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7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 NATIONAL ASSOCIATION OF WHEAT  
GROWERS; NATIONAL CORN  
12 GROWERS ASSOCIATION; UNITED  
STATES DURUM GROWERS  
13 ASSOCIATION; WESTERN PLANT  
HEALTH ASSOCIATION; MISSOURI  
14 FARM BUREAU; IOWA SOYBEAN  
ASSOCIATION; SOUTH DAKOTA AGRI-  
15 BUSINESS ASSOCIATION; NORTH  
DAKOTA GRAIN GROWERS  
16 ASSOCIATION; MISSOURI CHAMBER  
OF COMMERCE AND INDUSTRY;  
17 MONSANTO COMPANY; ASSOCIATED  
INDUSTRIES OF MISSOURI;  
18 AGRIBUSINESS ASSOCIATION OF  
IOWA; CROPLIFE AMERICA; AND  
19 AGRICULTURAL RETAILERS  
ASSOCIATION,

20  
21 Plaintiffs,

22 v.

23 LAUREN ZEISE, IN HER OFFICIAL  
CAPACITY AS DIRECTOR OF THE  
24 OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT; AND XAVIER  
25 BECERRA, IN HIS OFFICIAL CAPACITY  
AS ATTORNEY GENERAL OF THE  
26 STATE OF CALIFORNIA,

27  
28 Defendants.

Civil Action No. 2:17-cv-02401-WBS-  
EFB

**AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 Plaintiffs seek declaratory and injunctive relief against Defendants Lauren Zeise and  
2 Xavier Becerra, in their official capacities as Director of the California Office of Environmental  
3 Health Hazard Assessment (OEHHA) and Attorney General of the State of California,  
4 respectively, and allege as follows:

5 **PRELIMINARY STATEMENT**

6 1. Plaintiffs National Association of Wheat Growers, National Corn Growers  
7 Association, United States Durum Growers Association, Western Plant Health Association,  
8 Missouri Farm Bureau, Iowa Soybean Association, South Dakota Agri-Business Association,  
9 North Dakota Grain Growers Association, Missouri Chamber of Commerce and Industry,  
10 Monsanto Company, Associated Industries of Missouri, Agribusiness Association of Iowa,  
11 CropLife America, and Agricultural Retailers Association bring this suit to prevent Defendants  
12 from mandating false, misleading, and highly controversial cancer warnings concerning the  
13 herbicide glyphosate on a wide variety of food, agricultural, industrial, and lawn and garden  
14 products.

15 2. Glyphosate is a broad-spectrum herbicide approved by the federal government for  
16 use in more than 250 agricultural crop applications in all U.S. States. Glyphosate has been subject  
17 to scientific review by the federal government repeatedly for multiple decades. It is widely utilized  
18 worldwide, including throughout the U.S., in cultivation of many major crops (such as corn,  
19 soybeans, canola, wheat, and oats), and in California, in cultivation of almond, citrus, and cotton  
20 crops, among others. Glyphosate is regarded as one of the safest herbicides ever developed. For  
21 several decades, the federal government has approved the use of glyphosate under the Federal  
22 Insecticide, Fungicide, and Rodenticide Act (FIFRA), based on extensive scientific analyses of  
23 each specific use of the herbicide.<sup>1</sup> Likewise, the Federal Food, Drug, and Cosmetic Act (FDCA)  
24 establishes scientifically-set safe food tolerance levels for herbicide residues in food, and forbids  
25 misbranding food products with any false or misleading label.

26 3. EPA has repeatedly concluded under FIFRA that use of glyphosate in accordance

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27 <sup>1</sup> This Amended Complaint uses the term “herbicide” for clarity because glyphosate is an  
28 herbicide, but under federal law, herbicides, insecticides, rodenticides, and pesticides are all  
referred to under the definitional term “pesticide.” 7 U.S.C. § 136(u).

1 with federal label instructions does not present any unreasonable adverse effects on human health  
2 or the environment, and specifically that glyphosate *is not a carcinogen*. See *infra* ¶¶ 37, 38, 46.  
3 Likewise, California itself has *twice* examined glyphosate in its own reviews—in 1997 and in  
4 2007—and on both occasions concluded that glyphosate is “unlikely to pose a cancer hazard to  
5 humans.” *Infra* ¶ 43. The same is true for every other regulatory body worldwide that has  
6 evaluated glyphosate, including regulatory agencies in Europe, Canada, New Zealand, Australia,  
7 Japan, and South Korea, and the International Programme on Chemical Safety (the recognized  
8 authoritative body on these issues in the World Health Organization), as well as the Joint Food and  
9 Agricultural Organization and World Health Organization Meeting on Pesticide Residues (JMPR).  
10 See *infra* ¶¶ 36-43, 47-50 (listing more than a dozen regulatory and scientific agencies that have  
11 reviewed glyphosate and found that it is not likely to be a carcinogen).

