

## HOMEGROWN: IOWA'S FARMERS' MARKETS, THE BENEFITS OF DIRECT FARM MARKETING, AND THE SURROUNDING LEGAL CONSIDERATIONS

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### I. INTRODUCTION

On any given Saturday between the months of May and October, the last thing one can expect to find in downtown Des Moines are empty streets. On the contrary, nearly 300 vendors<sup>2</sup> from approximately fifty-eight Iowa counties<sup>3</sup> routinely flood the streets of Des Moines' Historic Court District.<sup>4</sup> With offerings including fresh produce, delicious homemade pies, farm fresh eggs, assorted cheeses, and locally made wines,<sup>5</sup> the farmers' market in downtown Des Moines has become a staple attraction since its conception in 1976.<sup>6</sup>

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1. *Hours*, DOWNTOWN FARMERS' MKT., <http://www.desmoinesfarmers-market.com/hours/> (last visited July 28, 2017).

2. *Vendors*, DOWNTOWN FARMERS' MKT., <http://www.desmoinesfarmers-market.com/vendors/> (last visited July 28, 2017) [hereinafter *Vendors*].

3. *About the Market*, DOWNTOWN FARMERS' MKT., <http://www.desmoinesfarmers-market.com> (last visited July 28, 2017).

4. *General Info*, DOWNTOWN FARMERS' MKT., <http://www.desmoinesfarmers-market.com/general-info/> (last visited July 28, 2017) [hereinafter *General Info*].

5. *Vendors*, *supra* note 2.

6. *General Info*, *supra* note 4.

Those outside the state have taken notice. In 2015, Des Moines' downtown farmers' market was ranked the 15th best farmers' market in the country according to *The Daily Meal's* coveted list of 101 Best Farmers Markets in America.<sup>7</sup> Impressively enough, this ranking appears after two consecutive years on the list's number two spot in both 2013 and 2014.<sup>8</sup> Moreover, the market has been featured in numerous other rankings with publications such as *Shape Magazine*, *Midwest Living Magazine*, *Country Living Magazine*, and the *Huffington Post*.<sup>9</sup>

Although the capitol city's farmers' market has gained nationwide recognition, it remains merely one of many farmers' markets within the state of Iowa.<sup>10</sup> According to a 2012 news release by the United States Department of Agriculture (USDA), 227 farmers' markets are present in Iowa alone.<sup>11</sup> With such a vast number of farmers' markets statewide, the benefits created are both abundant and multifaceted.<sup>12</sup> For example, aside from the financial profit earned by vendors, "farmers markets are a great way for consumers to purchase the wide variety of agricultural products produced on Iowa's farms and a great place to get to know the farmers who produce them."<sup>13</sup>

Although statewide farmers' markets may be considered an asset, there remains an inherent and less apparent risk to vendors and consumers alike.<sup>14</sup> One cannot ignore the innate threat of ailments such as pesticides and food-borne illnesses that may exist in locally grown crops.<sup>15</sup> These risks hold true even in Iowa, a state that has a long-standing and profound history of being one of the world's top food sources.<sup>16</sup> Furthermore, these risks are at an all-time high in instances of

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7. Abbey C., *101 Best Farmers Markets in American for 2015*, DAILY MEAL (June 18, 2015), <http://edit2.thedailymeal.com/101-best-farmers-markets-in-america>.

8. *General Info*, *supra* note 4.

9. *Id.*

10. *See* Press Release, U.S. Dep't of Agric., USDA Directory Records More Than 7,800 Farmers Markets (Aug. 3, 2012) (on file with author).

11. *See id.*

12. *See generally* DANIEL OTTO, IOWA DEP'T OF AGRIC. & LAND STEWARDSHIP, CONSUMERS, VENDORS, AND THE ECONOMIC IMPORTANCE OF IOWA FARMERS MARKETS: AN ECONOMIC IMPACT SURVEY ANALYSIS (2010), [http://www.iowaagriculture.gov/Horticulture\\_and\\_FarmersMarkets/pdfs/FarmersMarketEIS2009.pdf](http://www.iowaagriculture.gov/Horticulture_and_FarmersMarkets/pdfs/FarmersMarketEIS2009.pdf).

13. *See id.*

14. *See generally* Cookson Beecher, *Should Farmers Market Vendors Carry Product Liability Insurance?*, FOOD SAFETY NEWS (Nov. 20, 2012), <http://www.foodsafetynews.com/2012/11/should-farmers-market-vendors-carry-product-liability-insurance/#.WYkIg1WGOU1> (discussing less recognizable consumer concerns existing at farmers' markets).

15. *Id.*

16. Meghan Wilson, *Thinking Bigger About Organic Farming*, MORNINGSIDE POST

direct farm marketing because producers are selling directly to the hands of their consumers.<sup>17</sup>

However, the facts are clear: 80% of the almost two million farms in the United States are comprised of small-time farmers.<sup>18</sup> Moreover, the majority of this 80% consists of family-owned operations.<sup>19</sup> With the progressive movement towards direct marketing,<sup>20</sup> these small, family-run establishments inherently stand in a dangerous position. The future of these small, family-run farms are automatically placed in jeopardy should contaminated food be sold while acting in a vendor capacity—likely spurring food-product liability suits.<sup>21</sup>

This Note will first address the recent growth of state and nationwide farmers' markets, their inherent advantages to Iowa farmers, as well as their potential profit opportunities. Second, this Note will examine the looming risks to vendors that exist in every farmers' market. In doing so, the existing laws and regulations for farmers' markets within Iowa will be analyzed.

