1986, a passing score is thirteen (13) or higher.

(e) If she is contesting a male placement on or after January 1, 1987, a passing score is fifteen (15) or higher; and

(10) If she has not taken and passed the California insurance sales licensing examinations for life and casualty insurance, and she is not deceased at the time of the filing of her Final Claim, she must take and pass both such examinations pursuant to the following criteria:

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- (a) She must have signed the Waiver Form attached to this Decree as Exhibit 8;
- (b) If she does not pass one or both of the licensing examinations on the first attempt, she may have two additional opportunities to take either or both examinations;
- (c) State Farm shall pay the claimant's costs of registering for and taking the licensing examinations up to and including her second attempt to pass them, if necessary;
- (d) State Farm shall furnish to Class Counsel at no cost, for distribution to Initial Claimants, a copy of the licensing examination training materials that the Company regularly makes available to its pre-contract Trainee Agent candidates; and

1 (e) If the logistics of taking
2 and passing the licensing
3 examinations make the
4 timely filing of Final
5 Claims impracticable, the
6 Hold Period set forth in
7 Section VII.F.1 (page 12)
8 may be extended at the
9 discretion of the Special
10 Master(s), upon
11 stipulation or motion by
12 the parties.

13 (11) Her First Contact Date must have
14 been at least 60 days, but no
15 earlier than 420 days, before
16 the date of the challenged
17 appointment.

18 ii. A Final Claimant who establishes a
19 prima facie case of sex discrimination
20 may also seek to show that she should
21 have been considered for other
22 vacancies provided that the other
23 vacancy(ies) were filled not less than
24 60 days nor more than 420 days after
25 her first contact date with State
26 Farm. If the other vacancy(ies) were
27 within thirty-five (35) miles of her
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1 residence, it shall be presumed that
2 she was willing to fill such
3 position(s). Nothing in this
4 Section VII.G.4.b.ii (page 48),
5 however, shall bar a Final Claimant
6 from attempting to prove by a
7 preponderance of the evidence that she
8 was willing and able to relocate to be
9 considered for vacancies at greater
10 distances from her residence.

11 iii. State Farm may rebut a prima facie
12 case of employment sex discrimination
13 regarding a Trainee Agent position
14 that was filled before February 14,
15 1983, by proving by clear and
16 convincing evidence, as defined by the
17 Court of Appeals for the Ninth Circuit
18 in Nanty v. Barrows, 600 F.2d 1327,
19 27 FEP Cases 410 (9th Cir. 1981) and
20 LULAC v. City of Salinas, 654 F.2d
21 557, 27 FEP Cases 409 (9th Cir. 1981)
22 that:

23 (1) there was no Trainee Agent vacancy
24 filled at any location at which
25 she applied, or was deterred from
26 applying, or to which she was
27 willing to relocate within
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twelve (12) months of her application or deterred application; or

(2) a female was selected to fill the vacancy for which she applied, or was deterred from applying, or to which she was willing to relocate; or

(3) she was rejected or would have been rejected because she was less qualified than the male selected for the position; or

(4) she was rejected or would have been rejected for another sexually nondiscriminatory reason; or

(5) if she establishes that she was willing and able to relocate to fill a vacancy filled by an Agency Manager to whom she did not apply under Section VII.G.4.b.ii (page 48), the Company may rebut her prima facie case by showing:

(i) by a preponderance of the evidence that the Agency Manager to whom she applied, or to whom she was deterred from making application, did

1 not customarily refer any
2 applicants to other Agency
3 Managers, or referred only
4 those applicants who
5 specifically requested
6 referral and this Final
7 Claimant did not do so; or
8 (ii) by a preponderance of the
9 evidence that the Agency
10 Manager to whom she claims
11 she should have been
12 referred pursuant to
13 Section VII.G.4.b.iii.(1)
14 (page 49) did not
15 customarily accept such
16 referrals; or
17 (iii) by clear and convincing
18 evidence that she was less
19 qualified than the male who
20 was selected for the
21 position.

22 iv. As to any prima facie case of
23 employment sex discrimination
24 regarding a Trainee Agent position
25 filled on or after February 14, 1983,
26 State Farm's rebuttal, as specified in
27 Section VII.G.4.b.iii (page 49), shall
28 be by a preponderance of the evidence.

1 v. If State Farm meets its burden as set
2 forth in Sections VII.G.4.b.iii
3 (page 49) and/or iv (page 51), above,
4 the Final Claimant shall be entitled
5 to show, by a preponderance of the
6 evidence, that the reason given by
7 State Farm for not appointing her to a
8 Trainee Agent position was a pretext
9 for sex discrimination. State Farm
10 shall thereafter be entitled to rebut
11 the showing of pretext by a
12 preponderance of the evidence. The
13 elements of a Final Claimant's prima
14 facie case and of State Farm's
15 rebuttal shall not limit a party's
16 right to present other evidence in the
17 case-in-chief, or in rebuttal, or in
18 surrebuttal.

19 c. Conduct of Claim Hearings: The parties
20 shall conduct Claim Hearings in
21 accordance with the following procedures:

22 i. Opening Statements: Either party, at
23 its option, may deliver an opening
24 statement of not more than twenty
25 minutes in length as set forth below:

26 (1) The Final Claimant's opening
27 statement shall precede State
28 Farm's opening statement.

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(2) State Farm's opening statement may be reserved until the close of the Final Claimant's case.

(3) Opening statements may include argument, but such argument may be limited at the discretion of the Special Master.

ii. Presentation of Evidence: All evidence will be submitted under the following terms:

(1) Rulings regarding the form of questions asked of witnesses, the form of objections, the admissibility of evidence, and other matters regarding the conduct of the hearing not expressly covered by these guidelines shall be made by the Special Master pursuant to the Federal Rules of Evidence.

(2) Documentary Evidence: With the exception of rebuttal documents, opposing counsel must inform each other in writing no later than seven (7) calendar days prior to the date of the hearing of the precise documents they

1 propose to introduce at the
2 hearing. If a party receiving
3 timely notice of the proposed
4 introduction of a document has
5 no copy of that document, the
6 party that has it in its
7 possession shall deliver a copy
8 to opposing counsel no later
9 than five (5) days before the
10 date of the hearing. Any
11 document of which the
12 introducing party failed to
13 inform opposing counsel under
14 the seven-day notice rule shall
15 not be admitted into evidence
16 unless the Special Master finds
17 that good cause has been clearly
18 demonstrated to admit such
19 evidence.

20 (a) In order to expedite the
21 hearing, each party may
22 mark each document that it
23 intends to introduce at
24 the outset of the
25 proceeding. Neither party
26 shall be allowed to make
27 an objection that the
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document is a copy rather than the original, but either party may object that the document is not an accurate reproduction of the original.

Objections to the admissibility of proposed documentary exhibits may be made by either party at or before the outset of the proceeding.

(b) Counsel for either party may abbreviate the presentation of his or her case by introducing charts or diagrams prepared using information drawn solely from documents which have been admitted into evidence and which have been the subject of seven days' notice to opposing counsel. All such charts and diagrams may be introduced by counsel without the need to call

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as a witness the preparer of the charts or diagrams, provided that all source documents are clearly identified on such charts and diagrams. The accuracy of the charts or diagrams may be verified or impeached by reference to the source documents in the hearing record.

