

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

UPTON'S NATURALS CO.; and
THE PLANT BASED FOODS
ASSOCIATION,

Plaintiffs,

vs.

KEVIN STITT, in his official
capacity as Oklahoma Governor; and
BLAYNE ARTHUR, in her official
capacity as Oklahoma Commissioner
of Agriculture.

Defendants.

**DECLARATION OF MICHELE
SIMON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C. § 1746(2), I, Michele Simon, declare the following:

1. I am a citizen of the United States and a resident of Los Angeles County, California. I am over eighteen years of age and fully competent to make this declaration, which I make based on my personal knowledge. I voluntarily submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction. If called as a witness, I could and would testify competently under oath as to the facts set forth below.

2. After studying biology at Carnegie Mellon University, I earned a master's degree in public health from Yale University and a law degree from the University of California, Hastings College of Law.

3. I have been researching and writing about the food industry since 1996.

4. In 2000, I founded a non-profit organization, Center for Informed Food Choices, to educate people about eating plant-based foods.

5. In 2016, I founded the Plant Based Foods Association (PBFA), a trade association representing America's leading plant-based food sellers.

6. PBFA has over 170 members, including food manufacturers, ingredient suppliers, restaurants, and distributors.

7. PBFA members sell plant-based "beef," "hot dogs," "burgers," "bacon," "meatballs," "jerky," and "steaks," among other meat alternatives. Retailers and restaurants nationwide sell these products, including at many locations in Oklahoma.

8. I currently serve as PBFA's executive director. In that role, I advance policies and practices to promote plant-based foods. And I have extensive experience reviewing PBFA members' food labels.

9. As executive director of PBFA and an attorney, I offer advice on best practices for labeling and marketing plant-based foods. To that end, I helped craft, along with PBFA members, consultants, and attorneys, PBFA's "Voluntary Standards for the Labeling of Meat Alternatives in the United States."

10. Under PBFA's voluntary standards, plant-based food sellers are advised to conspicuously label their meat alternatives as "Plant-Based," "Vegan," "Meatless," "Meat-Free," or with a comparable qualifier. To the best of my knowledge, all PBFA members that sell plant-based meat alternatives in Oklahoma use such qualifying language. That is the entire purpose of their selling such products, to alert consumers that these options do not contain meat from an animal.

11. Even if federal and state laws and regulations did not require that plant-based meat alternatives use one of these qualifiers, PBFA's voluntary standards would

still advise that our members use such qualifiers on their labels.

12. I have seen several PBFA members' labels go further and include additional information to make clear their products are meat-free. For example, many PBFA members use more than one qualifier. Others also have adopted PBFA's Certified Plant Based stamp, a program whereby a third-party assesses products that qualify for the certification. This offers consumers additional confidence in what they are purchasing.

13. As PBFA's voluntary standards show, it is very important to us that customers understand our members' products do not contain meat from an animal. I know that many customers buy PBFA members' foods specifically because they are vegans, vegetarians, or simply are seeking products not made from animals.

14. While PBFA members clearly label their foods as plant-based, many also follow standard industry practices for labeling regarding font size. Just like labels in other industries, the largest text on plant-based meat labels is usually a product name or brand name. For example, on PBFA members' labels for "beef" alternatives, qualifiers such as "plant-based" or "vegan" are often in smaller font than the product names.

15. It is my understanding that Oklahoma's Meat Consumer Protection Act requires that PBFA's members revise their labels. That is because the law requires members' labels to print qualifying terms (such as "plant-based") in font size as large as their product names.

16. In PBFA's standards for labeling, we would never require specific font size the way that Oklahoma does. That is because it is customary for the font size of product names to be the largest on the label. Also, our members want the flexibility to be able to

choose the labels and messages of their choice, so long as they are truthful and not misleading.

17. Based on my own conversations with members, and knowing how important labeling is to their businesses, I know it is highly likely that some PBFA members would withdraw their products from Oklahoma if the state's new law went into effect. That is because they cannot afford to create a special label just for Oklahoma or to redesign their labels nationwide (nor would this make any sense). However, if Oklahoma's law were stopped, PBFA members would continue selling their foods in Oklahoma just as they are doing today, and consumers could enjoy them.

18. Finally, plant-based meat alternatives are a growing segment of the food economy. PBFA works with many of the nation's largest retailers, many of whom have outlets in Oklahoma. These retailers are very eager to sell more plant-based meat alternatives to Oklahoma residents. This law means that these and many other retailers, including many independent stores, may no longer be able to carry the many meat alternatives that consumers are increasingly demanding. To deny consumers these products will cause significant economic hardship to Oklahoma retailers, not to mention deprive many Oklahoma residents the options they are seeking.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2020

By:

/s/ Michele Simon

Michele Simon