UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

Case No. **CV 12-3130-JFW (JEMx)** Date: September 12, 2012

Title: William Cramer -*v*- Edmund G. Brown, et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS):

ORDER GRANTING DEFENDANT-INTERVENOR THE HUMANE SOCIETY OF THE UNITED STATES' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM [filed 7/24/2012; Docket No.35];

ORDER GRANTING DEFENDANTS GOVERNOR EDMUND G. BROWN, JR. AND ATTORNEY GENERAL KAMALA D. HARRIS'S MOTION TO DISMISS FIRST AMENDED COMPLAINT [filed 7/24/2012; Docket No. 36];

ORDER DENYING AS MOOT MOTION BY ASSOCIATION OF CALIFORNIA EGG FARMERS FOR LEAVE TO INTERVENE [filed 8/2/2012; Docket No. 42]

On July 24, 2012, Defendant-Intervenor the Humane Society of the United States ("HSUS") filed a Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim. On June 24, 2012, Defendants Edmund G. Brown, Jr. as Governor of California and Kamala D. Harris as Attorney General of California filed a Motion to Dismiss First Amended Complaint. On August 14, 2012, Plaintiff William Cramer ("Plaintiff") filed his Opposition to Motions to Dismiss First Amended Complaint. On August 28, 2012, Defendant-Intervenor HSUS and Defendants Edmund G. Brown, Jr. and Kamala D. Harris (collectively "Defendants") filed their respective Replies.[1]

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[1]On September 7, 2012, Plaintiff filed a Notice of Dismissal as to Defendant Edmund G. Brown, Jr. Pursuant to Rule 41(a).

On August 2, 2012, Association of California Egg Farmers filed a Motion for Leave to Intervene. On August 20, 2012, Defendant-Intervenor HSUS filed a Brief in Opposition to Motion to Intervene. On August 20, 2012, Plaintiff and Defendants Edmund G. Brown, Jr. and Kamala D. Harris filed Statements of Non-Opposition. On August 27, 2012, Association of California Egg Farmers filed a Reply.

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matters appropriate for submission on the papers without oral argument. The matters were, therefore, removed from the Court's September 10, 2012 hearing calendar. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

In November 2008, California voters approved Proposition 2, codified as the Prevention of Farm Animal Cruelty Act. *See* California Health and Safety Code §§ 25990 to 25994. It provides in relevant part:

> In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:
>
> (a) Lying down, standing up, and fully extending his or her limbs; and
>
> (b) Turning around freely.

Cal. Health & Safety Code § 25990. A "covered animal" is defined as "any pig during pregnancy, calf raised for veal, or egg-laying hen who is kept on a farm." Cal. Health & Safety Code § 25991. "Fully extending his or her limbs" is defined as "fully extending all limbs without touching the side of an enclosure, including, in the case of egg-laying hens, fully spreading both wings without touching the side of an enclosure or other egg-laying hens." *Id.* "Turning around freely" is defined as "turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure." *Id.* Any person who violates the statute "is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both such fine and imprisonment." Cal. Health & Safety Code § 25993. The statute will not be effective until January 1, 2015.

Plaintiff is the trustee of a family trust which owns farms in Riverside County, California. These farms house egg-laying hens, and produce eggs that are sold to distributors who in turn sell the eggs for retail sale both in California and outside of California. In his First Amended Complaint filed on July 5, 2012, Plaintiff challenges the constitutionality of Proposition 2, claiming that it (1) violates the due process clause because it is unconstitutionally vague and (2) violates the commerce clause because it imposes excessive burdens on interstate commerce.

II. LEGAL STANDARD

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g., Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. DISCUSSION

Defendants move to dismiss Plaintiff's First Amended Complaint on the grounds that: (1) Plaintiff's claims are not justiciable and are not ripe for review; (2) Proposition 2 is not unconstitutionally vague on its face; and (3) Plaintiff fails to allege sufficient facts to demonstrate that Proposition 2 imposes excessive burdens on interstate commerce.

