

ROBERT M. CHILVERS, Calif. Bar No. 65442
AVIVA CUYLER, Calif. Bar No. 185284
CHILVERS & TAYLOR PC
83 Vista Marin Drive
San Rafael, California 94903
Telephone: (415) 444-0875
Facsimile: (415) 444-0578

Attorneys for Plaintiffs
Straus Family Creamery, Inc. and
Horizon Organic Holding Corporation

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

STRAUS FAMILY CREAMERY, INC.
and HORIZON ORGANIC HOLDING
CORPORATION.
Plaintiffs,

vs.

WILLIAM B. LYONS, JR., Secretary,
California Department of Food and
Agriculture,
Defendant.

Case No.: C 02 1996 BZ

**JOINT CASE MANAGEMENT
STATEMENT AND PROPOSED
ORDER**

Conference Date: August 26, 2002

Time: 4:00 p.m.

Department: G

Judge: Bernard Zimmerman

1 The parties to the above-entitled action jointly submit this Case Management
2 Statement and Proposed Order and request the Court to adopt it as its Case Management
3 Order in this case.
4

5 DESCRIPTION OF THE CASE

6 1. A brief description of the events underlying the action:

7 A. Plaintiffs' Statement

8 Defendant, Secretary of the California Department of Food and Agriculture
9 ("CDFA"), administers California's milk price stabilization and pooling laws and
10 regulations, which were enacted before the existence of the organic food industry. The
11 primary purpose of these laws is to ensure that all dairy farmers ("producers") receive the
12 same minimum price for their milk from dairy processors each month, and that the
13 minimum price is fair and reasonable and generates reasonable incomes for dairy
14 producers. Pursuant to these laws, and formulas established by the Defendant, each
15 month Defendant sets minimum prices that dairy processors must pay to dairy farmers for
16 the milk that they purchase. Because some processed dairy products (such as fluid milk)
17 are more valuable than other processed dairy products (such as cheese), the laws and
18 regulations require processors of higher valued dairy products to pay money into an
19 "equalization pool" each month, to compensate processors of lower valued dairy
20 products. Defendant calculates each processor's required pool contribution based, in
21 part, on the applicable minimum price for that month and the volume of the various types
22 of dairy products that the processor processes that month.

23 Plaintiffs Straus Family Creamery, Inc. ("Straus") and Horizon Organic Holding
24 Corporation ("Horizon") process organic dairy products pursuant to state and federal
25 certification laws and procedures. As dairy processors, Plaintiffs are subject to the

1 California milk price stabilization and pooling laws and regulations. However, as
2 certified organic dairy processors, plaintiffs may only purchase milk from dairy farmers
3 who are certified as organic dairy producers pursuant to applicable statutes. Organic
4 producers have higher costs of production than non-organic (“conventional”) producers,
5 as a direct result of the requirements of the organic foods laws. The minimum prices that
6 Defendant sets each month are not fair and reasonable for organic producers and do not
7 generate reasonable incomes for organic producers. Accordingly, Plaintiffs must pay
8 their organic producers a higher price than the minimum price each month in order to
9 obtain certified raw organic milk. Defendant does not account for Plaintiffs’ higher costs
10 in calculating Plaintiffs’ pool obligation each month, and, instead, calculates Plaintiffs’
11 pool obligation each month based on the false assumption that Plaintiffs are able to obtain
12 their raw milk at the conventional minimum price. In 1999, Plaintiffs submitted a
13 petition to the Defendant to amend the pooling plan to require Defendant to account for
14 the higher costs incurred by Plaintiffs in order to comply with the organic food laws. The
15 Defendant denied the Plaintiffs’ petition because, among other things, the Defendant
16 concluded that he could not make the requested changes to the pooling plan without first
17 issuing the proposed change to a referendum vote of all dairy farmers, which Defendant
18 concluded would be defeated overwhelmingly.

19 **B. Defendant’s Statement**

20 In this action, Plaintiffs challenge the application of the Milk Stabilization Act and
21 the Gonsalves Milk Pooling Act of 1967 to organic dairies. The Milk Stabilization Act
22 and the Gonsalves Milk Pooling Act of 1967 work together as a comprehensive scheme
23 to stabilize California’s milk industry, to eliminate waste, and assure an “adequate supply
24 of this necessary commodity.” Cal. Food & Agric. Code §§61802(b), 61810, 62701.
25

1 The Milk Stabilization Act was passed in the mid-1930s to create a mechanism for
2 setting minimum prices that a milk processor had to pay to dairy farmers, or “producers,”
3 for milk. The Legislature provided the Secretary with guidance regarding the factors to
4 be considered in setting the prices of milk products, but does not direct how the Secretary
5 should consider those factors, or the weight to be given to any one factor. Cal. Food &
6 Agric. Code § 62062. Under the Act, milk is divided into five classes, depending on end-
7 use. The formulas for each class are different and rely on different sets of variables.
8 Some of the variables that are considered in making these are include the market price of
9 butter and cheddar cheese at the Chicago Mercantile Exchange (“CME”), the California
10 weighted average price for non-fat dry milk, the historic relationship of the price received
11 by California processors for cheddar cheese and the CME price, the amount of butter,
12 cheese, and nonfat dry milk that can be produced from milk fat and solids-not-fat,
13 respectively, as well as certain transportation costs and the cost of producing
14 manufactured milk products.