## II. THE NATIONAL PRESENCE AND IMPACT OF FARMERS' MARKETS

Within the last twenty years, the sheer presence of farmers' markets across the country has shown stunning growth.<sup>22</sup> Between 1994 and 2006, the number of farmers' markets across the United States rose from 1755 to 4385—a reported 150% increase.<sup>23</sup> Jumping to 2012, a reported 7864 farmers' markets were in operation nationwide.<sup>24</sup> Today, the USDA's Agricultural Marketing Service reports an

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(Mar. 1, 2010), <http://www.themorningsidepost.com/2010/03/01/thinking-bigger-about-organic-farming/> (explaining that Iowa prides itself on feeding the nation and the world; indeed, the state produces more corn than all grains produced in Canada).

17. CAROLYN J. PUGH, LIABILITY CONCERNS FOR FARMERS INVOLVED IN DIRECT MARKETING OF FARM PRODUCTS 1 (2003), [https://pennstatelaw.psu.edu/\\_file/aglaw/Direct\\_Farm\\_Marketing\\_2.pdf](https://pennstatelaw.psu.edu/_file/aglaw/Direct_Farm_Marketing_2.pdf) (“Direct farm marketing is defined as selling food and farm products directly to consumers without using an intermediary.”); *see also* NEIL D. HAMILTON, THE LEGAL GUIDE FOR DIRECT FARM MARKETING 22 (1999).

18. *Family Farms*, LOC. HARVEST, <http://www.localharvest.org/organic-farms/> (last visited July 28, 2017) [hereinafter *Family Farms*].

19. *Id.*

20. *Id.* (“More and more of these farmers are now selling their products directly to the public.”).

21. *See generally* Beecher, *supra* note 14 (discussing the legal consequences of farmers selling contaminated produce at local farmers' markets).

22. *See* FARMERS' MKTS. AM., CHARACTERISTICS OF SUCCESSFUL FARMERS MARKETS 1 (2008), <https://www.portlandoregon.gov/bps/article/236585>.

23. *Id.*

24. Press Release, U.S. Dep't. of Agric., *supra* note 10.

astonishing 8284 total farmers' markets in America.<sup>25</sup> The steadily increasing number of farmers' markets nationwide is not the result of coincidence or happenstance.<sup>26</sup> Rather, Americans are continually recognizing the economic and non-economic value generated from their implementations.<sup>27</sup>

#### A. Non-Economic Benefits of Farmers' Markets

The most apparent non-economic benefit of any farmers' market is the abundance of fresh produce.<sup>28</sup> Whereas “[f]ood in the U.S. travels an average of 1,500 miles to get to your plate,”<sup>29</sup> farmers' markets eliminate this unneeded transportation and feature food offerings that are “generally grown using methods that minimize the impact on the earth.”<sup>30</sup> This in turn supports the long-term effect of “[reducing] carbon dioxide emissions and [the use of] packing materials.”<sup>31</sup>

Second, farmers' markets promote healthy lifestyles and diets.<sup>32</sup> In their capacity as vendors, farmers are presented with a unique opportunity to serve as “food educators” and inform the consumer about the advantages of eating fresh and buying local.<sup>33</sup> This is something that is commonly used.<sup>34</sup> A recorded 63% of farmers selling at farmers' markets inform purchasers about the health benefits

25. *Number of U.S. Farmers' Markets Continues to Rise*, USDA, <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=77600> (last updated Sept. 1, 2016) [hereinafter *Markets Continues to Rise*].

26. PROJECT FOR PUB. SPACES & COLUMBIA UNIV., *FARMERS MARKETS AS A STRATEGY TO IMPROVE ACCESS TO HEALTHY FOOD FOR LOW-INCOME FAMILIES AND COMMUNITIES 1* (2013), <http://www.pps.org/wp-content/uploads/2013/02/RWJF-Report.pdf> (“The expansive growth of [farmers'] markets nationwide reflects the well-documented benefits of market shopping.”).

27. *Id.*

28. *10 Reasons to Support Farmers Markets*, CULTIVATING A HEALTHY FOOD SYS., <https://cuesa.org/article/10-reasons-support-farmers-markets> (last visited July 28, 2017) (“The fruits and vegetables you buy at the farmers market are the freshest and tastiest available.”) [hereinafter *10 Reasons*].

29. *Id.*

30. *Id.*

31. *Benefits of Buying Local*, FARMERS MKT. AUTHORITY, <http://www.fma.alabama.gov/BuyLocal.aspx> (last visited July 28, 2017).

32. *See generally Farmers Markets Support Healthy Communities*, FARMERS MKT. COALITION, <http://farmersmarketcoalition.org/education/support-healthy-communities/> (last visited July 28, 2017) [hereinafter *Healthy Communities*].

