

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
Tallahassee Division**

UPSIDE FOODS, INC.  
Plaintiff,

v.

Civil Action No.  
4:24-cv-00316-MW-MAF

WILTON SIMPSON, et al.  
Defendants.

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**PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

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Plaintiff UPSIDE Foods, Inc., (UPSIDE) respectfully moves this Court, under Federal Rule of Civil Procedure 65(a), for a preliminary injunction against the enforcement of Florida’s recently enacted SB 1084. Filed with this motion are the Declaration of Uma Valeti, the Declaration of Paul Sherman, and a memorandum of law in support of this motion.

In support of this motion, and as more fully set forth in Plaintiff’s memorandum of law, Plaintiff states the following:

1. UPSIDE is a California company founded in 2015 and a national leader in the field of “cultivated” meat. Unlike conventional meat, which requires the slaughter of live animals, cultivated meat is grown directly from animal cells under controlled conditions. These cells are then harvested and processed into

meat products that replicate the taste and texture of conventional meat without the need to kill live animals. For example, UPSIDE Foods uses these processes to produce a cultivated poultry product that looks, cooks, and tastes like a boneless skinless chicken cutlet. Valeti Decl. ¶¶ 10–12, 24.

2. UPSIDE has satisfied federal regulatory requirements that make its poultry product legal to sell in the interstate market. Valeti Decl. ¶¶ 26–32.

UPSIDE has previously sold and distributed its chicken product in Florida and had plans to do so again at the upcoming Art Basel exhibition, to be held in Miami on December 6–8 of this year. Valeti Decl. ¶¶ 34–38.

3. UPSIDE has had to cancel its plans to distribute its federally authorized product in Florida because, on May 1, 2024, Governor Ron DeSantis signed SB 1084, making Florida the first state in the country to ban the manufacture, distribution, or sale of cultivated meat. Valeti Decl. ¶¶ 44–49. The law went into effect on July 1, 2024.

4. Violations of the ban are punishable by up to 60 days in jail, and food establishments that violate the ban can have their permit revoked and face administrative fines of up to \$5,000 per violation. *See Fla. Stat. §§ 500.121(1)(b), 570.971(1)(b), 775.082(4)(b), § 775.083(1)(e).*

5. A driving purpose behind the enactment of the Constitution was the desire to create a national common market. Thus, the Constitution grants the United States Congress the power to regulate interstate commerce. To ensure that states do not enact laws that conflict with Congress's exercise of this power, the the Supremacy Clause of Article VI provides that the Constitution and laws enacted under its authority are "the supreme Law of the Land." This principle manifests itself in the doctrine of federal preemption, under which a state law may be held invalid if it conflicts with the operation of a validly enacted federal law.

6. Congress has enacted laws that expressly preempt SB 1084. Because UPSIDE manufactures cultivated chicken, the Poultry Products Inspection Act (PPIA), 21 U.S.C. §§ 451–73, provides the relevant regulatory framework.

7. The PPIA expressly preempts state attempts to impose requirements on the ingredients used in poultry products that add to or differ from those in federal law. 21 U.S.C. § 467e.

8. Florida's law does this. Federal law establishes standards for the use of cultivated cells in poultry products. *See, e.g.*, U.S. Dep't of Agric., FSIS Directive 7800.1, *FSIS Responsibilities in Establishments Producing Cell-Cultured Meat & Poultry Food Products* (June 21, 2023). In direct conflict with this, Florida

expressly forbids the use of cultivated cells in poultry products. Thus, it is preempted by federal law.

9. The PPIA also contains a provision that expressly preempts state attempts to impose requirements on the facilities in which poultry products are manufactured that add to or differ from those in federal law. 21 U.S.C. § 467e.

10. Florida’s law does this, too. The Supreme Court has held that states may not escape preemption under the identical preemption provision contained in the Federal Meat Inspection Act “just by framing [its law] as a ban on the sale of meat produced in whatever way the State disapprove[s].” *Nat’l Meat Ass’n v. Harris*, 565 U.S. 452, 464 (2012). That principle applies here, where federal law regulates the facilities in which cultivated poultry is manufactured, *see, e.g.*, Valeti Decl. ¶¶ 31–32, yet Florida law bans poultry products manufactured using those federally regulated processes. Thus, it is preempted by federal law.

11. Because SB 1084 is expressly preempted by federal law, UPSIDE has a likelihood of success on the merits of its challenge to SB 1084.

12. UPSIDE will suffer irreparable harm without the issuance of an injunction. As a direct result of SB 1084, UPSIDE is prohibited from selling its product in Florida. But any economic damages UPSIDE suffers as a result are unrecoverable, because damages against the state are barred by Eleventh

Amendment immunity. Besides this economic harm, UPSIDE is suffering and will continue to suffer a variety of other irreparable harms, such as loss of customer goodwill, lost business opportunities, and the loss of vital opportunities to grow its client base during a critical phase in its industry's development. UPSIDE also faces the prospect of irrevocably losing the opportunity to share its product with consumers at high-profile, one-time events, such as the 2024 Art Basel exhibition in Miami. Valeti Decl. ¶¶ 46–53.

13. An injunction will not substantially injure others, because it will not compel the State to take any action or obligate any resources, and because the State has no legitimate interest in the continued operation of an unconstitutional law. An injunction is in the public interest because it will permit UPSIDE to exercise its right to bring innovative products to the interstate market and allow consumers to exercise their freedom to decide for themselves what foods they want to eat.

14. Plaintiff requests that this Court preliminarily enjoin the enforcement of SB 1084 against UPSIDE and the chefs and other businesses with which UPSIDE wishes to partner to distribute its cultivated chicken in Florida.

15. Plaintiff also requests that the Court waive the bond requirement under Federal Rule of Civil Procedure 65(c) because this is a public-interest lawsuit and a preliminary injunction presents no monetary risk to Defendants.

16. Pursuant to Local Rule 7.1(B), counsel for Plaintiff has conferred in good faith with counsel for Defendants concerning this motion. Counsel for Defendants indicated that Defendants oppose this motion.

17. Counsel for Plaintiff has also conferred in good faith with counsel for Defendants concerning the briefing schedule. The parties agree that Defendants' response to this motion should be filed no later than September 16, 2024.

Dated: August 23, 2024.

Respectfully submitted,

**INSTITUTE FOR JUSTICE**

/s/ Paul M. Sherman

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*\*Pro hac vice application forthcoming.*

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*Local Counsel for Plaintiff*

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 23, 2024, the above captioned Plaintiff's Motion for Preliminary Injunction, along with the Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction, the Declaration of Paul M. Sherman in Support of Plaintiff's Motion for Preliminary Injunction, and the Declaration of Uma Valeti in Support of Plaintiff's Motion for Preliminary Injunction were filed with the clerk of the court via the ECF filing system, providing service on all attorneys of record, and a true and correct copy of each document will be provided via process server and via USPS Mail to the following Defendants:

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