

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

**TURTLE ISLAND FOODS SPC
d/b/a TOFURKY COMPANY**

PLAINTIFF

v.

Case No. 4:19-cv-00514-KGB

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

DEFENDANT

ORDER

Before the Court is a joint motion to consolidate the preliminary injunction hearing with the trial on the merits under Federal Rule of Civil Procedure 65(a)(2) (Dkt. No. 40). On July 22, 2019, plaintiff Turtle Island Foods SPC, d/b/a The Tofurky Company (“Tofurky”) filed this lawsuit against defendant Nikhil Soman, in his official capacity as Director of the Arkansas Bureau of Standards (“the State”), alleging that the challenged provisions of Arkansas Code Annotated § 2-1-301, *et seq.*, violate the First and Fourteenth Amendments (Dkt. No. 1). On December 11, 2020, this Court granted Tofurky’s motion for a preliminary injunction and enjoined the State from enforcing the challenged provisions against Tofurky while this litigation remains pending (Dkt. No. 25). Tofurky filed its amended complaint on April 15, 2020, and the State filed its answer on April 16, 2020 (Dkt. Nos. 31; 32).

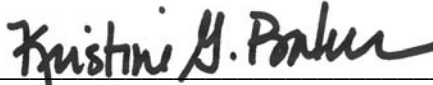
In their motion to consolidate, the parties state that they have jointly concluded that they do not require additional discovery and that the record before the Court on Tofurky’s motion for preliminary injunction is sufficient for the entry of a final order and judgment related to the provisions of Arkansas Code Annotated § 2-1-301, *et seq.*, challenged in this lawsuit (Dkt. No. 40, ¶ 2). The parties jointly move to consolidate the preliminary injunction hearing with the trial on the merits and ask the Court to enter a final judgment pursuant to Rule 65(a)(2) (*Id.*, ¶3).

The Eighth Circuit has encouraged district courts to utilize Rule 65(a)(2) to consolidate a hearing on a motion for preliminary injunction with the trial on the merits in appropriate cases. *See W. Pub. Co. v. Mead Data Cent., Inc.*, 799 F.2d 1219, 1229 (8th Cir. 1986). The only caution the Eighth Circuit has given district courts is that the court give the parties clear notice of its intent prior to consolidating. *See Ecolab, Inc. v. Morisette*, 879 F.2d 325, 327 (8th Cir. 1989) (citing *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *United States ex rel. Goldman v. Meredith*, 596 F.2d 1353, 1358 (8th Cir.), *cert. denied*, 444 U.S. 838 (1979); *see also* Fed. R. Civ. P. 65(a)(2)).

Because the parties have jointly agreed that the record before the Court is sufficient for the Court to rule on the merits of the claims presented, the motion to consolidate under Rule 65(a)(2) is granted (*Id.*). This case is removed from the Court's trial calendar for the week of February 8, 2021.

The parties note that the Court granted only as-applied preliminary injunctive relief (Dkt. Nos. 25; 40, ¶ 4). Tofurkey asserts that it is entitled to all of the relief identified in the Amended Complaint, including facial declaratory and injunctive relief, relating to the provisions challenged in this action, and it has offered to submit further briefing on this issue at the Court's direction (Dkt. No. 40, ¶ 4). Within 45 days of entry of this Order, Tofurkey may file a supplemental brief addressing the additional relief it seeks pursuant to the amended complaint (Dkt. No. 31). The State shall have 45 days following his receipt of Tofurkey's supplemental brief to respond.

So ordered this the 15th day of December, 2020.



Kristine G. Baker
United States District Judge