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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

13 **STRAUS FAMILY CREAMERY, INC. and**  
14 **HORIZON ORGANIC HOLDING**  
**CORPORATION,**

15 Plaintiffs,

16 v.

17 **WILLIAM LYONS, JR., in his official capacity as**  
18 **Secretary of the California Department of Food and**  
**Agriculture,**

19 Defendant

Case No.: C 02 1996 BZ

**MEMORANDUM OF POINTS**  
**AND AUTHORITIES IN**  
**SUPPORT OF MOTION FOR**  
**JUDGMENT ON THE**  
**PLEADINGS**

[Fed. R. Civ. P. 12(c)]

Date: January 22, 2003

Time: 10 a.m.

Department: G

Judge: Magistrate Judge Bernard  
Zimmerman

22 **I. INTRODUCTION**

23 This motion challenges Plaintiffs Straus Family Creamery, Inc., and Horizon Organic Holding  
24 Corporation's third claim for relief in their Complaint for Declaratory and Injunctive Relief (Complaint).  
25 In this claim, Plaintiffs challenge California Food and Agricultural Code section 62717,<sup>1/</sup> which provides

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27  
28 1. All statutory references will be to the California Food and Agricultural Code unless otherwise  
indicated.

1 that any substantive amendments to the Pooling Plan are effective only after a referendum of affected dairy  
2 farmers (producers). Plaintiffs allege that this referendum provision is an unconstitutional delegation of  
3 decision-making authority to decision-makers with adverse financial interests. (Complaint, § 38.)

4 Plaintiffs' allegations are contrary to a long line of authority, culminating with a recent Ninth Circuit  
5 decision that is directly on point. *Sequoia Orange Co. v. Yeutter*, 973 F.2d 752 (9th Cir. 1992). Since  
6 the 1930s, laws regulating agriculture have contained analogous referendum provisions. These referendum  
7 provisions have been challenged repeatedly on the ground that they constitute unlawful delegations of  
8 legislative authority. Courts have consistently rejected these challenges, finding that the referendum  
9 provisions are not invalid delegations, but are instead legitimate conditions precedent to the exercise of  
10 legislative authority. Similarly, the referendum provision in § 62717 is not an invalid delegation, but is  
11 instead a lawful condition on the effectiveness of the Pooling Plan. As such, Plaintiffs' third claim fails to  
12 state a viable claim for violation of procedural due process, and the Secretary is entitled to judgment as a  
13 matter of law.

## 14 **II. BACKGROUND**

### 15 **A. The Regulatory Program**

16 The Legislature and the courts have long recognized the importance of an adequate and continuous  
17 supply of wholesome fluid milk. *See, e.g., Nebbia v. New York*, 291 U.S. 502, 516 (1934). Milk is a  
18 necessary article of food for human consumption. § 62701. However, conditions inherent in milk  
19 production create market instability that could disrupt the supply of milk available to the consumer.  
20 Historically, when the market has produced sufficient milk to furnish an adequate supply for periods of peak  
21 consumption, there would be "an excess of production during the troughs of demand." *United States v.*  
22 *Royal Rock Co-Op, Inc.*, 307 U.S. 533, 549 (1939) (*Rock Royal*); *see also Nebbia*, 291 U.S. at 516.  
23 Further, milk is a highly perishable product. *Nebbia*, 291 U.S. at 516. The net result was widely  
24 fluctuating prices, creating instability in the market. *Rock Royal*, 307 U.S. at 549. To combat these  
25 conditions, the government has long imposed price controls on raw milk. *See, e.g., Nebbia*, 291 U.S. at  
26 520-521.

27 Additionally, milk that is used as fluid milk historically brings a higher price than milk used in  
28 manufactured products, such as butter and cheese. *Rock Royal*, 307 U.S. at 550. These differences have

1 long been reflected in minimum prices of milk set by the government, resulting in different pricing structures  
2 for different classes of milk. *Id.* at 571; *Jersey Maid Milk Products Co. v. Brock*, 13 Cal.2d 620, 653-  
3 654 (1939). These differences have tended to create destabilizing competition for the more lucrative fluid  
4 milk contracts. *Rock Royal*, 307 U.S. at 550. Therefore, equalization pools have been used as tools to  
5 prevent destructive competition between producers for the more lucrative contracts with fluid milk  
6 processors. *Royal Rock*, 307 U.S. 449-550. These pools are “ancillary to the price regulation, designed,  
7 as is the price provision, to foster, protect and encourage interstate commerce by smoothing out the  
8 difficulties of the surplus and cut-throat competition which burdened this marketing.” *Rock Royal*, 307  
9 U.S. at 571.

