UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STRAUS FAMILY CREAMERY, Plaintiffs, v. WILLIAM B. LYONS, Defendant.	No. C02-1996 BZ **ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Before the court is defendant's motion for judgment on the pleadings on plaintiffs' third claim pursuant to Federal Rule of Civil Procedure 12(c).[1] For purposes of defendant's motion, the allegations of the non-moving party must be accepted as true and all inferences reasonably drawn from those facts must be construed in the non-moving party's favor. Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1990); General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989). Judgment on the pleadings is not appropriate if plaintiff's complaint raises

[1] The parties have consented to the jurisdiction of a United States Magistrate Judge for all proceedings including entry of final judgment pursuant to 28 U.S.C. § 636(c).

issues of fact, which, if proved, would support recovery. Seventh-Day Adventist, 887 F.2d at 230.

Contrary to defendant's argument, the issue posed by the third claim in plaintiffs' complaint is not whether the referendum procedure itself as contained in California Food and Agriculture Code section 62717 is unconstitutional. As stated by plaintiffs, their claim is that the referendum procedure "as applied to plaintiffs by defendant in denying plaintiff's petition for relief," (Pl.'s Compl. ¶ 38), violates their right to procedural due process, given the adverse interests of plaintiffs and the rest of the milk producers eligible to vote of which the defendant is alleged to be aware.

Given plaintiffs' allegation, I cannot say as a matter of law that plaintiffs will be unable to prove a set of facts in which the perceived need for a majority of conventional milk producers to approve the changes in the milk regulatory scheme plaintiffs seek would not establish a fundamental unfairness that may violate plaintiffs' due process rights. Because the complaint raises issues of fact that could support plaintiffs' recovery, judgment on the pleadings on plaintiff's third claim is **DENIED**.

Dated: January 23, 2003

/s/ Bernard Zimmerman
Bernard Zimmerman
United States Magistrate Judge

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