IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

TURTLE ISLAND FOODS, SPC, ET AL.,)
Plaintiffs,)
V.) Case No. 2:18-CV-04173
MARK RICHARDSON,)
Defendant.)

ORDER

On August 28, 2018, Mo.Rev.Stat. § 265.494 went into effect. The statute defines "meat" as: "any edible portion of livestock, poultry, or captive cervid carcass or part thereof." Mo.Rev.Stat. §265.300(7). The term "misrepresent" in the statute is defined as "the use of any untrue, misleading or deceptive oral or written statement, advertisement, label, display, picture, illustration or sample. Mo.Rev.Stat. § 265.490(6). Pursuant to the statute any person who violates any portion of Mo.Rev.Stat. § 265.494 is guilty of a class A misdemeanor. Mo.Rev.Stat. §265.496. Plaintiffs, the Good Food Institute "GFI" (a non-profit advocacy organization) and Tofurky (a plant-based meat producer whose products are marketed and sold in stores in Missouri) filed a Complaint against Mark Richardson, in his official capacity as the Cole County Prosecuting Attorney and on behalf of all Missouri Prosecuting Attorneys challenging the constitutionality of the statute referenced above. Plaintiffs allege that the statute violates their First Amendment rights, violates the Dormant Commerce Clause and violates their due process rights. Plaintiffs sought a preliminary and permanent injunction preventing

enforcement of the statute, a declaration that the statute is unconstitutional on its face and as applied to plaintiffs and an award of costs and attorneys' fees. Plaintiff's stated that because they sought only injunctive and declaratory relief against unconstitutional application of the statute, the proposed class satisfied Fed.R.Civ.P. 23(b). The Court agreed and found that because plaintiffs were challenging the constitutionality of the statue and because all 115 prosecuting attorneys in Missouri were charged with prosecuting violations of this statute and defending its constitutionality, plaintiffs met the requirements to certify the Missouri Prosecuting Attorneys as a defendant class under Fed.R.Civ.P. 23(b)(2). However, the Court denied plaintiffs Motion for a preliminary injunction, finding that none of the Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109 (8th Cir. 1981) factors supported entry of an injunction. On October 2, 2019, plaintiffs appealed this Court's denial of their motion for preliminary injunction. On October 8, 2019, the parties jointly requested a stay of the current proceedings pending the outcome of the appellate proceedings. On December 11, 2019, the Eighth Circuit denied plaintiffs permission for leave to appeal. Accordingly, the Court hereby **DENIES AS MOOT** the Joint Motion to Stay Proceedings (Doc. # 70). The parties are hereby directed to confer regarding dates for an Amended Scheduling Order and may submit a proposal for an Amended Scheduling Order on or before February 24, 2020.

Date: <u>February 10, 2020</u> Kansas City, Missouri S/ FERNANDO J. GAITAN, JR.

Fernando J. Gaitan, Jr.
United States District Judge