(c) Rebuttal documents shall be defined as documents introduced to explain, counteract, or dispute facts given in evidence by the adverse party but not reasonably anticipated by the party seeking to introduce them.

iii. Witness Testimony: With the exception of rebuttal witnesses, opposing counsel must inform each other in writing no later than seven (7) calendar days prior to the date of the hearing of the names of witnesses they plan to call at the hearing. The

1 testimony of a witness of which the
2 introducing party failed to inform
3 opposing counsel under the seven-day
4 notice rule shall not be admitted
5 unless the Special Master finds that
6 good cause has been clearly
7 demonstrated to admit such evidence.

8 (1) The testimony of all witnesses
9 shall be under oath or by an
10 affirmance.

11 (2) Each party shall conduct the
12 examination and cross-
13 examination of its witnesses by
14 one attorney per claimant.

15 (3) Rebuttal witnesses shall be
16 defined as witnesses whose
17 testimony is introduced to
18 explain, counteract, or disprove
19 facts given in evidence by the
20 adverse party but not reasonably
21 anticipated by the party seeking
22 to have them testify.

23 iv. Transcripts: If either party should
24 desire a transcript of any proceeding,
25 it shall arrange for such transcript
26 at its own expense. If a Special
27 Master requests a transcript, State

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1 Farm shall bear the costs. Prevailing
2 claimants shall be entitled to
3 reimbursement of the cost of a
4 transcript.

5 v. Closing Arguments: Either party, at
6 its option, may make a closing
7 argument. The Special Master shall
8 set a time limit for closing arguments
9 after hearing proposals for such limit
10 from counsel for the parties. State
11 Farm's closing argument shall follow
12 the Final Claimant's closing argument.
13 Either side shall be permitted an
14 opportunity for rebuttal, Class
15 Counsel having the opportunity to be
16 heard last.

17 vi. Post-Hearing Briefs: Submission of
18 post-hearing briefs shall be in
19 accordance with a schedule determined
20 on the final day of the hearing by the
21 Special Master.

22 d. Form of Decision: The decision of the
23 Special Master shall be rendered in writing
24 within thirty (30) days of the Claim
25 Hearing, or submission of post-hearing
26 briefs, whichever is later, and shall set
27 forth:

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- i. the contentions of the Final Claimants and of State Farm; and
- ii. the decision of the Special Master, and the findings of fact and conclusions of law upon which the decision is based. A Final Claimant who prevails at her hearing shall be known as a "Successful Claimant."

e. Amount of Damages:

- i. Damages for a Successful Claimant, other than one who was appointed by State Farm to a Trainee Agent position during the Liability Period, shall begin accruing no earlier than July 5, 1974; shall be unaffected by the "continuing violation" theory or any "escalator-of-damages" concept arising under that theory; and shall be calculated to the date of judgment, except as otherwise provided in this Decree, as set forth in Exhibit 9.

(1) It is understood that these distributions shall not constitute pay from State Farm for the purposes of any employee benefit plans, and no credit or benefit shall accrue under such

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plans by reasons of these
payments.

(2) It is understood that Trainee Agents are State Farm employees and hold their status as Trainee Agents for two years, whereas Career Agents are independent contractors and hold Career Agent status for an indefinite period. Therefore, only the positive damages, if any, attributable to the first two years of a Claim Amount shall be considered back pay subject to state and federal tax withholdings.

ii. Damages for a Successful Claimant who was appointed by State Farm to a Trainee Agent position during the Liability Period shall begin accruing no earlier than July 5, 1974; shall be unaffected by the "continuing violation" theory or any "escalator-of damages" concept arising under that theory; and shall be calculated to the date of judgment, except as otherwise

1 provided in this Decree, as set forth
2 in Exhibit 9.

3 iii. Liability Termination: The parties
4 agree that claimants shall be entitled
5 to prejudgment interest at the rates
6 set forth in Exhibit 9. The parties
7 disagree regarding the date liability
8 for back pay should terminate. The
9 parties agree that this issue shall be
10 presented to the District Court for
11 resolution at or near the time of the
12 Consent Decree Fairness Hearing and
13 that either party may appeal the
14 liability termination date set by the
15 District Court to the Ninth Circuit
16 Court of Appeals or the Supreme Court.
17 For the purposes of implementing the
18 terms of this Section VII.G.4.e.iii
19 (page 61), the parties agree that:

20 (a) They shall simultaneously file
21 and serve their opening briefs
22 and reply briefs on the issue of
23 liability termination according
24 to a mutually agreed litigation
25 timetable. The parties' opening
26 and reply briefs may not exceed
27 the twenty-five (25) page limit
28 set forth in Local Rule 220-4.

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(b) The parties agree that the decision regarding termination of liability is of critical importance to the claims procedure set forth in this Decree, and that any appeal of such decision should be resolved as expeditiously as possible.

(c) If the District Court declines to certify the issue for interlocutory appeal or if the Ninth Circuit declines to accept the interlocutory appeal, State Farm shall retain its right of appeal until the issue is certified and accepted by the Ninth Circuit.

(d) If an appeal is taken and accepted by the Ninth Circuit, the implementation of the terms of this Decree shall not be stayed and shall continue throughout the appeal process.

(e) If the Court terminates back pay liability on a date which precedes the end of the Hold Period, damages for Successful

1 Claimants shall be calculated in
2 accordance with Exhibit 9 up to
3 the date set by the Court. If
4 the Court terminates back pay
5 liability on a date which
6 follows the end of the Hold
7 Period, damages for Successful
8 Claimants shall be calculated,
9 during the period of any appeal,
10 in accordance with Exhibit 9 up
11 to the date on which the Hold
12 Period ends. No later than
13 thirty (30) days after the
14 exhaustion of all avenues of
15 appeal taken from the liability
16 termination decision of the
17 Court, State Farm shall pay any
18 additional damages due
19 Successful Claimants as set
20 forth in Exhibit 9.

21 H. Escrow of Awards to Successful
22 Claimants Pending Appeal:

- 23 1. All parties shall have the right to seek
24 review of any final judgment on a Final
25 Claim rendered by a Special Master by filing
26 a motion with the Chief Special Master,
27 within fifteen (15) days of the Special
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1 Master's decision. The standard for such
2 review shall be whether: (a) the award was
3 procured by corruption, fraud, or other
4 undue means; (b) there was corruption on the
5 part of the Special Master; (c) the rights
6 of the moving party were substantially
7 prejudiced by misconduct of the Special
8 Master; (d) the Special Master exceeded his
9 or her powers under this Decree, and the
10 award cannot be corrected without affecting
11 the merits of the decision upon the
12 controversy submitted; or (e) there was an
13 evident miscalculation of figures or an
14 evident mistake in the description of any
15 person, thing, or property referred to in
16 the award. The Chief Special Master's
17 decision shall be binding on all parties
18 without right of further review.