33. *Id.* (“Farmers can simultaneously sell fresh, local food and serve as food educators, revitalizing the way consumers shop and eat.”).

34. Gus Schumacher, *Farmers Markets: Health, Access and Community*, FARMERS MKT. COALITION, <http://farmersmarketcoalition.org/farmers-markets-health-access-and-community/> (last visited July 28, 2017).

associated with buying local produce.<sup>35</sup> This goes to show that “markets everywhere are working harder than ever to ensure visitors leave knowing a bit more about the food they eat.”<sup>36</sup>

Furthermore, according to a 2013 study performed by the American Fitness Index, the study used as an indicator “the number of farmers markets per capita as a factor contributing to healthier communities.”<sup>37</sup> This finding resulted from a direct correlation between the number of active farmers’ markets and the level of access to fresh fruits and vegetables.<sup>38</sup>

Next, farmers’ markets serve as the ideal forum for farmers—particularly small-sized farmers—to exercise direct marketing.<sup>39</sup> Defined as the ability to make direct contact with the consumer to promote a product or service,<sup>40</sup> direct marketing eliminates the middleman by allowing farmers to sell directly to the eventual consumer.<sup>41</sup> Growing in popularity, a reported 19,000 farmers exercised direct marketing by selling their produce exclusively at farmers’ markets in the year 2000.<sup>42</sup> Out of the numerous benefits to direct marketing,<sup>43</sup> one in particular is well suited for farmers participating in local farmers’ markets. “Using direct marketing allows [the farmer] to target specific groups of customers with tailored messages.”<sup>44</sup>

As previously discussed, vendors at farmers’ markets have a specific message: eat fresh and buy local.<sup>45</sup> Furthermore, farmers are aware this message attracts

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35. *Id.*

36. Steve Holt, *5 Ways America's Farmers' Markets Have Evolved*, CIV. EATS (Aug. 5, 2015), <http://civileats.com/2015/08/05/5-ways-americas-farmers-markets-have-evolved/>.

37. *Healthy Communities*, *supra* note 32.

38. *Id.*

39. Dawn Thilmany & Phil Watson, *The Increasing Role of Direct Marketing and Farmers Markets for Western U.S. Producers*, 3 W. ECON. F. 19, 24 (Apr. 2004), <http://core.ac.uk/download/pdf/6674591.pdf>; Tim Payne, *U.S. Farmers' Markets 2000: A Study of Emerging Trends*, USDA (2002), <http://www.ams.usda.gov/directmarketing/> (noting farmers’ markets “are likely the most important direct marketing channel for U.S. producers.”).

40. *Direct Marketing*, INVESTOPEDIA, <http://www.investopedia.com/terms/d/direct-marketing.asp> (last visited July 28, 2017).

41. HAMILTON, *supra* note 17, at 22; PUGH, *supra* note 17, at 1.

42. Thilmany & Watson, *supra* note 39, at 24.

43. *See generally Benefits of Direct Marketing*, QUEENSLAND GOV'T, <https://www.business.qld.gov.au/business/running/marketing/direct-marketing/using-direct-marketing/benefits-direct-marketing> (last updated June 21, 2016).

44. *Id.*

45. *See generally Healthy Communities*, *supra* note 32.

a certain type of customer favorable to their profit-driven goals.<sup>46</sup> Interestingly, a demographic study of farmers' market attendees found the typical farmers' market goer is "female, married, and [has] completed post graduate work."<sup>47</sup> Moreover, they are most likely to attend a farmers' market in order to "[purchase] high-quality products, [receive] good value for [their] money, [find] specialty items, buy directly from farmers, to socialize, [find] entertainment, to shop area stores, and [to] purchase organic produce."<sup>48</sup> Thus, farmers' use of direct marketing—particularly at local farmers' markets—is most advantageous, both from a profit and target-market standpoint.<sup>49</sup>

In addition to targeting an ideal customer base, direct marketing promotes brand awareness.<sup>50</sup> Generated through repetition and consistency,<sup>51</sup> "[y]our brand is your promise to your customer."<sup>52</sup> Any farmer serving as a vendor at a local farmers' market undoubtedly promises their customer homegrown produce straight from the hands of the person producing it.<sup>53</sup>

Similarly, not only is a farmer's brand their promise, "[i]t tells [the customer] what they can expect from your [farm] and is the foundation on which trust and loyalty are built."<sup>54</sup> In turn, a loyal customer base serves as an asset to the vendor through increased customer spending, increased engagement between the farmer and consumer, as well as the vendor's improved chances of retaining that customer in the future.<sup>55</sup>

Importantly, "[f]armer's markets have a recreational and social component

46. See generally Marianne McGarry Wolf et al., *A Profile of Farmers' Market Consumers and the Perceived Advantages of Produce Sold at Farmers' Markets*, 36 J. FOOD DISTRIBUTION RES. 192, 193 (2005).

47. *Id.*

48. *Id.*

49. *Id.*

50. See KATHERINE ADAM ET AL., NAT'L CTR. FOR APPROPRIATE TECH., DIRECT MARKETING 2-3 (2016), <https://attra.ncat.org/attra-pub/summaries/summary.php?pub=263>.