10 In California, minimum pricing and equalization pools are governed by two acts, the Milk Stabilization  
11 Act, which governs minimum pricing, and the Gonsalves Milk Pooling Act of 1967, which governs the  
12 equalization pool. The operation of these Acts, and the plans and regulations issued under these Acts, are  
13 discussed in detail in the Secretary’s Motion to Transfer, filed on July 15, 2002.

14 While these Acts set out the parameters of the milk stabilization and equalization programs, the  
15 Secretary is charged with filling in the details of these acts. With regard to the Gonsalves Milk Pooling Act,  
16 the Secretary is charged with issuing a Pooling Plan, which is necessary to implement the Act. §§ 62704,  
17 62707. As is common in the area of agricultural regulations, after the Pooling Plan is issued, it is subject  
18 to a producer referendum. The Pooling Plan will only go into effect if approved by a supermajority of  
19 producers.<sup>2/</sup> §§ 62716, 62717. This procedure also applies to substantive amendments to the Pooling  
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21 2. Section 62717 provides, in pertinent part:

22 If the director finds that producers on a statewide basis have assented in writing  
23 to the proposed pooling plan submitted to them for assent, the director shall place the  
24 proposed pooling plan into effect. The director shall find that producers have assented to  
25 the plan if he finds on a statewide basis that not less than 51 percent of the total number  
26 of eligible producers in the state shall have voted in the referendum and finds one of the  
following:

27 (a) Sixty-five percent or more of the total number of eligible producers who voted  
28 in the referendum who produced 51 percent or more of the total amount of fluid milk  
produced in the state during the calendar month next preceding the month of the

1 Plan. If the Secretary finds that amendment is necessary to effectuate the purposes of the Milk Pooling Act,  
2 the Secretary may make non-substantive amendments to the Pooling Plan. § 62717(b). However, if the  
3 proposed amendment is substantive, the Secretary may only make the amendment if it is approved by  
4 referendum<sup>3/</sup>. *Id.*

5 B. Procedural Background

6 This motion relates to Plaintiffs' third claim for violation of procedural due process. In this claim,  
7 Plaintiffs challenge § 62717, which subjects substantive amendments to the Pooling Plan to a producer  
8 referendum. Plaintiffs allege that the referendum provision is unconstitutional as applied, because it  
9 constitutes an unlawful delegation of decision making authority to interested parties. (Complaint ¶ 38.)

10 **III. ANALYSIS**

11 A. Standard

12 The applicable standard on a motion for judgment on the pleadings is essentially the same as that  
13 applied to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). William W. Schwarzer,  
14 et al., Cal. Practice Guide: Federal Civil Procedure Before Trial (2002) ¶ 9:335, at 9-86. A motion for  
15 judgment on the pleadings is properly granted when, even if all of the material facts in the pleading are true,  
16 the moving party is entitled to judgment as a matter of law. *Hal Roach Studios, Inc. v. Richard Feiner*

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18 commencement of the referendum period by all producers who voted in the referendum  
19 approve the plan.

20 (b) Fifty-one percent or more of the total number of eligible producers who voted  
21 in the referendum who produced 65 percent or more of the total amount of fluid milk  
22 produced in the state during the calendar month next preceding the month of the  
23 commencement of the referendum period by all producers who voted in the referendum,  
approve the plan.

24 . . .

25 . . . The director may make substantive amendments to the plan only if producers assent  
26 to the proposed amendments at a referendum conducted in the same manner and in the  
same number as provided for the referendum approving the pooling plan.

27 3. In making this motion, the Secretary does not concede that he had the authority to make  
28 the amendment requested by Plaintiffs in their petition for amendment of the Pooling Plan,  
submitted to the Department on October 23, 2000.