19 2. In the event that State Farm appeals any
20 individual monetary award to a Successful
21 Claimant, State Farm shall deliver to an
22 interest-bearing Escrow Account a check for
23 the appropriate distribution amount for such
24 Successful Claimant, within fifteen (15)
25 days of the Special Master's award. Class
26 Counsel may designate the financial
27 institution which shall maintain the
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1 interest-bearing Escrow Account. Class
2 Counsel may designate only one such
3 institution per year, however, and
4 acknowledge that the right of designation
5 does not include a right of control.
6 Control of the account shall be determined
7 by the parties in consultation with the
8 Chief Special Master at the time that the
9 account is opened.

10 3. If, after exhausting such appeal, State Farm
11 has not prevailed in reversing or decreasing
12 the individual monetary award to a
13 Successful Claimant, the escrow amount
14 designated for such Successful Claimant
15 shall be paid, with accrued interest, within
16 fifteen (15) days of the date on which the
17 Chief Special Master's decision is rendered.

18 4. If State Farm does not appeal a monetary
19 award to a Successful Claimant, State Farm
20 shall mail a check for the appropriate
21 amount to such Successful Claimant within
22 fifteen (15) days of the Special Master's
23 Award.

24 I. Consideration of Successful Hearing
25 Claimants for Future Trainee Agent
Vacancies:

26 1. Any Successful Claimant who receives a
27 favorable judgment at the conclusion of her
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1 claim hearing and who indicated, in her
2 Final Claim Form, an interest in a future
3 Trainee Agent position with State Farm in
4 California shall be considered for such
5 future position(s) in accordance with the
6 following procedures. Final Claimants who
7 become Successful Claimants as a consequence
8 of the settlement of their claims are not
9 eligible for consideration for future
10 Trainee Agent vacancies under this
11 Section VII.I.1 (page 65) unless provided
12 for in the settlement agreement.

13 a. Following the completion of Claim
14 Hearings for each class year, State Farm
15 shall prepare a list of the Successful
16 Claimants whose Final Claim Forms
17 reflected an interest in future State
18 Farm Trainee Agent positions in
19 California ("Instatement List").

20 i. The Instatement List shall contain a
21 heading for every county in
22 California, in alphabetical order.

23 ii. Under each county heading, the names
24 and addresses of Successful Claimants
25 shall be listed in order of their
26 dates of application or deterred
27 application, from the oldest to the
28

1 most recent. Women having identical
2 dates of application or deterred
3 application shall be listed in
4 alphabetical order using surname first
5 and given name second.

6 b. Within thirty (30) days of the
7 preparation of each Instatement List,
8 State Farm shall furnish a copy to all of
9 its Agency Managers and Regional
10 Recruitment Administrators in California.

11 c. State Farm's Agency Managers and
12 Recruitment Administrators shall refer to
13 such Instatement List(s) when screening
14 applicants for future Trainee Agent
15 positions and shall consider the
16 individuals on such Instatement List(s)
17 when selecting candidates for such
18 positions.

19 d. Successful Claimants who are as qualified
20 or more qualified than other candidates
21 with whom they are compared in the
22 screening process shall have priority in
23 the selection of candidates for continued
24 pre-contract processing. Successful
25 Claimants who successfully complete pre-
26 contract processing shall have priority
27 for appointment as a Trainee Agent:

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1 (a) over other candidates then remaining
2 in the pre-contract process as to whom
3 they are equally or more qualified; and
4 (b) for positions which open within the
5 geographic area served by the Agency
6 Manager who administers their pre-
7 contract training. Nothing in this
8 Section VII.I.1.d (page 67) shall be
9 construed to otherwise limit the right of
10 State Farm to exercise its discretion in
11 a sexually nondiscriminatory manner in
12 deciding whether a candidate has
13 successfully completed pre-contract
14 training or when and where Trainee Agent
15 vacancies shall open. Successful
16 Claimants who contend that their
17 deselection from the screening process
18 was based on sex may challenge their
19 deselection by resort to the terms and
20 time frame of the Alternative Dispute
21 Mechanism set forth in Section VII.H.1-4
22 of the Injunctive Decree.

23 J. Applicability of Procedures to All Final
24 Claimants: Any Initial or Final Claimant who
25 elects to be represented by independent counsel
26 rather than Class Counsel shall be subject to,
27 and bound by, all the procedures and timetables
28 set forth in this Decree.

1 K. Appeal of Collateral Issues: Unless otherwise
2 specifically provided in this Decree, any and
3 all disputes requiring the interpretation of
4 this Decree and the implementation of the claim
5 procedure described in it, including questions
6 regarding conflicts of interest under Federal
7 Rule of Civil Procedure 23, the ABA Model Rules
8 of Professional Conduct, and the California
9 Rules of Professional Conduct, shall be
10 submitted to the Court in accordance with Local
11 Rules regarding law and motion matters. The
12 Court's decision on any such issue shall be
13 binding on all parties, including class
14 members, claimants, and independent counsel,
15 without right of further review.

16 L. Damages For the Class Representatives: Within
17 fifteen (15) days of final approval of this
18 Decree by the District Court, Muriel
19 Kraszewski, Wilda Tipton, and the Estate of
20 Daisy Jackson ("Named Plaintiffs") shall each
21 recover damages in the amount of \$420,822, as
22 calculated according to the terms of Exhibit 9
23 through the date of the final approval of the
24 Decree.

25 1. Muriel Kraszewski shall recover damages for
26 the appointment dated August 1, 1974 and
27 filled by Kendall B. Andersen; Wilda Tipton
28

1 shall recover damages for the appointment
2 dated September 1, 1974 and filled by
3 Donald W. Koeberle; and the Estate of Daisy
4 Jackson shall recover damages for the
5 appointment dated August 1, 1974 and filled
6 by David E. Rinehart.

7 2. Each Named Plaintiff shall receive these
8 damages after executing Settlement
9 Agreements, and without obligation to prove
10 entitlement or to otherwise participate in
11 the claim procedures set forth in this
12 Decree. The appointments of Kendall B.
13 Anderson, Donald W. Koeberle, and David E.
14 Rinehart shall be deleted as male
15 appointments during the Liability Period and
16 may not be challenged by any Final Claimant
17 for any purpose.

18 3. Payment of damages to the Named Plaintiffs
19 shall not constitute an admission of
20 liability under the terms of the claims
21 procedure and shall not constitute or be
22 urged as a substantive or procedural
23 precedent of any kind in any proceeding
24 under this Decree.

25 4. If the Court does not give final approval to
26 this Decree, the damage awards to the class
27 representatives under this Section VII.L
28

1 (page 69) and Exhibit 9 shall be null and
2 void, and their damages shall be subject to
3 further negotiation or litigation by the
4 parties.

5 VIII. ATTORNEYS' FEES

6 Except as provided in Section VII.F.4 (page 16),
7 Class Counsel shall be entitled to reasonable
8 attorneys' fees (for attorneys, paralegals, and law
9 clerks) and costs on a current rate basis
10 ("Attorneys' Fees and Costs") in this action only
11 as follows.