A. Justiciability and Ripeness

As an initial matter, the Court concludes that the issues presented in this action present a "case or controversy" within the meaning of Article III of the Constitution and that the issues are sufficiently ripe for review. "Whether the question is viewed as one of standing or ripeness, the Constitution mandates that prior to our exercise of jurisdiction there exist a constitutional 'case or controversy,' that the issues presented are 'definite and concrete, not hypothetical or abstract.'" *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000). "In assuring that this jurisdictional prerequisite is satisfied, we consider whether the plaintiffs face a realistic

danger of sustaining a direct injury as a result of the statute's operation or enforcement." Id.

Although the statute will not be effective until January 1, 2015, Plaintiff has demonstrated an injury in fact which is actual and imminent, and not conjectural or hypothetical, and that Plaintiff will suffer a hardship if the Court declines review. Proposition 2 was directed at small group of commercial egg farms in California, including Plaintiff's egg farms, and Plaintiff must take timely action in order to avoid criminal prosecution in the future, which will include modifying the hen-housing system employed on his farms or building new facilities, which can take years. *See* First Amended Complaint at ¶ 42. Moreover, these issues are suitable for judicial review, especially given that the California Legislature has no power to amend the statute before its effective date and because Plaintiff's facial challenge to the law does not require any further factual development.[2] See*, e.g., Thomas More Law Center v. Obama*, 651 F.3d 529, 535-39 (6th Cir. 2011) (*abrogated on other grounds by Nat'l Fed'n of Indep. Bus. v. Seblius*, 132 S. Ct. 2566 (2012)); *Abbott Laboratories v. Gardner*, 387 U.S. 126, 149 (1967) (*abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

As the Sixth Circuit stated in *Thomas More Law Center v. Obama*:

> In view of the probability, indeed virtual certainty, that the [law] will apply to the plaintiffs on January 1, 2014, no function of standing law is advanced by requiring plaintiffs to wait until six months or one year before the effective date to file this lawsuit. There is no reason to think that plaintiffs' situation will change. And there is no reason to think the law will change. By permitting this lawsuit to be filed three and one-half years before the effective date, as opposed to one year before the effective date, the only thing that changes is that all three layers of the federal judiciary will be able to reach considered merits decisions, as opposed to rushed interim (*e.g.,* stay) decisions, before the law takes effect. The former is certainly preferable to the latter, at least in the current setting of this case.

651 F.3d at 538.

Accordingly, the Court concludes that Article III of the Constitution is satisfied, and that this action is ripe for review, and therefore that it is proper to consider the merits of Plaintiff's claims.

B. Vagueness

Plaintiff contends that Proposition 2 is impermissibly vague and thus violates the Due Process Clause of the Constitution. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The Supreme Court has stated in relevant part:

> Vague laws offend several important values. First, because we assume that man is

[2]Although there is a possibility that Congress will enact H.R. 3798/S. 3239, the Egg Products Act Amendments of 2012, it is sheer speculation that Congress will enact it before Proposition 2's effective date, if at all.

> free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Id. at 108-109.

Contrary to HSUS's misleading argument, where a law does not implicate First Amendment rights, it "may nevertheless be challenged on its face as unduly vague in violation of due process." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982). "To succeed, however, the complainant must demonstrate that the law is impermissibly vague in all of its applications." *Id.*

The Court concludes that the Proposition 2 is not impermissibly vague in all of its applications, or even in a single application as argued by Plaintiff. Plaintiff poses four questions in his Opposition in a failed attempt to demonstrate the vagueness of Proposition 2. Instead of demonstrating the vagueness of Proposition 2, each of those questions demonstrate that Proposition 2 provides a person of ordinary intelligence more than a reasonable opportunity to know what is prohibited and provides explicit and objective standards to prevent discriminatory enforcement.

First, does Proposition 2 require California egg farms to be cage-free or not?

There is nothing in the language of Proposition 2 that requires California egg farms to be cage-free. The statute is clear that, provided the cage does not prevent the egg-laying hen from lying down, standing up, fully extending her limbs and wings without touching the side of the cage or other egg-laying hens, or turning in a complete circle without any impediment and without touching the side of the cage, the use of such a cage would not violate Proposition 2.