51. See Leslie Van Zee, *Repetition for Brand Awareness*, VANTAGE LOC. (Nov. 20, 2012), <http://www.vantagelocal.com/repetition-for-brand-awareness/> ("Building brand awareness requires repetition and consistency.").

52. Jen Barletta, *Brand Building Through Direct Marketing*, DIGITAL DOG DIRECT (Aug. 8, 2016), <http://www.digitaldogdirect.com/brand-building-direct-marketing/>.

53. *10 Reasons*, *supra* note 28 ("The fruits and vegetables you buy at the farmers market are the freshest and tastiest available.").

54. Barletta, *supra* note 52.

55. See generally Britt Brouse, *Loyalty Pays: Hang On to Your Best Customers*, TARGET MARKETING (Mar. 1, 2009), <http://www.directmarketingiq.com/article/customer-loyalty-programs-best-practice-direct-marketers-looking-emerge-stronger-economic-downturn-300144/1>.

in addition to the instrumental component of food purchase.”<sup>56</sup> Fostering a sense of community among patrons and vendors,<sup>57</sup> farmers’ markets stimulate interaction between consumers and the farmers who grow the product.<sup>58</sup> Subsequently, “[t]he farmers market [becomes] a community hub—a place to meet up with your friends, bring your children, or just get a taste of small-town life.”<sup>59</sup>

Finally, these markets “can have a profound effect at a time when communal public spaces are becoming increasingly rare.”<sup>60</sup> This is demonstrated through the easily apparent social interaction found at local farmers’ markets.<sup>61</sup> “[M]ore than [three-fourths] of farmer’s market shoppers arrive in the company of others, compared to [one-fourth] of supermarket shoppers.”<sup>62</sup>

Taking all of these benefits into account, one can conclude that “farmers’ market[s] may be modernizing and evolving, but they probably won’t be going anywhere any time soon.”<sup>63</sup>

### B. Economic Benefits of Farmers’ Markets

Aside from the availability of fresh produce, unique marketing opportunities, and fostering a sense of community, farmers’ markets additionally have an obvious financial attraction to vendors.<sup>64</sup> In a nation where “the majority of American farmland is dominated by industrial agriculture,”<sup>65</sup> farmers’ markets create a niche for those remaining.

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56. REBECCA DUNNING, CTR. ENVTL. FARMING SYSTEMS, RESEARCH-BASED SUPPORT AND EXTENSION OUTREACH FOR LOCAL FOOD SYSTEMS, 9 (Aug. 2013), <https://cefs.ncsu.edu/wp-content/uploads/research-based-support-for-local-food-systems.pdf?x47549>.

57. Holt, *supra* note 36 (“One of the best arguments for farmers’ markets . . . is that they connect neighbors to producers and each other in a unique way.”).

58. *Healthy Communities*, *supra* note 32.

59. *10 Reasons*, *supra* note 28.

60. Holt, *supra* note 36.

61. *Id.* (discussing the community building components found at farmers’ markets).

62. DUNNING, *supra* note 56; *see also* Robert Sommer et al., *The Behavioral Ecology of Supermarkets and Farmers’ Markets*, 1 J. ENVTL. PSYCHOL. 13, 16 (1981).

63. Holt, *supra* note 36.

64. SIMON BULLOCK, FRIENDS OF THE EARTH TR., THE ECONOMIC BENEFITS OF FARMERS’ MARKETS 4-5 (Sept. 2000), [http://www.foe.co.uk/sites/default/files/downloads/farmers\\_markets.pdf](http://www.foe.co.uk/sites/default/files/downloads/farmers_markets.pdf) (explaining farmers’ markets make economic sense and are viewed as a sound business proposition).

65. *Industrial Agriculture: The Outdated, Unsustainable System that Dominates U.S. Food Production*, UNION CONCERNED SCIENTISTS, <http://www.ucsusa.org/our-work/food-agriculture/our-failing-food-system/industrial-agriculture#.VjZhTrSI8k> (last visited July 28, 2017).

Whether a large or small vendor, there is a profit to be had. According to a study performed in 2004, in the twenty-one week period farmers' markets were operational in Iowa, just over \$20 million in sales occurred.<sup>66</sup> The Iowa Department of Agriculture and Land Stewardship conducted a parallel study in 2009.<sup>67</sup> Results showed a whopping 92% growth during the five-year period between studies.<sup>68</sup> During the 2009 season alone, approximately \$38.4 million in sales were accounted for.<sup>69</sup> Moreover, "that number yields an estimated \$59.4 million of gross sales in the Iowa economy as a result of the indirect and induced effects."<sup>70</sup>

Next, "[w]hen food is produced, processed, distributed and sold all within the same region, more money stays in the local economy. This leads to economic development and job creation."<sup>71</sup> Aside from generating substantial profits for farmers during the 2009 study, a vast number of jobs were created in the process.<sup>72</sup> Indeed, "374 direct jobs [were] attributed to farmers markets, [and] over 200 jobs within the economy were indirectly attributed."<sup>73</sup>

Farmers' markets creating employment opportunities is not something exclusive to Iowa.<sup>74</sup> Statistics prove that thirteen full-time jobs are created per \$1 million in revenue earned by growers selling locally.<sup>75</sup> Comparatively, growers who are not selling locally create only three full-time jobs per \$1 million in revenue.<sup>76</sup>

Next, "[i]n a typical week during the market season an average of nearly 99,400 Iowans attended at least one weekly" market during the 2009 study.<sup>77</sup> Moreover, "[a]pproximately 2.2 million consumer visits occurred at Iowa farmers markets at some point during the [2009] season, receiving goods and information from

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66. See OTTO, *supra* note 12, at 6.