12 A. Entitlement Standards:

- 13 1. Inception of this Action Through Date of
14 Final Approval of Decree: Class Counsel
15 shall be entitled to reasonable Attorneys'
16 Fees and Costs for the period from the date
17 of the Stage I Findings through the date of
18 Final Approval of this Decree. The parties
19 dispute whether Class Counsel is entitled to
20 all such Attorneys' Fees and Costs on a
21 current rate basis and preserve the right to
22 litigate this question notwithstanding the
23 first sentence of this Section VIII. Class
24 Counsel also shall be entitled to seek a
25 multiplier on Attorneys' Fees and Costs paid
26 by Order of this Court dated February 18,
27 1986 (Kraszewski v. State Farm Ins. Co.,

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1 40 Empl. Prac. Dec. ¶ 13,396 (CCH)
2 (N.D. Cal. 1986) ("February 18 Order") as
3 well as on Attorneys' Fees and Costs awarded
4 for the period from the date of the Stage I
5 Findings through the date of Final Approval
6 of this Decree only as set forth in Section
7 VIII.B.1.b (page 77).

8 2. Date of Final Approval of Decree Through End
9 of Hold Period: Class Counsel shall be
10 entitled to reasonable Attorneys' Fees and
11 Costs for the period from the date of Final
12 Approval of the Decree through the end of
13 the Hold Period, but shall not be entitled
14 to any multiplier on such Attorneys' Fees
15 and Costs.

16 3. End of Hold Period Through End of Stage II:

17 a. Attorneys' Fees and Costs Related to
18 Preparation for Litigation and Litigation
19 of Final Claims: Final Claimants shall
20 be entitled to reasonable Attorneys' Fees
21 and Costs only on a prevailing party
22 basis, and shall be entitled to a
23 multiplier on such Attorneys' Fees and
24 Costs only as set forth below in Section
25 VIII.B.3.a (page 80).

26 b. Attorneys' Fees and Costs Related to
27 Discovery and Law and Motion Practice:

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1 Class Counsel shall be entitled to
2 reasonable Attorneys' Fees and Costs
3 related to discovery and law and motion
4 practice (including, but not limited to,
5 Rule 12(b)(6) motions, status challenges,
6 scheduling motions, comprehensive issue
7 resolution motions, and collateral issue
8 motions addressed in Section VII.K.
9 (page 69) (excepting motions for
10 interpretation of this Decree)), but
11 shall not be entitled to any multiplier
12 on such Attorneys' Fees and Costs.

13 c. Attorneys' Fees and Costs Related to

14 Motion for Reconsideration: Class

15 Counsel shall be entitled to reasonable
16 Attorneys' Fees and Costs related to any
17 Motion for Reconsideration filed by State
18 Farm, but shall not be entitled to any
19 multiplier on such Attorneys' Fees and
20 Costs.

21 d. Attorneys' Fees and Costs Related to

22 Appeals of or Collateral Attacks Upon the

23 Terms of Consent Decrees: Class Counsel

24 shall be entitled to reasonable
25 Attorneys' Fees and Costs related to any
26 appeals of or collateral attacks upon the
27 terms of this Decree, or the Decree

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1 Regarding Injunctive Relief, but shall
2 not be entitled to any multiplier on such
3 Attorneys' Fees and Costs.

4 e. Attorneys' Fees and Costs Related to
5 Motions to Interpret or to Modify Terms
6 of this Consent Decree: Class Counsel
7 shall be entitled to reasonable
8 Attorneys' Fees and Costs related to any
9 motions to interpret or to modify the
10 terms of this Decree only on a prevailing
11 party basis, and shall be entitled to a
12 multiplier on such Attorneys' Fees and
13 Costs only as set forth below in Section
14 VIII.B.3.e (page 85).

15 4. Stage I Multiplier: The parties dispute
16 Class Counsels' entitlement to a Stage I
17 Attorneys' Fees and Costs Multiplier and the
18 amount of any such multiplier. The parties
19 agree only that Stage I ends on the date of
20 Final Approval of this Decree, that they may
21 present their dispute to the District Court
22 with full rights of appeal according to a
23 mutually agreeable litigation timetable, and
24 that, if the District Court grants Class
25 Counsel a multiplier, State Farm shall pay
26 Class Counsel fifty percent (50%) of that
27 multiplier within fifteen (15) days of the

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1 District Court Order pending the exhaustion
2 of all appeal rights by both parties.
3 Within fifteen (15) days of the exhaustion
4 of all appeal rights, State Farm shall pay
5 Class Counsel any outstanding portion of the
6 Multiplier (or Class Counsel shall reimburse
7 State Farm any overpayment of the
8 Multiplier) plus interest at the rate set
9 forth in Exhibit 9.

10 B. Standards for Application For
11 Attorneys' Fees and Costs and For
12 Resolution of Application Disputes:

13 1. Inception of This Action Through Date of
14 Final Approval of Decree:

15 a. Lodestar Fees (Applicable Only To Period
16 from Date of Stage I Findings Through
17 Date of Final Approval of This Decree):

18 Within fifteen (15) days of the date of
19 Final Approval of this Decree, Class
20 Counsel shall provide State Farm with
21 documentation of the services for which
22 they seek reimbursement ("Lodestar
23 Demand").

24 i. Such documentation shall include:

25 (1) the date on which the service is
26 rendered; (2) the name of the person
27 rendering the service; (3) a
28 description of the service; (4) the

1 time spent rendering the service to
2 the nearest tenth of an hour; and
3 (5) the billing rate for the person
4 rendering the service.

5 ii. Within fifteen (15) days of receiving
6 the Lodestar Demand, State Farm shall
7 advise Class Counsel in writing
8 whether it disputes any portion of
9 that Demand. If State Farm advises
10 Class Counsel that it has no dispute,
11 it shall pay the full amount of the
12 Lodestar Demand within fifteen (15)
13 days thereafter. If State Farm
14 advises Class Counsel that it
15 disputes, any portion of that Demand
16 it shall specifically identify the
17 hours, costs, and hourly rates that it
18 is challenging, along with the bases
19 for such challenge. If, within thirty
20 (30) days thereafter, the parties are
21 unable to resolve the dispute, they
22 shall present their arguments to the
23 District Court pursuant to a mutually
24 acceptable litigation timetable. On
25 the date that the first such brief or
26 briefs are filed, State Farm shall pay
27 Class Counsel fifty percent (50%) of
28

1 their Lodestar Demand. Both parties
2 shall retain full rights of appeal.
3 Within fifteen (15) days of the
4 exhaustion of all appeal rights, State
5 Farm shall pay Class Counsel any
6 outstanding portion of the Lodestar
7 Demand plus interest at the rate set
8 forth in Exhibit 9.

9 iii. The payment of disputed sums shall not
10 constitute a waiver by State Farm of
11 any objections that it may have to the
12 Lodestar Demand, nor shall it prevent
13 State Farm from obtaining relevant
14 information from Class Counsel
15 regarding the names, qualifications,
16 billing rates, and assignments of
17 their personnel or consultants.