Although Plaintiff relies on two press releases issued by HSUS in support of his argument that Proposition 2 is vague, those press releases are irrelevant in interpreting the clear language of the statute.

Second, do any of the square-inch rules set forth in the proposed federal legislation, ranging from 67 square inches per hen to 125 square inches per hen comply with or violate Proposition 2?

Although the Court could answer this question if it had the opportunity to measure, e.g., the wing span of an average egg-laying hen, the answer to this question is certainly not a mystery and is capable of easy determination by egg farmers, who have been in this business for decades. As Plaintiff admits in his Opposition, the egg-laying hens on commercial farms are generally the same size and weight. Therefore, the answer to Plaintiff's question, "how many square inches per hen is enough" is simple enough to determine using objective criteria.

Although it may have been preferable for Proposition 2 to specify exactly how many square inches per hen would be permissible, the due process clause does not present an "insuperable obstacle to legislation" by demanding perfect clarity and precise guidance. *See U.S. v. Petrillo*, 332 U.S. 1, 7 (1947); *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2719 (2010) (quotations and citations omitted) ("But perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.").

Third, what is the test a law enforcement officer would apply? Is the test could a hen spread her wings without touching anything if she wanted to do so? Does merely touching the side of the enclosure or another egg-laying hen violate the law?

Proposition 2 establishes a clear test that any law enforcement officer can apply, and that test does not require the law enforcement officer to have the investigative acumen of Columbo to determine if an egg farmer is in violation of the statute. Simply stated, the egg-laying hen cannot be *prevented* from lying down, standing up, fully extending her limbs or wings without touching the side of an enclosure or another egg-laying hen, or turning in a complete circle without any impediment and without touching the side of an enclosure. The mere fact that a hen, if she so chooses, touches the side of an enclosure or another egg-laying hen does not constitute a violation of the statute. The hen, however, must have the *ability* to lie down, stand up, fully extend her limbs or wings without touching the side of an enclosure or another egg-laying hen, and turn in a complete circle without any impediment and without touching the side of an enclosure.

Fourth, what exactly would a person need to do to "prevent" a hen from spreading her wings without touching another hen?

Although the word "prevent" is not defined in the statute, the statute provides a person of ordinary intelligence a reasonable opportunity to know what is prohibited and provides explicit standards to prevent discriminatory enforcement. Indeed, Proposition 2 clearly provides that a person may not "tether" or "confine" the egg-laying hen in such a way that does not allow the egg-laying hen to lie down, stand up, fully extend her limbs, or turn around freely. Thus, for example, if an egg farmer houses an egg-laying hen in a cage which does not allow her to fully spread her wings without touching the cage or another egg-laying hen, he will violate the statute.

Plaintiff fails to present a single example of how Proposition 2 would be vague in its application, much less in all of its applications. Accordingly, Plaintiff's claim for relief based on a violation of due process fails as a matter of law.

C. Dormant Commerce Clause

A state law may violate the "dormant" Commerce Clause either because the state law discriminates against interstate or foreign commerce, or because the state law incidentally affects such commerce. *Pacific Northwest Venison Producers v. Smitch*, 20 F.3d 1008, 1012 (9th Cir. 1994). "If the regulations discriminate in favor of in-state interests, the state has the burden of establishing that a legitimate state interest unrelated to economic protectionism is served by the regulations that could not be served as well by less discriminatory alternatives." *Id.* "In contrast, if the regulations apply evenhandedly to in-state and out-of state interests, the party challenging the regulations must establish that the incidental burdens on interstate and foreign commerce are