67. See generally *id.*

68. See *id.* at 3.

69. See *id.*

70. *Id.*

71. Anne L. Alonzo, *Farmers Markets as Community Centerpieces*, USDA (Aug. 5, 2013), <http://blogs.usda.gov/2013/08/05/farmers-markets-as-community-centerpieces/>.

72. OTTO, *supra* note 12, at 4.

73. *Id.*

74. See generally *Farmers Markets Stimulate Local Economies*, FARMERS MKT. COALITION, [http://farmersmarketcoalition.org/education/stimulate-local-economies/#\\_ednref1](http://farmersmarketcoalition.org/education/stimulate-local-economies/#_ednref1) (last visited July 28, 2017) [hereinafter *Local Economies*].

75. *Id.* ("Growers selling locally create 13 full time jobs per \$1 million in revenue earned."); see Gail W. Feenstra et al., *Entrepreneurial Outcomes and Enterprise Size in U.S. Retail Farmers' Markets*, 18 AM. J. ALTERNATIVE AGRIC. 46, 50-53 (2003).

76. *Local Economies*, *supra* note 74 ("Those that do not sell locally create 3 [full-time jobs per \$1 million in revenue]."); see Feenstra et al., *supra* note 75, at 50-53.

77. OTTO, *supra* note 12, at 6.

approximately 1,500 vendors.”<sup>78</sup> Clearly, this shows both a high rate of foot traffic occurring throughout farmers’ markets and the readiness of visitors to enter into purchases while there.<sup>79</sup>

The abundance and frequency of farmers’ market visitors—along with their willingness to purchase—assist in combatting one of the admitted economic downsides of direct farm marketing: high marketing costs for farmers’ market vendors.<sup>80</sup> Specifically, these costs consist of “the expenses incurred to make the sale, including labor at the market, market fees, transportation (the time, fuel and vehicle wear-and-tear for delivery to market) and packaging (the bag, box or carton for the product).”<sup>81</sup> The majority of cost is generally not found in the expense as a whole, but rather, as it pertains to the price “per unit of the product sold.”<sup>82</sup> However, when considering the steady rise of farmers’ markets—particularly in Iowa—in addition to the regularity of their visitors, high marketing costs for vendors appear to be an incidental burden.<sup>83</sup>

The same can also be said for an additional economic disadvantage of farmers’ markets: numerous small transactions.<sup>84</sup> “[I]ncreasing the amount of labor needed to make each sale,” numerous small sales may have their flaws.<sup>85</sup> However, they are again outweighed by the exposure, popularity, and foot traffic offered by farmers’ markets.<sup>86</sup> Furthermore, with a continuing shift towards the “local, fresh food movement,” farmers are gaining the added advantage of diversifying their market channels.<sup>87</sup>

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78. *Id.*

79. *See id.*

80. *See* MEGAN L. BRUCH & MATTHEW D. ERNST, UNIV. TENN. INST. AGRIC., CHOOSING DIRECT MARKETING CHANNELS FOR AGRICULTURAL PRODUCTS 4 (Dec. 2010), <https://extension.tennessee.edu/publications/Documents/PB1796.pdf> (noting high marketing costs as one disadvantage associated with direct marketing at farmers’ markets).

81. *Id.*

82. *Id.* (“The cost of marketing at farmers’ markets can be relatively high per unit of product sold.”).

83. *See* OTTO, *supra* note 12, at 6; *see also* BRUCH & ERNST, *supra* note 80, at 4.

84. *See* BRUCH & ERNST, *supra* note 80, at 4 (noting “many small transactions” as one disadvantage associated with direct marketing at farmers’ markets).

85. *Id.*

86. *Id.*

87. Mark Koba, *Meet the ‘4%’: Small Number of Farms Dominates U.S.*, CNBC (May 6, 2014), <http://www.cnbc.com/2014/05/06/state-of-american-farming-big-producers-dominate-food-production.html> (“[The local, fresh food movement] is good in that it offers farmers some diversification in market channels, so they’re not completely dependent on large agri-business firms to move products.”).