18 b. Multiplier (Applicable To Period from
19 Inception of This Action Through Date of
20 Final Approval of This Decree): The
21 Parties agree that Class Counsel may seek
22 a multiplier from the District Court,
23 with full rights of appeal by both
24 parties, pursuant to a mutually
25 acceptable litigation timetable. Nothing
26 in this Decree shall be interpreted to
27 alter the terms of the February 18 Order.

28

1 2. Date of Final Approval Through End of Hold

2 Period: On a monthly basis, Class Counsel
3 shall provide State Farm with detailed
4 documentation of the services for which they
5 seek reimbursement. Such documentation
6 shall include: (1) the date on which the
7 service is rendered; (2) the name of the
8 person rendering the service; (3) a full
9 description of the service; (4) the time
10 spent rendering the service to the nearest
11 tenth of an hour; and (5) the billing rate
12 for the person rendering the service.

13 Within thirty (30) days of receiving such
14 documentation, State Farm shall pay all
15 undisputed sums and shall meet and confer
16 with Class Counsel regarding any disputed
17 sums. State Farm shall specifically
18 identify the hours, costs, and/or hourly
19 rates that it is challenging, along with the
20 bases for such challenge. If the parties
21 are unable to resolve such disputes, State
22 Farm may withhold payment of disputed sums,
23 but shall not pay Class Counsel less than
24 75% of each invoice. The payment of
25 disputed sums shall not constitute a waiver
26 by State Farm of any objections that it may
27 have to any invoice nor shall it prevent
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1 State Farm from obtaining information from
2 Class Counsel regarding the names,
3 qualifications, billing rates, and
4 assignments of personnel or consultants
5 working on this claim procedure.

6 Furthermore, Class Counsel shall: (1) give
7 State Farm fifteen (15) days' advance
8 written notice of their intention to expend
9 \$5,000 or more in costs (exclusive of hourly
10 fees) on any single task, including costs
11 for experts and computer services but need
12 not disclose work product; (2) endeavor not
13 to create data bases with information in the
14 possession of State Farm which State Farm is
15 willing to create; and (3) exercise
16 appropriate billing judgment, including but
17 not limited to investigating the
18 reasonableness of their bills and monitoring
19 their costs, prior to submitting such bills
20 and documentation to State Farm. Any
21 challenge to Class Counsel's fee request
22 shall be resolved by the Court pursuant to a
23 duly noticed motion in accordance with the
24 Local Rules of the Northern District of
25 California.

26 a. State Farm shall file such motion within
27 thirty (30) days of receiving the
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1 disputed bill, and shall notice the
2 motion for the next available hearing
3 date.

4 b. If State Farm prevails on such a
5 challenge, Class Counsel shall reimburse
6 State Farm for any amounts paid which
7 exceeded their entitlement, along with
8 interest at the rate specified in
9 Exhibit 9 from the date of payment.

10 c. If Class Counsel prevail on such a
11 challenge, State Farm shall pay the
12 disputed sum within twenty (20) days of
13 the order of the Court, along with
14 interest at the rate specified in
15 Exhibit 9 from the date of the invoice.

16 3. End of Hold Period Through End of Stage II:

17 a. Attorneys' Fees and Costs Related to
18 Preparation for Litigation and Litigation
19 of Final Claims:

20 i. Lodestar: After their settlements or
21 claim hearing judgments and any
22 appeals, Successful Claimants shall
23 both apply for lodestar Attorneys'
24 Fees and Costs and resolve application
25 disputes as set forth in Section
26 VIII.B.2 (page 78). However, if at
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1 any time from and including the
2 scheduled day of her claim hearing to
3 the date of the decision of the
4 Special Master, a Final Claimant
5 agrees to accept State Farm's written
6 settlement offer that was outstanding
7 seven calendar days before the
8 hearing, the Final Claimant shall pay
9 the fees and costs incurred by Special
10 Master for attending such hearing and
11 evaluating her claim.

12 ii. Multiplier: The liability of State
13 Farm for any multiplier on Stage II
14 Attorneys' Fees and Costs for
15 successful Claimants as well as the
16 amount of any such multiplier shall be
17 determined as follows:

18 (1) The issues regarding the
19 liability of State Farm for, and the
20 amount of, a Stage II multiplier
21 shall be presented to the Attorneys'
22 Fees and Costs Multiplier Special
23 Master according to a mutually
24 acceptable litigation timetable.
25 Briefs may not exceed the twenty-
26 five (25) page limit set forth in
27 Local Rule 220-4.

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(2) The parties agree that the only factor which Class Counsel may claim as the basis for a multiplier is "contingent risk of loss." The parties may not assert, and the Attorneys' Fees and Costs Multiplier Special Master may not utilize, any other factor as the basis for a multiplier.

(3) The parties agree that the maximum Stage II multiplier for work related to preparation for litigation and litigation of Final Claims, if any, that may be imposed by the Attorneys' Fees and Costs Multiplier Special Master, or that may be negotiated by the parties, is 1.35.

(4) The decision rendered by the Attorneys' Fees and Costs Multiplier Special Master regarding a Stage II multiplier shall be final and binding on all parties, claimants and attorneys without right of appeal, but with the right to file one motion for reconsideration with the Attorneys' Fees and Costs

Multiplier Special Master within thirty (30) days of the decision. Neither the rendering of such decision, nor the pleadings and briefs pertaining to it, nor any negotiations relating to the issue of a Stage II multiplier shall be construed or used by the parties, the Court, or the Special Masters as:

(a) an admission of liability by State Farm as to any multiplier that may be sought regarding Stage I attorneys' fees; or

(b) evidence in any other proceeding, whether litigated or negotiated, regarding a multiplier for Stage I attorneys' fees.

b. Attorneys' Fees and Costs Related to Discovery and Law and Motion Practice:
Class Counsel shall both apply for Attorneys' Fees and Costs and resolve application disputes for Attorneys' Fees and Costs for discovery and law and motion practice (including, but not

limited to, Rule 12(b)(6) motions, status challenges, scheduling motions, comprehensive issue resolution motions, and collateral issue motions addressed in Section VII.K (page 69) (excepting, as to Section VII.K, motions for interpretation of this Decree)) as set forth in Section VIII.B.2 (page 78).

- c. Attorneys' Fees and Costs Related to Motion for Reconsideration: Class Counsel shall both apply for Attorneys' Fees and Costs and resolve application disputes for Attorneys' Fees and Costs related to any Motion for Reconsideration as set forth in Section VIII.B.2 (page 78).
- d. Attorneys' Fees and Costs Related to Appeals of or Collateral Attacks Upon the Terms of Consent Decrees: Class Counsel shall both apply for Attorneys' Fees and Costs and resolve application disputes for Attorneys' Fees and Costs related to any appeals of or collateral attacks upon the terms of this Decree or the Injunctive Decree, as set forth in Section VIII.B.2 (page 78).

