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## BY FAX (719) 634-1865 AND MAIL

Bruce Davis  
Secretary  
UNITED FARMERS AGENTS ASSOCIATION, INC.  
523 S. Circle Drive  
Colorado Springs, CO 80910

Re: Horizontal Marketing Agreement

Dear Bruce:

At United Farmers Agents Association, Inc.'s 1997 convention, the UFAA board and chapter presidents requested my written opinion on Farmers' proposed Horizontal Marketing Agreement ("HMA"). I am honored to respond.

The HMA applies not just to Farmers Auto Loans, but to any and all existing and future business and product lines, at the companies' sole discretion. *Even if the agent signs the HMA, the companies reserve the right to sell and service any product without compensation to the agent.* On the other hand, if the companies merely offer the agent a new business or product line, the agent cannot compete with Farmers in that line, even if the agent has a preexisting business in that line, for the duration of the HMA and for the subsequent one-year term of its noncompetition covenant. If the agent accepts the new line, Farmers owns all business the agent develops. Thus, the agent's only options are either to accept the business or product line and sell it exclusively for Farmers, or to reject the business and product line, refrain from selling it at all, and also suffer direct sales from Farmers to the agent's clients. The provisions for such a "freeze" of the agent by mere offer, and against agent competition even if the competitive business predates the offer, are both quite extraordinary.

The companies disclaim any implied duty of good faith and fair dealing under the HMA. Because the agent has no right to object to "exceptions" and "variances" in the companies' "systems and operations" under the HMA, it follows that the companies need not treat all HMA agents equally. The companies purport to discharge all obligations regarding disputed commissions under the HMA by payment to any of the disputing agents, leaving them to fight among themselves. The companies may unilaterally amend compensation schedules.

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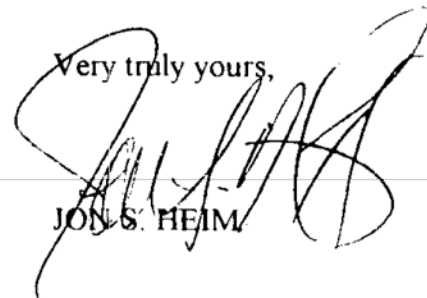
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Although the agent is called an independent contractor in the HMA, it expressly requires the agent to meet the companies' "minimum production and expectations standards." I must confess inability to imagine what an "expectation standard" might be. The HMA includes what I call a "no-knock, see-all" audit clause. It is much more sweeping than its counterpart in the Farmers Insurance Group Agent Appointment Agreement ("AAA"). The HMA's noncompetition covenant runs throughout the agent's state, a territory far greater than that covered by the AAA's covenant. Unlike the AAA, the HMA has an arbitration clause providing for hearing of all disputes in Los Angeles, regardless of the agent's locale. The HMA provides for an unusually short six-month period of limitations on any arbitration claims. Emotional distress and punitive damages are disclaimed.

Overall, the HMA is one of the most unfair and one-sided contracts I have seen in my brief fifteen years of law practice. I am confident that enterprising agents can negotiate better deals, including perhaps the business ownership the HMA denies them, with providers other than Farmers. I know some agents already are enjoying profits from such independent efforts. I can recommend execution of the HMA only to those agents who know, presently and certainly, that they never will desire to offer any business or service that is not presented to them by Farmers. This recommendation follows from the stark fact that the HMA will make every Farmers agent who signs it captive to Farmers in any business Farmers ever chooses to enter.

Thank you for the opportunity to submit this opinion. As in many years past, I am grateful for UFAA's confidence.

Very truly yours,



JON S. HEIM

JSH/amg