clearly excessive in relation to the putative local benefits." *Id.*

Plaintiff does not allege that Proposition 2 discriminates in favor of in-state interests, and instead alleges that the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits. However, Plaintiff's factual allegations are wholly insufficient to raise his claim above the speculative level. As Plaintiff admits, the prevention of animal cruelty is a legitimate state interest. *See United States v. Stevens*, __ U.S. __, 130 S. Ct. 1577, 1585 (2010) ("[T]he prohibition of animal cruelty itself has a long history in American law, starting with the early settlement of the Colonies."). In order to outweigh this legitimate state interest, Plaintiff must allege facts that demonstrate that the incidental burdens on interstate commerce are clearly excessive in relation to the local benefit and that these burdens are substantial. *See National Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1148 (9th Cir. 2012) ("A critical requirement for proving a violation of the dormant Commerce Clause is that there must be a *substantial burden* on *interstate commerce."*). Instead, Plaintiff alleges purely hypothetical and entirely speculative burdens on interstate commerce. Moreover, those hypothetical and speculative burdens, even if they are realized, are not clearly excessive in relation to the legitimate state interest in preventing cruelty to animals. Indeed, as the Supreme Court stated in *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127-28 (1978) in considering a Maryland law that prohibited petroleum producers and refiners from owning retail service stations in Maryland:

> Some refiners may choose to withdraw entirely from the Maryland market, but there is no reason to assume that their share of the entire supply will not be promptly replaced by other interstate refiners. The source of the consumers' supply may switch from company-operated stations to independent dealers, but interstate commerce is not subjected to an impermissible burden simply because an otherwise valid regulation causes some business to shift from one interstate supplier to another.
>
> . . . . [T]he [Commerce] Clause protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations. It may be true that the consuming public will be injured by the loss of the high-volume, low-priced stations operated by the independent refiners, but again that argument relates to the wisdom of the statute, not to its burden on commerce.

Indeed, the mere fact that the price of eggs may increase or that egg production may shift from in-state egg farmers to out-of-state egg farmers, for example, relates more to the wisdom of the statute, not to its burden on interstate commerce.[3] "Where such a regulation does not regulate activities that inherently require a uniform system of regulation and does not otherwise impair the free flow of materials and products across state borders, there is not a significant burden on interstate commerce." *See National Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1148 (9th Cir. 2012).

Moreover, as Plaintiff concedes in his Opposition, "[i]f Prop 2 were understandable - that is,

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[3]Plaintiff also relies on AB 1437 to support his dormant commerce clause claim. However, the constitutionality of AB 1437, a separate measure enacted by the California Legislature, is not challenged in this action, and it has no bearing on the constitutionality of Proposition 2.

if it provided standards that businesses could follow -- there would not be a problem." Opposition at page 21, lines 25-26. As the Court has concluded, Proposition 2 in fact provides standards that businesses can follow.

Accordingly, the Court concludes that Plaintiff's dormant Commerce Clause claim fails.

IV. CONCLUSION

The mere fact that Plaintiff dislikes or disagrees with the policy or language of Proposition 2 is not sufficient to sustain a constitutional challenge. Indeed, to determine whether a statute is "wise or effective is not, of course, the province of this Court." *See Flipside*, 455 U.S. at 505.

For the foregoing reasons, HSUS's Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim is **GRANTED.** Defendants Edmund G. Brown, Jr. and Kamala D. Harris's Motion to Dismiss First Amended Complaint is **GRANTED**. Plaintiff's claims are **DISMISSED with prejudice.** The Association of California Egg Farmers' Motion for Leave to Intervene is **DENIED as moot**.

Although the Court recognizes that this Circuit has a liberal policy favoring amendments and that leave to amend should be freely granted, the Court is not required to grant leave to amend if the Court determines that permitting Plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile."). "Leave to amend may be denied if a court determines that allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Abagninin v. AMVAC Chemical Corp.*, 545 F.3d 733, 742 (9th Cir. 2008) (quotations and citations omitted). "Leave to amend may also be denied for repeated failure to cure deficiencies by previous amendment." *Id.* In this case, Plaintiff has already had an opportunity to file an amended pleading in this Court, and has failed to provide the Court with any facts or argument that indicate leave to amend would not be futile. *See Deutsch v. Turner Corp.*, 324 F.3d 692, 717-718 (9th Cir. 2003) (upholding denial of leave to amend on the basis of futility where the plaintiffs proffered facts to the district court that were insufficient to support tolling and failed to offer additional facts on appeal). Accordingly, the Court denies Plaintiff leave to amend his First Amended Complaint.

IT IS SO ORDERED.

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