1 e. Attorneys' Fees and Costs Related to
2 Motions to Interpret or to Modify Terms
3 of Consent Decrees:

4 i. Lodestar: Class Counsel shall both
5 apply for lodestar Attorneys' Fees and
6 Costs and resolve application disputes
7 for Attorneys' Fees and Costs related
8 to motions to modify the terms of this
9 Decree or the Injunctive Decree, as
10 set forth in Section VIII.B.2
11 (page 78). Such applications shall be
12 made to the Court rather than to a
13 Special Master. No motion for
14 interpretation or modification of this
15 Decree brought by any party shall be
16 granted unless denial of the motion
17 would not only cause substantial and
18 prejudicial harm to the interests of
19 the moving party, but also would
20 substantially subvert the purposes of
21 the Injunctive Decree or this Decree.

22 ii. Multiplier: The liability of State
23 Farm for any multiplier on attorneys'
24 fees and costs related to motions to
25 interpret or modify the terms of this
26 Decree, as well as the amount of any
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1 such multiplier, shall be determined
2 by the District Court, with full
3 rights of appeal by both parties,
4 pursuant to a mutually acceptable
5 litigation timetable.

6 C. No Modification of Substantive Terms of
7 Injunctive Decree:

8 1. Procedures For Attorneys' Fees and Costs for
9 Administering, Monitoring, and Enforcing of
10 Injunctive Decree: Class Counsel shall be
11 entitled to Attorneys' Fees and Costs for
12 administering, monitoring, and enforcing the
13 terms of the Injunctive Decree as set forth
14 in Section IX of that Decree. The
15 documentation and dispute resolution
16 procedures for any application for such fees
17 shall be the same as those specified in
18 Section VIII.B.1.a (page 75).

19 2. No Substantive Modifications: Nothing in
20 this Decree shall be interpreted to modify
21 any of the substantive terms of the
22 Injunctive Decree.

23 D. Attorneys' Fees and Costs for Independent
24 Counsel: Independent Counsel are entitled to
25 reasonable Attorneys' Fees and Costs on the
26 same terms and conditions as Class Counsel only
27 under Section VIII.A.3.a (page 72) and Section
28

1 VIII.B.3.a (page 80). Independent Counsel are
2 entitled to no other Attorneys' Fees and Costs
3 of any kind under the terms of this Decree.

4 IX. NOTICE

5 A. Individual Mailed Notice.

6 1. Escrow Agent: American Legal Systems shall
7 be designated Escrow Agent and shall have
8 the responsibilities set forth in this
9 Decree and in the contract for services that
10 Class Counsel and State Farm negotiate with
11 American Legal Systems.

12 2. Direct Mail and Published Notice Agent:
13 Cohn & Wells shall be designated Direct Mail
14 and Published Notice Agent and shall have
15 responsibilities for mailing Rule 23 and
16 Claim Procedure mailed notice, for
17 publishing Rule 23 and Claim Procedure
18 published notice, and for such other tasks
19 as may be designated in the contract for
20 services entered among Class Counsel,
21 counsel for State Farm, and Cohn & Wells.

22 3. Rule 23 Mailed Notice of Settlement and
23 Fairness Hearing: On the date set by this
24 Court in its Order Tentatively Approving
25 Consent Decrees, the Direct Mail and
26 Published Notice Agent shall distribute, at
27 State Farm's cost, individual mailed notice
28

1 of the terms of settlement of this case and
2 the opportunity to appear at a fairness
3 hearing ("Rule 23 Mailed Notice") as
4 follows:

5 a. Individuals To Whom Notice Must Be Sent:

6 The Direct Mail and Published Notice
7 Agent shall mail Rule 23 Mailed Notice to
8 the persons listed in Exhibit 10.

9 b. Number of Mailings: State Farm shall be
10 required to make one first-class mailing
11 of Rule 23 Mailed Notice to the persons
12 listed in Exhibit 10.

13 c. Content and Format of Mailing: The
14 content and format of Rule 23 Mailed
15 Notice are set forth in Exhibit 11.

16 4. Mailed Notice of Claim Procedure: On May 3,
17 1988, the Direct Mail and Published Notice
18 Agent shall distribute, at State Farm's
19 cost, individual mailed notice of the
20 provisions of the claim procedure set forth
21 in the Decree ("Claim Procedure Mailed
22 Notice") as follows:

23 a. Individuals to Whom Notice Must Be Sent:

24 The Direct Mail and Published Notice
25 Agent shall mail Claim Procedure Mailed
26 Notice to the persons listed in
27 Exhibit 10, incorporating any new
28

1 addresses obtained through the tracing
2 procedures used in connection with
3 Rule 23 Mailed Notice.

4 b. Number of Mailings: State Farm shall be
5 required to pay for two (2) first-class
6 mailings of Claim Procedure Mailed Notice
7 to the persons listed in Exhibit 10,
8 incorporating any new addresses obtained
9 through the tracing procedures used in
10 connection with Rule 23 Mailed Notice.

11 i. Content and Format of First Mailing:

12 The first mailing of Claim Procedure
13 Mailed Notice shall include the
14 documents entitled "Important Legal
15 Notice," "Buck Sheet," and
16 "Appendix A" set forth in Exhibit 12
17 and the document entitled "Initial
18 Claim Form" set forth in Exhibit 2.

19 The format of each such document shall
20 adhere to the specifications set forth
21 in Exhibits 2 and 12.

22 ii. Content and Format of Second Mailing:

23 The second mailing of Claim Procedure
24 Mailed Notice shall include the
25 document entitled "Reminder Notice"
26 set forth in Exhibit 13 and the
27 document entitled "Initial Claim Form"

28

1 set forth in Exhibit 2. The format of
2 each such document shall adhere to the
3 specifications set forth in Exhibits 2
4 and 13.

5 iii. Date of Second Mailing: The second
6 mailing of Claim Procedure Mailed
7 Notice shall be made on the 21st day
8 after the deadline for the first
9 mailing of Claim Procedure Mailed
10 Notice.

11 iv. Invalid Addresses: State Farm shall
12 have no obligation to send any Claim
13 Procedure Mailed Notice to any address
14 used for the Rule 23 Mailed Notice
15 which resulted in the return of such
16 Rule 23 Mailed Notice by the U.S.
17 Postal Service as undeliverable.

18 5. Mailing Notice Cost: Except as set forth in
19 Section IX.A.6 (page 90), State Farm shall
20 not be required to spend more than
21 \$83,000.00 to the Direct Mail and Published
22 Notice Agent for all non-postage expenses in
23 any way connected with Rule 23 and Claim
24 Procedure mailed notice.

25 6. Tracing.

26 a. U.S. Postal Service Tracing: State Farm
27 shall utilize U.S. Postal Service tracing
28

1 in the category entitled "Forwarding and
2 Address Correction Requested."

3 b. IRS Tracing: If, following U.S. Postal
4 Service tracing, there remain potential
5 class members identified in Exhibit 10
6 for whom the U.S. Postal Service has no
7 valid current address but for whom a
8 Social Security Number is available,
9 counsel for State Farm and class counsel
10 may apply to the Internal Revenue Service
11 for use of its Computerized Mailing
12 Program at the expense of State Farm.
13 Delays in IRS processing shall not excuse
14 the filing of Initial Claims by the Claim
15 Deadline.