### III. ISSUES REGARDING FARMER OBLIGATIONS AND VENDOR CONSIDERATIONS

#### A. Existing Iowa Law Surrounding Farmers' Markets

Iowa law as it pertains to the regulation of farmers' markets and the liability of its vendors is slim.<sup>88</sup> The lack of existing case law does not suggest an absence of litigation surrounding vendor liability; rather, it can be inferred disputes tend to get settled through some form of alternative dispute resolution.<sup>89</sup> Although settlements are generally encouraged in the legal community,<sup>90</sup> the lack of resulting regulation makes it difficult for a vendor to be fully informed in terms of best practices and selling items in the safest possible way.<sup>91</sup>

The Iowa Code provides only a moderate degree of insight into farmers' markets and the requirements placed on vendors prior to their participation.<sup>92</sup> Defining a farmers' market as a "marketplace which seasonally operates principally as a common market for Iowa-produced farm products on a retail basis for off-the-premises consumption,"<sup>93</sup> Chapter 137F requires each vendor to obtain necessary licensing in order to sell his or her goods.<sup>94</sup> This licensing comes in the form of an annual fee of one hundred dollars.<sup>95</sup> Notably, the statute specifically recognizes the annual licensing fee is for farmers' markets "where potentially hazardous food is sold or distributed."<sup>96</sup> This goes to show it is not a hidden fact that farmers' markets

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88. See *The Legal Guide for Direct Farm Marketing*, DRAKE AGRIC. L. CTR., <http://directmarketersforum.org/chapter-four-farmers-markets/> (last visited July 28, 2017) [hereafter *Legal Guide*] ("A review of reported cases indicates there have been very few disputes involving claims of liability against farmers' markets which have made it to the state high courts.").

89. See *id.* ("[The lack of reported cases] probably indicates that there are relatively few incidents and that many of those which do arise are settled before they go to court.").

90. *Policy of Law to Encourage Compromise and Settlement*, USLEGAL, <http://compromiseandsettlement.uslegal.com/policy-of-law-to-encourage-compromise-and-settlement/> (last visited July 28, 2017) ("The law favors the compromise and settlement of disputes without resorting to litigation.").

91. See generally *Legal Guide*, *supra* note 88.

92. See IOWA CODE § 137F (2015) (putting forward regulations for food establishments and food processing plants).

93. IOWA CODE § 137F.1 (2015).

94. See IOWA CODE § 137F.8 (2015) ("A vendor who offers a product for sale at a farmers market shall have the sole responsibility to obtain and maintain any license required to sell or distribute the product."); see also IOWA CODE § 137F.4 (2015) (requiring licenses prior to operation).

95. See IOWA CODE § 137F.6(1)(g) (2015) (requiring an annual one hundred dollar licensing fee for each vendor on a countywide basis).

96. *Id.*

naturally bear risk in the products sold.<sup>97</sup>

Looking at the Downtown Des Moines farmers' market online registration, a license comes secondary to actually being accepted to participate in the market.<sup>98</sup> Applicants for the downtown market are considered on an annual basis and acceptance is "based on product [offering], as well as previous commitment, attendance, and conduct [of the vendor]."<sup>99</sup> Most importantly, the downtown farmers' market requires proof of insurance for each accepted vendor.<sup>100</sup> This necessary insurance comes in the form of General Commercial Liability insurance "with \$1,000,000 limits [and must] name [the owning organization of the downtown market] as Additional Insured and Certificate Holder."<sup>101</sup> By requiring such proof of insurance, the downtown farmers' market releases itself from independent liability under the shield of the vendor's obligatory General Commercial Liability insurance.<sup>102</sup>

### B. The Downside of Direct Marketing

As previously discussed, a farmer's strategic use of direct marketing is valuable in numerous aspects.<sup>103</sup> These valuable aspects include financial,<sup>104</sup> social,<sup>105</sup> and promotional<sup>106</sup> advantages. However, therein also lies the downside of direct marketing. With increased exposure via farmers' markets and other forms of direct marketing, farmers and vendors have a more relative presence in potential litigation.<sup>107</sup> In other words, should a claim arise due to a contaminated product sold at a

97. *See id.*; *see also* Beecher, *supra* note 14 (discussing the presence, concern, and possibility of foodborne illnesses in products sold at farmers' markets).

98. *Vendor Information Guide 2015*, DOWNTOWN FARMERS' MKT. 1, <http://s3.amazonaws.com/www.desmoinesfarmersmarket.com/wp-content/uploads/2012/04/Vendor-Information-Guide-2015.pdf> (last visited July 28, 2017) (discussing the process for becoming a vendor).

99. *Id.*

100. *See id.* at 3 ("Each accepted vendor, in all product categories, is required to furnish proof of insurance before Market acceptance.").

101. *Id.*

102. *Id.*

103. *See* Thilmany & Watson, *supra* note 39, at 24; Payne, *supra* note 39 (noting farmers' markets "are likely the most important direct marketing channel for U.S. producers.").

104. OTTO, *supra* note 12, at 3.

105. Holt, *supra* note 36 ("One of the best arguments for farmers' markets . . . is that they connect neighbors to producers and each other in a unique way.").

