

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**TURTLE ISLAND FOODS, SPC,  
doing business as THE TOFURKY COMPANY**

**PLAINTIFF**

**v.**

**CASE NO. 4:19-CV-514-KGB**

**NIKHIL SOMAN, in his official capacity as  
Director of the Arkansas Bureau of Standards**

**DEFENDANT**

---

**JOINT MOTION TO CONSOLIDATE THE PRELIMINARY INJUNCTION HEARING  
WITH THE TRIAL ON THE MERITS**

---

Pursuant to Fed. R. Civ. P. 65(a)(2), the parties move this Court to consolidate the preliminary injunction hearing with the trial on the merits and enter a final judgment in this action.

In support of this motion, the parties state the following:

1. On December 11, 2019, this Court granted Plaintiff's motion for preliminary injunction against Act 501, Arkansas Code Annotated § 2-1-301, *et seq.* Dkt. 25. More particularly, the Court preliminarily enjoined Defendant from enforcing six provisions of Act 501 challenged by Plaintiff: Ark. Code Ann. §§ 2-1-305(2), (5), (6), (8), (9), and (10). Dkt. 25, at 33.

2. The parties have jointly concluded that no discovery is necessary, and agreed that the record before the Court on Plaintiff's motion for preliminary injunction is sufficient for the entry of a final order and judgment related to the six provisions of Act 501 challenged by Plaintiff here.

3. The parties therefore jointly move the Court to consolidate the preliminary injunction hearing with the trial on the merits and enter a final judgment pursuant to Fed. R. Civ. P. 65(a)(2). Under Rule 65(a)(2), consolidation of the preliminary injunction hearing with the trial

on the merits after the hearing is permissible where, as here, it is done with the consent of the parties. *See, e.g., Warehouse Groceries Management, Inc. v. Sav-U-Warehouse Groceries, Inc.*, 624 F.2d 655, 657 (5th Cir. 1980) (post-hearing consolidation is within the “literal” language of Rule 65(a)(2)); 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2950 (“Since Rule 65(a)(2) provides that consolidation may be ordered ‘before or after beginning the hearing,’ the trial court can transform a preliminary-injunction hearing into a consolidated hearing at any time . . .”). The use of the rule has been restricted “to cases in which the party adversely affected by the entry of such an order has been given adequate notice and an opportunity to object before his right to a separate hearing on the merits of the case has been foreclosed.” *Warehouse Groceries Management*, 624 F.2d at 657. Thus, where the parties agree to consolidation and propose it to the Court, use of the Rule to consolidate after the close of the preliminary injunction hearing is appropriate. *See, e.g., Wright & Miller, Federal Practice and Procedure* § 2950.

4. Although the Court granted only as-applied preliminary injunctive relief, Dkt. 25 at 15–16, Plaintiff respectfully requests all the relief identified in the Amended Complaint, Dkt. 31, including facial declaratory and injunctive relief, relating to the six provisions of Act 501 challenged in this action. *See, e.g., 44 LiquorMart, Inc. v. Rhode Island*, 517 U.S. 484, 504–08 (1996) (facially invalidating restrictions on liquor advertising because they failed to satisfy *Central Hudson* scrutiny); *accord Mo. Broad. Ass’n v. Schmitt*, 946 F.3d 453, 462–63 (8th Cir. 2020); *see also Pearson v. Shalala*, 164 F.3d 650, 657–59 (D.C. Cir. 1999) (facially invalidating federal labeling regulations because they failed to satisfy *Central Hudson* scrutiny). Plaintiff is prepared to submit further briefing on this issue at the Court’s direction.

5. Although Defendant consents to consolidation because additional evidentiary proceedings and discovery are unnecessary, Defendant respectfully disagrees with the Court's resolution of the preliminary injunction motion and preserves all rights of appeal.

6. In the interest of efficiency, the parties have agreed to pause discovery while this joint motion remains pending. If this Court does not grant the joint motion, the parties respectfully request that the Court extend the remaining deadlines to allow them to complete discovery, engage in any necessary motion practice, and prepare for trial.

For these reasons, the parties jointly move the Court to consolidate the preliminary injunction hearing with the trial on the merits and proceed with the entry of a final order and judgment.

Dated: September 23, 2020

Respectfully submitted,

/s/ Jeff Priebe

Jeff Priebe

Ark. Bar No. 2001124

Jeff Priebe Law Firm

PO Box 7481

Little Rock, AR 72217

Email: [jeff@jeffpriebe.com](mailto:jeff@jeffpriebe.com)

Phone: 501-580-7890

*On behalf of the Arkansas Civil Liberties  
Union Foundation, Inc.*

Brian Hauss\*

American Civil Liberties

Union Foundation

Speech, Privacy & Technology Project

125 Broad Street, 18th Floor

New York, NY 10004

Email: [bhauss@aclu.org](mailto:bhauss@aclu.org)

Phone: 212.549.2500

Amanda M. Howell\*  
Alene Anello\*  
Animal Legal Defense Fund  
525 E. Cotati Ave.  
Cotati, California 94931  
Email: ahowell@aldf.org  
Phone: 707.795.2533

Jessica Almy\*  
Nicole Manu\*  
The Good Food Institute  
1380 Monroe St. NW #229  
Washington, DC 20010  
Email: jessicaa@gfi.org  
Phone: 866.849.4457

\* Admitted *pro hac vice*

***Attorneys for Plaintiff***

LESLIE RUTLEDGE  
Attorney General

By: /s/ Jerry D. Garner (with permission)  
Jerry D. Garner  
Ark. Bar No. 2014134  
Assistant Attorney General  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
Tel.: (501) 682-1723  
Fax: (501) 682-2591  
Email: jerry.garner@arkansasag.gov

***Attorneys for Defendant***