16 c. Additional Tracing: Class Counsel shall
17 be entitled to expend for additional
18 tracing the \$300,000 awarded by this
19 Court on June 9, 1983 (see Kraszewski v.
20 State Farm Ins. Co., 36 Fair Empl. Prac.
21 (BNA) Cas. 1354, 1366) ("June 9 Order")
22 for both tracing (\$50,000) and damages
23 (\$250,000), plus all accrued interest at
24 the rate paid by the accounts into which
25 such funds are deposited. For the
26 purposes of Paragraph 69 of that Order:
27 (1) the term "judgment" shall be
28

1 interpreted to mean the Stage I Findings;
2 (2) the phrase "at the conclusion of one
3 year from the date of judgment" shall be
4 stricken and replaced by the phrase
5 "within ninety days after the Claim
6 Deadline"; (3) the sum of \$250,000, which
7 the Court designated for "payment of any
8 Court-approved recoveries to class
9 members located after the ordinary period
10 for the payment of judgment has lapsed,"
11 shall instead be used entirely for
12 tracing the addresses of potential class
13 members; and any unused portions of the
14 \$50,000 or the \$250,000 shall be returned
15 to State Farm as set forth in Section
16 IX.A.6.f.v (page 95). The June 9 Order
17 is not otherwise modified. It shall be
18 the responsibility of Class Counsel to
19 secure from class members thus traced the
20 service of a completed Initial Claim Form
21 upon the Escrow Agent by the Claim
22 Deadline.

23 d. Additional Tracing Agent: Information
24 Resource Services Company shall be
25 designated Additional Tracing Agent and
26 shall have the responsibilities set forth
27 in the contract for services entered
28

1 among counsel for State Farm, Class
2 Counsel, and Information Resource
3 Services Company. Those responsibilities
4 shall include the obligation to trace the
5 names and addresses in Exhibit 10 no
6 later than the deadline for mailing
7 Rule 23 Mailed Notice.

8 e. Cost of Mailing to Traced Persons: State
9 Farm shall pay the cost of mailing to
10 persons listed in Exhibit 10 whose
11 addresses are updated through tracing
12 efforts, but shall be relieved of all
13 further obligations to issue mailed
14 notice upon the arrival of the Claim
15 Deadline.

16 f. Order of Resort to Tracing Services:

17 i. Before the Direct Mail and Published
18 Notice Agent mails Rule 23 Mailed
19 Notice, the Additional Tracing Agent
20 shall trace the addresses listed in
21 Exhibit 10 using its "National Movers"
22 service at a cost of \$.20 per traced
23 address and shall furnish all
24 addresses thus traced to the Direct
25 Mail and Published Notice Agent. The
26 cost of such tracing shall be paid
27 from the \$300,000 fund set forth in
28 Section IX.A.6.c (page 91). It is
understood that such tracing may alter

1 addresses listed in Exhibit 10 but
2 shall not excuse State Farm from
3 mailing the first Claim Procedure
4 Mailed Notice to all persons listed in
5 Exhibit 10 who have either a traced or
6 an untraced address.

7 ii. At the time that the Direct Mail and
8 Published Notice Agent mails Rule 23
9 Mailed Notice, it shall mark each
10 envelope "Forwarding and Address
11 Correction Requested" and thus
12 authorize the U.S. Postal Service to
13 use its tracing services for the
14 addresses used in the mailing. State
15 Farm shall pay the cost of such
16 tracing apart from the \$300,000 fund
17 set forth in Section IX.A.6.c
18 (page 91).

19 iii. There shall be no other tracing of any
20 kind for Rule 23 Mailed Notice.

21 iv. Before the Direct Mail and Published
22 Notice Agent mails the first Claim
23 Procedure Mailed Notice, the
24 Additional Tracing Agent shall trace
25 the addresses used for Rule 23 Mailed
26 Notice which proved to be invalid.
27 The Additional Tracing Agent shall
28 conduct such tracing using the

1 services and applying the rates
2 specified in its contract for services
3 with Class Counsel and State Farm.

4 The cost of such tracing shall be paid
5 from the \$300,000 fund set forth in
6 Section IX.A.6.c (page 91).

7 v. There shall be no other tracing by the
8 Additional Tracing Agent for the first
9 or the second Claim Procedure Mailed
10 Notice. Within fifteen (15) days of
11 completion of tracing activity by the
12 Additional Tracing Agent, Class
13 Counsel shall return any unused
14 portion of the \$300,000 fund set forth
15 in Section IX.A.6.c (page 91) to State
16 Farm.

17 vi. Before the Direct Mail and Published
18 Notice Agent mails the first Claim
19 Procedure Notice, Class Counsel, at
20 its option, may ask the IRS to trace
21 the addresses used for the Rule 23
22 Mailed Notice which proved to be
23 invalid. State Farm shall pay the
24 cost of such tracing apart from the
25 \$300,000 fund set forth in
26 Section IX.A.6.c (page 91).

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vii. There shall be no other tracing by the IRS for the first or the second Claim Procedure Mailed Notice.

viii. At the time that the Direct Mail and Published Notice Agent mails the first and the second Claim Procedure Mailed Notice, it shall mark each envelope "Forwarding and Address Correction Requested" and thus authorize the U.S. Postal Service to use its tracing services for the addresses used in both mailings. State Farm shall pay the cost of such tracing apart from the \$300,000 fund set forth in Section IX.A.6.c (page 91).

ix. There shall be no other tracing of any kind for either of the two Mailed Notices of the Claim Procedure.

B. Published Notice:

1. Rule 23 Published Notice of Settlement and Fairness Hearing: On the date set by this Court in its Order Tentatively Approving Consent Decrees, State Farm shall publish, at its cost, a notice of the terms of settlement of this case and the opportunity to appear at a fairness hearing ("Rule 23 Published Notice") as follows:

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- a. Publication Plan: State Farm shall publish Rule 23 Published Notice in the publications and at the frequencies set forth in Exhibit 14.
- b. Publication Cost: Except as provided in the following sentence, State Farm shall not be required to spend more than \$125,000 for all expenses in any way connected with Rule 23 Published Notice, including the costs charged by any company that may implement the publication plan. If any of the publications listed in the Rule 23 Published Notice publication plan raise their rates before or during the implementation of that plan and cause the total plan costs to exceed \$125,000, State Farm and Class Counsel shall bear those costs which exceed \$125,000 equally. Nothing in this Section shall be interpreted to bar Class Counsel from claiming that \$17,214.10 in payments that they already have made to the Direct Mail and Published Noticed Agent are chargeable to State Farm as Stage I lodestar costs. Similarly, nothing in this Section shall be interpreted to bar State Farm from claiming that the

1 \$17,214.10 in payments are not properly
2 awardable to Class Counsel as lodestar
3 costs.

4 c. Content and Format: The content and
5 format of Rule 23 Published Notice are
6 set forth in Exhibit 15.