106. ADAM ET AL., *supra* note 50, at 2.

107. *See generally* Brandon Baird, Note, *The Pending Farmers' Market Fiasco: Small-Time Farmers, Part-Time Shoppers, and a Big-Time Problem*, 1 KY. J. EQUINE AGRIC. & NAT. RESOURCES L. 49, 49-50 (2009).

farmers' market, the claimant need not look very far in order to "identify and prove the source of contamination."<sup>108</sup> Adversely, "[i]f the farmer is not involved in direct marketing, the [claimant] might have problems proving the product was defective when it left the farm and entered the chain of commerce."<sup>109</sup> Such a short chain of commerce (such as those found in farmers' markets) inherently creates an expansive threat to farmers and vendors alike.<sup>110</sup>

Critics of this contention, on the other hand, argue from a different perspective—one of safety in the status of being a small-time farmer.<sup>111</sup> Simply put, "[i]f a farmer has limited assets, then the injured consumer [potentially] may not view the case as worth pursuing."<sup>112</sup> It must be taken into account from a claimant's perspective whether a lawsuit is worth the time, expense, burden, and unpredictability of litigation.<sup>113</sup> "Furthermore, lawyers [themselves], recognizing the limited chances of recovery, may refuse to take a case if the farmer has limited assets."<sup>114</sup> Although these latter options are nonetheless possible, small-time farmers should neither count on nor heavily rely upon this being the case.

### C. Products Liability and the Basis of Potential Claims

"Anglo-American jurisprudence has always held the purveyor of foodstuff responsible for any injuries resulting from a defective condition."<sup>115</sup> Moreover, with an estimated seventy-six million different cases of foodborne illness each year, farmers selling produce at local markets sit in an uneasy position of exposure.<sup>116</sup>

The question remains as to what the basis of a claim against a vendor may

108. *Id.* at 63 (discussing the chain of commerce as a contributing reason why farmers may hold a false sense of security if practicing direct marketing).

109. *Id.*; Angela Holt, *Alternative Liability Theory: Solving the Mystery of Who Dunit in Foodborne Illness Cases*, 2 PITT J. ENVTL. PUB. HEALTH L. 105, 109 (2008).

110. Baird, *supra* note 107, at 63.

111. *See id.* (noting numerous reasons why small-time farmers may be safe from liability due to minimal assets and low chance of recovery).

112. *Id.* at 65.

113. *See generally* Letter from Clifford H. Bloom, Attorney, Law Weathers (on file with author) (discussing an attorney's perspective on the pros and cons of whether to litigate a claim).

114. Baird, *supra* note 107, at 65.

115. Charles E. Cantu, *A Continuing Whimsical Search for the True Meaning of the Term "Product" in Products Liability Litigation*, 35 ST. MARY'S L.J. 341, 351 (2004); Herbert W. Titus, *Restatement (Second) of Torts Section 402A and the Uniform Commercial Code*, 22 STAN. L. REV. 713, 735 (1970).

116. *See Holt, supra* note 109, at 107; Paul S. Mead et al., *Food-Related Illness and Death in the United States*, 5 EMERGING INFECTIOUS DISEASES 607, 607 (1999).

be.<sup>117</sup> The answer depends on whether the presence of a vendor at a farmers' market and their accompanying sales are labeled as a product or service.<sup>118</sup> "[I]f the reason for entering into the agreement is the knowledge, skill, or expertise of the provider, then we are confronted with a service."<sup>119</sup> As previously detailed, the majority of farmers selling at local markets pass along their knowledge and expertise regarding the benefits of local produce.<sup>120</sup> Moreover, one of the main attractions of a farmers' market for customers is the interaction with the farmers who grow the produce being sold.<sup>121</sup> Therefore, it would not be farfetched to view a farmer's transactions at local markets as a type of service.<sup>122</sup> However, the nature of the transactions found at farmers' markets are more in line with products themselves.<sup>123</sup> As a result, "the aggrieved party may select from actionable negligence, warranty, and strict products liability" as a basis for claims—opposed to only actionable negligence as is required for claims based on services.<sup>124</sup>

What's at risk for the vendor? "[A] successful plaintiff can win compensatory damages, damages for pain and suffering, and possibly punitive damages."<sup>125</sup>

#### IV. CONCLUSION AND RECOMMENDATION

With exponential growth in the last decade, it is safe to say farmers' markets are here to stay—both nationwide<sup>126</sup> and specifically in Iowa<sup>127</sup>—for numerous reasons. First, local farmers' markets provide the freshest produce available without the consumer having to travel to a farm to get it.<sup>128</sup> Next, living in a world where "approximately 36 percent of adults and 17 percent of children and adolescents are

117. See generally Cantu, *supra* note 115, at 351-52.

118. See *id.* at 352-54 (discussing the distinction between goods and services and their effect on product liability claims).

119. *Id.* at 353.

120. See Schumacher, *supra* note 34 (noting 63% of farmers selling at farmers' markets inform purchasers of the benefits stemming from local produce).

121. See generally *id.*

122. See generally *id.*

123. See Cantu, *supra* note 115, at 353 ("If, however, the subject matter is what induced the purchase, we have a product.").

124. *Id.* at 353-54.

125. Christina Bohannon, Note, *Product Liability: A Public Policy Approach to Contaminated Factor VIII Blood Products*, 48 FLA. L. REV. 263, 276 (1996).

126. See *Markets Continues to Rise*, *supra* note 25 (noting the USDA's Agricultural Marketing Service reports an astonishing 8284 total farmers' markets currently in America).