15 While class price regulation brought some stability to California’s milk market,
16 inequities remained. This was in part because Class 1 milk has a higher value than other
17 classes of milk. Therefore, producers who contracted with processors of Class 1 milk
18 products received a higher price for their milk. The resulting competition between
19 producers for contracts with Class 1 processors created market instability and price
20 inequity. In an effort to resolve this problem, the Legislature passed the Gonsalves Milk
21 Pooling Act of 1967. The Pool Plan issued under the Act utilizes a complex reporting
22 and accounting system to ensure the minimum price that a producer received would not
23 be dictated by the end-use of their own milk. Under the Pool Plan, the price of milk is
24 equalized (pooled) and each producer is guaranteed to receive a minimum price that is
25 not based on the end-use of their own milk.

1 These programs have been operating continuously since 1969, and have helped
2 stabilize California's dairy industry. The Legislature has directed that these programs
3 apply to all Grade A or market milk producers and processors in the State of California,
4 which includes those producing or processing organic milk. The Legislature has also
5 mandated that all milk sold as Class 1 and Class 2 be included in the milk pooling
6 program; however, in practice nearly all milk produced in the state is pooled. In the
7 present action, Plaintiffs allege that the application of this comprehensive regulatory
8 scheme to the organic milk processing operations violates their equal protection,
9 substantive due process, and procedural due process rights under the United States and
10 California Constitutions.

11 **2. The principal factual issues which the parties dispute:**

12 **A. Plaintiffs' Statement**

13 Plaintiffs believe that it is likely that there are no material disputed facts, and that
14 at the appropriate time this case should be resolved by summary judgment. The organic
15 foods laws prohibit the use of conventional milk in processing organic dairy products.
16 The governing statutes and regulations set forth the method by which Defendant
17 calculates Plaintiffs' pool obligations. The fact that only conventional dairy processors
18 receive income from the net pool contributions is a matter of record maintained by the
19 CDFA. The Defendant has admitted that "[t]he standards governing organic milk
20 production result in higher production costs. Organic milk producers do incur a higher
21 cost of production as indicated in the study 'Organic Milk Production in California'
22 (Hearing Exhibit #63) prepared by Dr. Leslie Butler" (Statement of Determination and
23 Order of the Secretary of the of Food and Agriculture, dated May 21, 2001, at p.9.) and
24 that Plaintiffs accordingly pay their organic dairy farmers a higher price. Id. The costs
25 incurred by Plaintiffs and the prices that Plaintiffs pay for raw organic milk, as well as

1 the organic certification of Plaintiffs and organic dairy farmers are a matter of record. It
2 is also undisputed that the overwhelming majority of dairy farmers produce conventional
3 milk and have a financial interest in requiring Plaintiffs to participate in the pool.

4 **B. Defendant's Statement**

5 The parties have disputes regarding the following issues:

- 6 1. Defendant disputes plaintiffs' characterizations of the methods used
7 to set minimum prices under the Stabilization and Marketing Plans
8 for Market Milk;
- 9 2. Defendant disputes plaintiffs' characterizations of the methods used
10 to calculate Pool Obligations under the Pooling Plan for Market
11 Milk ("Pooling Plan").
- 12 3. Defendant disputes plaintiffs' characterizations of the purpose and
13 effects of the stabilization and pooling programs;
- 14 4. Whether any conventional dairy processors receive income from the
15 net pool contributions;
- 16 5. Whether the Secretary has the power to amend the Pooling Plan to
17 reduce the pool obligation of organic processors and, if so, the
18 procedures that must be followed to do so;
- 19 6. The basis for the Secretary's decision not to amend the Pooling Plan
20 to reduce the obligation of organic processors;
- 21 7. Whether the overwhelming majority of dairy producers would
22 experience any significant direct financial gain or loss if plaintiffs
23 did not participate in the pool;
- 24
- 25

1 8. The scope of the facts that are part of the record maintained by the
2 California Department of Food and Agriculture;

3 9. If the Court determines the following issues are relevant:

4 a. Whether there is a difference between the cost of producing
5 organic milk and the cost of producing conventional milk;

6 b. If there is a difference between the cost of producing organic
7 milk and the cost of producing conventional milk, the degree
8 of that difference.

9 **3. The principal legal issues which the parties dispute:**

10 Whether the Milk Stabilization Act and the Gonsalves Milk Pooling Act of 1967,
11 and the regulations promulgated under the acts, as applied to Plaintiffs' organic dairy
12 processing operations, violate Plaintiffs' equal protection rights under the United States
13 and California Constitutions.

14 Whether the Milk Stabilization Act and the Gonsalves Milk Pooling Act of 1967,
15 and the regulations promulgated under the acts, as applied to Plaintiffs' organic dairy
16 processing operations, violate Plaintiffs' substantive due process rights under the United
17 States and California Constitutions.