7 2. Published Notice of Claim Procedure: Within
8 sixty (60) days of the Court's final
9 approval of this Decree, State Farm shall
10 publish, at its cost, published notice of
11 the provisions of the Claim Procedure set
12 forth in this Decree ("Claim Procedure
13 Published Notice") as follows:

14 a. Publication Plan: State Farm shall
15 publish Claim Procedure Published Notice
16 in the publications and at the
17 frequencies set forth in Exhibit 16.

18 b. Publication Cost: State Farm shall not
19 be required to spend more than \$200,000
20 for all expenses in any way connected
21 with Claim Procedure Published Notice,
22 including the costs of any company that
23 may implement the publication plan.
24 Nothing in this Section shall be
25 interpreted to bar Class Counsel from
26 claiming that \$17,214.10 in payments that
27 they already have made to the Direct Mail
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1 and Published Noticed Agent are
2 chargeable to State Farm as reasonable
3 costs. Nor shall anything in this
4 Section be interpreted to bar State Farm
5 from claiming that the \$17,214.10 in
6 payments are not properly awardable to
7 Class Counsel as lodestar costs.

8 c. Content and Format: The content and
9 format of Claim Procedure Published
10 Notice are set forth in Exhibit 17.

11 C. Posting.

12 1. Rule 23 Published Notice: State Farm shall
13 post conspicuously in each of its California
14 facilities a copy of the Rule 23 Published
15 Notice for the period from the date set by
16 the Court in its Order Tentatively Approving
17 Consent Decrees until the date of the
18 fairness hearing. State Farm also shall
19 send a copy of the Rule 23 Published Notice
20 to each State Farm agent in California with
21 instructions that the District Court has
22 ordered that such notice be posted
23 conspicuously in each agent's office for the
24 period set forth in the previous sentence.

25 2. Claim Procedure Published Notice: State
26 Farm shall post conspicuously in each of its
27 California facilities a copy of the Claim
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Procedure Published Notice for the period from the date sixty (60) days after final approval of this Decree by the Court until the Claim Deadline. State Farm also shall send a copy of the Claim Procedure Published Notice to each State Farm agent in California with instructions that the District Court has ordered that such notice be posted conspicuously in each agent's office for the period set forth in the previous sentence.

D. Processing of Undelivered Mailed Notices, Initial Claim Forms, and Final Claim Forms by the Escrow Agent:

1. Claim Deadline: All Initial Claim Forms must be mailed to the Escrow Agent no later than one hundred twenty (120) days after the date set forth above for completion of the first mailing of Claim Procedure Mailed Notice ("Claim Deadline").

2. Processing Procedures.
a. Undelivered Mailed Notices: The Escrow Agent shall date stamp, bate stamp, and file each mailed notice envelope which

1 the U.S. Postal Service returns as
2 undeliverable. The Escrow Agent also
3 shall mark Exhibit 10 (or a computerized
4 duplicate of Exhibit 10) to reflect the
5 names and addresses of those persons
6 whose mailed notices are returned as
7 undeliverable. The Escrow Agent further
8 shall send a photocopy of each mailed
9 notice envelope which the U.S. Postal
10 Service returns as undeliverable to
11 counsel for State Farm and to Class
12 Counsel no later than five (5) days from
13 the date of its receipt.

14 b. Initial Claim Forms: The Escrow Agent
15 shall date stamp, bate stamp, log, and
16 file each original Initial Claim Form.
17 The Escrow Agent also shall send a
18 photocopy of each Initial Claim Form To
19 Class Counsel and to counsel for State
20 Farm no later than five (5) days from the
21 date of its receipt.

22 c. Final Claim Forms: The Escrow Agent
23 shall date stamp, bate stamp, log and
24 file each original Final Claim Form. The
25 Escrow Agent also shall send a photocopy
26 of each Final Claim Form to counsel for
27 State Farm no later than five (5) days
28 from the date of its receipt.

1 d. Retention of Stage II Documents: The
2 Escrow Agent shall retain until the end
3 of Stage II all original Stage II
4 documents which it receives, unless
5 directed otherwise by stipulation of
6 Class Counsel or counsel for State Farm.

7 E. Telephone Lines.

8 1. Number and Duration.

9 a. Date Set for Rule 23 Mailed Notice

10 Through End of Hold Period: State Farm
11 shall provide Class Counsel with eight
12 (8) incoming toll-free telephone lines
13 and eight (8) outgoing toll-free
14 telephone lines for the period from the
15 date ordered by the Court for
16 commencement of Rule 23 Mailed Notice to
17 the end of the Hold Period.

18 b. End of Hold Period Through End of

19 Stage II: State Farm shall provide Class
20 Counsel with six (6) incoming toll-free
21 telephone lines and six (6) outgoing
22 toll-free telephone lines for the period
23 following the Hold Period through the end
24 of Stage II.

25 c. Increase or Decrease in Toll-Free Lines:

26 Such toll-free lines may be increased or
27 decreased in number upon the stipulation
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1 of Class Counsel and counsel for State
2 Farm or for good cause shown in any
3 motion before the Discovery and Motion
4 Special Master.

5 2. Purpose: The toll-free telephone lines
6 shall be used exclusively to facilitate
7 communications between Class Counsel and
8 class members regarding the filing of
9 Initial Claim Forms, the litigation of Final
10 Claims, and the interpretation and
11 implementation of this Decree and the
12 Injunctive Decree.

13 3. Requests for Claim Forms: It shall be the
14 sole responsibility of Class Counsel to
15 timely furnish Initial Claim Forms to
16 persons who request such forms by resort to
17 the toll-free telephone lines.

18 F. Publicity and Disclosure: It is the intent of
19 the parties that, commencing on the date on
20 which they submit the Injunctive Decree and
21 this Decree for tentative approval by the
22 Court, the information communicated to class
23 members, State Farm employees, State Farm
24 Career Agents, and the general public regarding
25 the Decrees and the underlying litigation shall
26 be consistent with the terms of both Decrees
27 and conveyed as follows:

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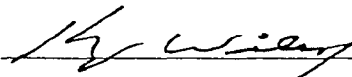
1. State Farm may only to the extent permitted by state and federal law, communicate in any manner, oral, written, or through electronic or other media, regarding any aspect of either or both Decrees, with:
 - a. the Company's employees and Career Agents;
 - b. the Company's customers and members of the general public; and
 - c. the press; and
2. Class counsel may only to the extent permitted by state and federal law, communicate in any manner, oral, written, or through electronic or other media, regarding any aspect of either or both Decrees, with:
 - a. class members or potential class members;
 - b. members of the general public; and
 - c. the press.

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3. Nothing in this Section shall be interpreted
to create or take away any First Amendment
rights of the parties or their attorneys.

DATED: January 13, 1988

RAYMOND L. WHEELER
KIRBY WILCOX
ERICA B. GRUBB
MORRISON & FOERSTER

By 

Attorneys for Defendants STATE
FARM GENERAL INSURANCE COMPANY,
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, STATE FARM
LIFE INSURANCE COMPANY, and
STATE FARM FIRE AND CASUALTY
COMPANY

DATED: 1/13/88

FARNSWORTH, SAPERSTEIN &
SELIGMAN
A Professional Corporation

By 
Attorneys for Plaintiffs