127. See generally OTTO, *supra* note 12, at 3.

128. See *10 Reasons*, *supra* note 28.

obese,”<sup>129</sup> farmers' markets promote healthy lifestyles and diets.<sup>130</sup> Furthermore, the majority of farmers selling at the farmers' market ensure the customer leaves more knowledgeable about the benefits of local produce than when they first came.<sup>131</sup> Finally, local farmers' markets are a terrific source of employment,<sup>132</sup> which in turn funnels the money spent at farmers' markets and guides it directly back into the community.<sup>133</sup>

In terms of the vendor's perspective, farmers' markets entail a proven financial incentive for farmers.<sup>134</sup> Moreover, with the sheer amount of farmers' market visitors,<sup>135</sup> farmers are able to establish relationships with consumers that go beyond the point of purchase.<sup>136</sup> However, by partaking in local farmers' markets, the greatest advantage for Iowa farmers is the opportunity to practice direct marketing.<sup>137</sup> Through the use of direct marketing, farmers are able to slice out the middleman and sell directly to his or her consumer.<sup>138</sup> Subsequently, this promotes and increases the farmer's brand awareness.<sup>139</sup> This is particularly important because—through brand awareness—a farmer can establish recognition, repeat visitors, a stream of steady business, and a loyal customer base.<sup>140</sup>

This Note firmly recommends and encourages small-time farmers to partake in the local farmers' markets, particularly when comparing the size and abundance of farming operations nationwide.<sup>141</sup> In turn, the brand awareness derived from local

129. *Obesity in the U.S.*, FOOD RES. & ACTION CTR., <http://frac.org/initiatives/hunger-and-obesity/obesity-in-the-us/> (last visited July 28, 2017); see Cynthia L. Ogden et al., *Prevalence of Childhood and Adult Obesity in the United States*, 311 J. AM. MED. ASS'N (2015).

130. *Healthy Communities*, *supra* note 32.

131. See Schumacher, *supra* note 34.

132. See OTTO, *supra* note 12, at 4 (noting 374 jobs in Iowa were attributed to farmers' markets within the state in 2009).

133. See Alonzo, *supra* note 71 (“When food is produced, processed, distributed and sold all within the same region, more money stays in the local economy.”).

134. See OTTO, *supra* note 12, at 3 (noting that \$38.4 million in Iowa farmers' market sales were accounted for in 2009).

135. See *id.* at 6 (showing nearly 99,400 Iowans attended at least one farmers' market on a weekly basis in 2009).

136. Holt, *supra* note 36 (“One of the best arguments for farmers' markets . . . is that they connect neighbors to producers and each other in a unique way.”).

137. See Thilmany & Watson, *supra* note 39, at 24; Payne, *supra* note 39 (noting farmers' markets “are likely the most important direct marketing channel for U.S. producers.”).

138. PUGH, *supra* note 17, at 1 (“Direct farm marketing is defined as selling food and farm products directly to consumers without using an intermediary.”).

139. See ADAM ET AL., *supra* note 50, at 2-4.

140. See Beacher, *supra* note 14.

141. See *Family Farms*, *supra* note 18 (noting 80% of the almost two million farms in the United States are comprised of small-time farmers).

farmers' markets takes on a whole new significance for small-time producers.<sup>142</sup> Given the fact the “vast majority of the nation's food” is produced by a miniscule number of large farms, farmers' markets create an alternative market channel for small-farm operators.<sup>143</sup> “Large farms with over \$1 million in sales account for only 4 percent of all farms, but 66 percent of all sales;” therefore, smaller sized operations must realize it is in their best interests to use these reduced, yet consistently profitable, avenues like local farmers' markets.<sup>144</sup> Doing so creates an edge in a market that is unfairly dominated by a mere 4% of large farming operations.<sup>145</sup>

However, it must be reiterated: with alternative routes come alternative risks. Farmers must comprehend the short leash of direct marketing, which may expose them to liability as much as it may boost profits.<sup>146</sup> Compared to how a product's quality may be altered as it travels from manufacturer to retailer, there is no hiding the condition of items sold by farmers at local markets.<sup>147</sup> As such, there is an increased likelihood of litigation farmers must understand prior to obtaining a vendor license.<sup>148</sup> This must push small farm operations participating in farmers' markets to thoroughly examine their goods prior to sale and exert the duty of care necessary in order to avoid the risk of injury. Should vendors abide by these practices, farmers' markets will remain an advantageous marketing and financial opportunity for those farmers looking to diversify their operations and share Iowa's homegrown products.<sup>149</sup>

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142. *See id.*

143. Koba, *supra* note 87.

144. *Id.*

145. *Id.*

146. *See Baird, supra* note 107, at 63 (discussing the chain of commerce as a contributing reason why farmers may hold a false sense of security if practicing direct marketing).

147. *See id.*

148. *See id.*; *see also* IOWA CODE § 137F.8 (2015) (“A vendor who offers a product for sale at a farmers market shall have the sole responsibility to obtain and maintain any license required to sell or distribute the product.”).

149. *See Family Farms, supra* note 18 (“More and more of these farmers are now selling their products directly to the public.”); *see also* BULLOCK, *supra* note 64, at 4-5.