1 & Co., 896 F.2d 1542, 1550. Although the facts alleged in the complaint are presumed to be true, the  
2 court need not accept as true conclusory allegations or legal characterizations, or any unreasonable  
3 inferences or unwarranted deductions of fact. Schwarzer, *supra*, ¶ 9:221, at 9-59 to 9-60. In particular,  
4 because it is the function of the court to interpret the language of a statute, it need not accept as true the  
5 plaintiff's characterization of the meaning of a statute. *Western Mining Council v. Watt*, 643 F.2d 618,  
6 630 (9th Cir. 1981).

7 Although Rule 12(c) does not specifically authorize a motion directed to less than all of the claims  
8 in a complaint, the court may, in its discretion, grant such a motion. Schwarzer, *supra*, ¶ 9:340.  
9 Consideration of the viability of Plaintiffs' third claim for relief is appropriate at this stage of the  
10 proceedings, because a ruling on this motion would promote judicial economy by narrowing the issues to  
11 be raised on summary judgment or at trial.

12 B. The Referendum Provision Is Not an Unlawful Delegation of Legislative Power

13 The third claim for relief in Plaintiffs' Complaint challenges the referendum provision in the  
14 Gonsalves Milk Pooling Act on the ground that it is an unlawful delegation of authority to industry members  
15 with adverse interests. (Complaint, ¶ 38.) This argument fails because the referendum provision at issue  
16 is not an invalid delegation of authority, but is instead a lawful condition on that law going into effect.  
17 Indeed, in *Sequoia Orange Co.*, the Ninth Circuit recently affirmed that requiring producer approval of  
18 an amendment to a regulation is not an unconstitutional delegation of power. *Sequoia Orange Co.*, 973  
19 F.2d at 759.

20 The Ninth Circuit's holding in *Sequoia Orange Co.* is compelled by a long line of authority that  
21 confirms that referendum provisions in agricultural regulations are constitutional. At both the state and  
22 federal levels, it is common for the legislature to subject agricultural regulations to referendum provisions.  
23 *See, e.g.*, the Agricultural Marketing Agreement Act of 1983 (AMAA) 7 U.S.C.A. §§ 601, 608c; the  
24 California Marketing Act, §§ 58991-58993, 58997. While these referendum provisions have repeatedly  
25 been challenged on the ground that they constitute unlawful delegations of authority to private interests,  
26 courts have consistently rejected these challenges and have found that referendum provisions are  
27 constitutional. *See, e.g., Currin v. Wallace*, 306 U.S. 1, 15 (1939), *Rock Royal*, 307 U.S. at 577-578;  
28 *United States v. Frame*, 885 F.2d 1119, 1127-1128 (3d Cir. 1989); *Sequoia Orange Co.*, 973 F.2d

1 at 752; *Brock v. Superior Court*, 9 Cal.2d 291 (1937).

2 For example, in *Rock Royal*, the United States Supreme Court approved a referendum provision  
3 in a federal milk marketing order that set minimum milk prices and created a pool to equalize the prices  
4 received by producers. *Rock Royal*, 307 U.S. at 554 n.14, 555, 571. This marketing order became  
5 effective only upon approval of 50 percent of the handlers or, if there was no agreement by the handlers,  
6 upon the approval of a supermajority of the interested producers. *Id.* at 577. This order was challenged,  
7 in part, on the ground that this referendum provision unconstitutionally delegated legislative authority to the  
8 producers.

9 Relying on *Currin v. Wallace*, the *Rock Royal* Court found that the referendum provision was not  
10 an invalid delegation. *Rock Royal*, 307 U.S. at 578 & n.65 (citing *Currin*, 306 U.S. 1 at 15). The *Currin*  
11 Court had explained that, in exercising its law-making power, the Legislature is free to prescribe the  
12 conditions of the law's application, including subjecting the law to a referendum. *Currin*, 306 U.S. at 16.  
13 Such a condition does not constitute a delegation of legislative power "because the power has already been  
14 exercised legislatively by the body vested with that power under the Constitution," and the referendum is  
15 merely a condition of that legislation going into effect. *Id.*; see also *United States v. Frame*, 885 F.2d at  
16 1127-1128.