18 Whether the provision in California Food and Agriculture Code § 62717 that
19 "[t]he director may make substantive amendments to the plan only if producers assent to
20 the proposed amendments at a referendum conducted in the same manner and in the same
21 number as provided for the referendum approving the pooling plan," as applied to
22 Plaintiffs' organic dairy operations, violates Plaintiffs' right to procedural due process
23 under the United States and California Constitutions.

1 **4. The other factual issues [e.g. service of process, personal jurisdiction,**
2 **subject matter jurisdiction or venue] which remain unresolved for the**
3 **reason stated below and how the parties propose to resolve those issues:**

4 Defendant filed a Motion to Transfer for Convenience on July 15, 2002. The
5 Defendant asserts that the Sacramento Division of the United States District Court for the
6 Eastern District of California would be more convenient. Plaintiff filed an opposition to
7 the Motion to Transfer on August 14, 2002. The motion is set for hearing on September
8 4, 2002.

9 **5. The parties which have not been served and the reasons:**

10 All parties have been served.

11 **6. The additional parties which the below-specified parties intend to join and**
12 **the intended time frame for such joinder:**

13 The parties do not intend to join any new parties.

14 **7. The following parties consent to assignment of this case to a United States**
15 **Magistrate Judge for court trial:**

16 All parties have consented to assignment of this case to Magistrate Judge Bernard
17 Zimmerman for court trial.

18 **ALTERNATIVE DISPUTE RESOLUTION**

19 **8.** The parties filed a Notice of Need for ADR Phone Conference and the
20 telephone conference is scheduled for August 19, 2002.

21 **9. Please indicate any other information regarding ADR process or**
22 **deadline.**

23 The parties do not request an ADR process and believe that ADR would not help
24 to resolve this case.

DISCLOSURES

10. The parties certify that they have made the following disclosures:

On August 19, 2002, pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, each side is providing the other: (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information; and (B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party that the disclosing party may use to support its claims or defenses, unless solely for impeachment. No monetary damages are claimed in this action, so the provisions of Rule 26(a)(1)(C) and 26(a)(1)(D) do not apply.

DISCOVERY

11. The parties agree to the following discovery plan:

A. Discovery, other than discovery related to expert testimony, shall close on February 28, 2003.

B. The parties anticipate that discovery will be conducted regarding:

- 1) the mechanics of implementing the Stabilization and Marketing Plans for Market Milk and the Pooling Plans for Market Milk;
- 2) the cost of production of organic and conventional milk;
- 3) the history of milk regulation in California and the purpose of the challenged statutes.

C. It is unnecessary to conduct the discovery in phases or to limit it to specific issues.

1 D. The parties do not believe that it is necessary to make any changes in
2 the limitations on discovery imposed by Federal Rule of Civil
Procedure, Rule 26.

3 E. Disclosure of expert testimony shall be made pursuant to the schedule
4 set forth in Rule 26(a)(2) of the Federal Rules of Civil Procedure.

5 F. The parties anticipate that they will enter a stipulation regarding
6 protection of secret or sensitive information, which they will present to
7 the court for entry of an order. Defendant contends that he is required
8 by statute to preserve the confidentiality of information regarding
9 individual dairies; therefore the defendant states that, while he will
10 disclose summaries of this data, he will not disclose the information
from individual dairies. Plaintiffs reserve the right to challenge this, and
to move the court to require the Secretary to disclose this information,
subject to an appropriate protective order.

11 TRIAL SCHEDULE

12 **12. The parties request a trial date as follows:**

13 June 2, 2003, or as soon thereafter as the Court's calendar permits.

14 **13. The parties expect that the trial will last for the following number of**
15 **days:**

16 Five days.
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1 Dated: August 19, 2002

CHILVERS & TAYLOR PC

2 By: /s/ Aviva Cuyler

3 Aviva Cuyler

4 Attorneys for Plaintiffs
5 Straus Family Creamery, Inc.
6 and Horizon Organic
7 Holding Corporation

8 Dated: August 19, 2002

OFFICE OF THE ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA

9 By: /s/ Ellen Peter

10 Ellen M. Peter

11 Attorneys for Defendant
12 William Lyons, Jr.,
13 Secretary, California
14 Department of Food &
15 Agriculture

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the Court orders:

Dated: _____

Bernard Zimmerman
United States Magistrate Judge

**DECLARATION OF AVIVA CUYLER
REGARDING CONCURRENCE OF SIGNATORY
IN FILING JOINT CASE MANAGEMENT STATEMENT
PURSUANT TO GENERAL ORDER NO. 45(X)**

I, AVIVA CUYLER declare the following of my own personal knowledge, and if called as a witness herein, I could and would competently testify that each of the following facts are true:

1. I am an attorney licensed to practice in this court, and counsel of record for plaintiffs Straus Family Creamery, Inc. and Horizon Organic Holding Corporation.

2. I have obtained concurrence in the filing of the Joint Case Management Statement in the form of a copy of the Joint Case Management Statement signed by Linda Berg for Ellen Peter, attorney for defendant William B. Lyons, Secretary, California Department of Food and Agriculture

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: August 19, 2002.

/s/ Aviva Cuyler
Aviva Cuyler