17 Similarly, in *Brock v. Superior Court*, the California Supreme Court held that a referendum  
18 provision in an agricultural regulation does not constitute an unlawful delegation of authority. *Brock*, 9  
19 Cal.2d at 291. The *Brock* Court considered a challenge to California's Agricultural Marketing Act of 1935  
20 (AMA). The AMA authorized the State Director of Agriculture (now the Secretary of the Department of  
21 Food and Agriculture) to issue marketing orders regulating California agricultural commodities. *Id.* at 294.  
22 However, the AMA also provided that the Director cannot enter into a marketing agreement without the  
23 consent of eighty percent of the affected industry members. *Id.* at 298. The AMA was challenged, in part,  
24 based on the consent provision. The California Supreme Court rejected this challenge, explaining that "a  
25 statute is not invalid merely because it provides for the consent of interested persons to the contemplated  
26 regulation." *Id.* at 299.

27 This rule applies equally when amendments to agricultural regulations are contingent on the approval  
28 of those affected by the order. *Sequoia Orange Co.*, 973 F.2d at 759. In *Sequoia Orange Co.*, the

1 Ninth Circuit considered a federal marketing order regulating the sale of oranges. The regulatory program  
2 authorizing the order required that any amendments to the marketing order “be favored by at least 75%  
3 of the growers or by growers producing at least two-thirds of the total volume of oranges.” *Id.* at 754.  
4 Sequoia Orange Company challenged an amendment to the marketing order, arguing that this “voting  
5 scheme unconstitutionally delegated law-making to a minority of growers.” *Id.* at 759. The *Sequoia*  
6 *Orange Co.* court rejected this argument, explaining:

7 This argument is untenable. In *United States v. Rock Royal Co-op.*, 307 U.S. 533,  
8 577-78, 59 S.Ct. 993, 1014-15, 83 L.Ed. 1446 (1939), the Court upheld the AMAA's  
9 requirement of producer approval of marketing orders. The Court cited *Currin v.*  
10 *Wallace*, 306 U.S. 1, 16, 59 S.Ct. 379, 387, 83 L.Ed. 441 (1939), which stated that  
11 requiring producer approval of a regulation was not an unconstitutional delegation of power  
12 but a legitimate condition precedent to the exercise of authority. The Secretary's  
13 determination that amendments were necessary to the marketing order, and his implicit  
14 determination to implement an order with only those amendments approved by 75% of the  
15 growers (or growers growing two-thirds of the total crop) was not an unconstitutional  
16 delegation of power. *Cf. Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1488 (9th  
17 Cir.1992) (“the Secretary is free to seek advice from whatever sources he deems  
18 appropriate, so long as he or his delegate ... retains ultimate authority”) (citation omitted).

19 *Id.*

20 In the present case, the Legislature has set forth, in detail, the purposes of the Pooling Plan and the  
21 items to be included that plan, and has directed the Secretary to draft the regulations that will constitute the  
22 Pooling Plan. §§ 62701-62702.1, 62707. The Secretary is also authorized to amend the Pooling Plan.  
23 § 62717(b). However, the Pooling Plan, and any substantive amendments to the Plan, are subject to a  
24 referendum and will only be implemented if approved by a supermajority of producers. § 62717.

25 As explained in *Rock Royal*, *Brock*, and *Sequoia Orange Company*, this referendum provision  
26 is not an invalid delegation of authority to interested parties. Instead, it is a permissible condition that the  
27 Legislature may impose on the effectiveness of a regulatory program. *Rock Royal Co-op.*, 307 U.S. at  
28 577-578; *Frame*, 885 F.2d at 1127-1128; *Sequoia Orange Co.*, 973 F.2d at 759; *Brock*, 9 Cal.2d at  
299. Therefore, Plaintiffs’ third claim for relief, based on allegations that the referendum procedure is an  
unconstitutional delegation of authority, fails to state a claim on which relief can be granted, and the  
Secretary is entitled to judgment on this claim as a matter of law.

#### IV. CONCLUSION

1 Plaintiffs' third claim for relief alleges that the referendum provisions in § 62717 unconstitutionally  
2 delegates authority to private parties. However, controlling authority establishes that the referendum  
3 provision in § 62717 is not an invalid delegation of decision-making authority. Instead, it is a permissible  
4 condition that the Legislature may place on the regulation's effectiveness. As such, the Secretary  
5 respectfully requests that judgment on the pleadings be granted, with prejudice, with regard to Plaintiffs'  
6 third claim for relief.

7 Dated: November 22, 2002

8 Respectfully submitted,

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