12 4. Under California’s Proposition 65, businesses must warn Californians about the  
13 presence of chemicals that are “known to the state to cause cancer.” Despite the overwhelming  
14 scientific consensus that glyphosate is *not* a carcinogen, OEHHA issued a determination on July  
15 7, 2017 that glyphosate has been added to the list of chemicals “known to the state to cause cancer”  
16 that are subject to Proposition 65. OEHHA did not issue its Proposition 65 determination because  
17 OEHHA or any other California agency conducted a scientific or regulatory review and reached  
18 the conclusion that glyphosate was actually carcinogenic—in fact, OEHHA had previously  
19 reached the opposite conclusion. Instead, under what California refers to as its “Labor Code”  
20 listing mechanism under Proposition 65, certain determinations by a foreign non-governmental  
21 entity known as the International Agency for Research on Cancer (IARC) *automatically* require a  
22 Proposition 65 cancer listing no matter whether the IARC determination is supported by the  
23 consensus of worldwide scientific bodies or not. Indeed, a listing under the Labor Code  
24 mechanism is automatically required *even if IARC is absolutely alone in its views*, as is the case  
25 here where IARC’s conclusion is opposed by every global regulatory body that has examined the  
26 issue, including OEHHA itself.

27 5. Under this framework, California has designated glyphosate as a chemical “known”  
28 to cause cancer based solely on IARC’s conclusion that glyphosate is “*probably* carcinogenic.”

1 Not only does the scientific community firmly disagree with IARC’s substantive conclusion,  
2 IARC’s internal process for reviewing glyphosate has also been roundly criticized. *See infra*  
3 ¶¶ 51-54 (identifying multiple published reports that IARC purposely declined to share critical  
4 data with its glyphosate review panel).

5 6. California has no administrative or regulatory mechanism for reviewing the validity  
6 of an IARC conclusion before a Proposition 65 listing is made. Once IARC designates a substance  
7 as carcinogenic, OEHHA takes the position that Proposition 65 listing is then a “ministerial” task.  
8 That listing then triggers Proposition 65’s compelled speech requirements in the form of consumer  
9 “warnings.” And any relevant product without an appropriate warning—including consumer  
10 products, foods, and crops—will be subject to Proposition 65’s enforcement mechanisms,  
11 including private strike suits filed by so-called bounty hunters, who are entitled to retain one-fourth  
12 of the \$2,500 per violation per day in civil penalties that are potentially available under California  
13 Health & Safety Code section 25249.12(d). Such suits are already threatened regarding numerous  
14 food products that allegedly contain trace residues of glyphosate.

15 7. California’s listing of glyphosate as a carcinogen and the attendant warning  
16 requirement violate the First Amendment of the U.S. Constitution by compelling Plaintiffs and  
17 other entities to make false, misleading, and highly controversial statements about their products.  
18 The listing and warning requirement also conflict with, and are preempted by, the FDCA, and  
19 violate the Due Process Clause of the Fourteenth Amendment.

20 8. In addition to being illegal, California’s treatment of glyphosate under Proposition  
21 65 threatens significant disruption to multiple of the nation’s supply chains, including the nation’s  
22 food production and processing supply chains. As set forth herein, the listing threatens to change  
23 the way of life for many farmers who currently rely on glyphosate herbicides as a mainstay of their  
24 farming practices. It is no surprise, then, that Plaintiffs—a national coalition of farming interests,  
25 food producers, glyphosate manufacturers, and others—have coalesced to bring this suit. Had  
26 California conducted any sort of reasonable scientific review before taking the action challenged  
27 here, it would have determined—as more than a dozen other global regulatory and scientific  
28 agencies already have—that the cancer listing at issue is false and inappropriate. This suit,

1 accordingly, should be unnecessary. In addition to being enjoined, Defendants should be assessed  
2 Plaintiffs' fees and costs under 42 U.S.C. § 1988(b).

3 **PARTIES**

4 9. Plaintiff National Association of Wheat Growers is a federation of twenty state  
5 associations whose members are wheat farmers. The mission of the National Association of Wheat  
6 Growers is to mobilize wheat farmers to advocate for beneficial policies, cultivate productive  
7 relationships with partners and the public, and champion opportunities through research,  
8 innovation, education, and stewardship. Members of the National Association of Wheat  
9 Growers—many of whom sell their wheat into California or sell their wheat to milling facilities  
10 that in turn sell into California—depend on glyphosate as a critical tool in their farming practices.

11 10. Plaintiff National Corn Growers Association is a 501(c)(5) trade association  
12 chartered in Iowa, with 40,000 members across the country. Most of its members are farmers who  
13 use glyphosate as an important means for weed control. Members of the National Corn Growers  
14 Association deliver their crops to elevators, feed mills, corn processing plants, and ethanol plants,  
15 a portion of which makes its way to California.

16 11. Plaintiff United States Durum Growers Association is a national organization  
17 comprised of around 175 durum wheat producers, most of which are located in North Dakota and  
18 Montana, and other businesses that use and rely on durum. Durum is a specialty wheat product  
19 that is used primarily for the production of semolina, the primary ingredient in pasta. The purpose  
20 of the United States Durum Growers Association is to promote and address the issues that affect  
21 producers of durum. Many members of the United States Durum Growers Association sell their  
22 durum for incorporation into products that are sold into California. Glyphosate is an integral tool  
23 for the sustainable harvesting of durum and the preservation of soil.

24 12. Plaintiff Western Plant Health Association is a California based association that  
25 represents the interests of fertilizer and crop protection manufacturers, distributors, and  
26 agricultural retailers (including those that sell and use glyphosate) in California, Arizona, and  
27 Hawaii. The Western Plant Health Association's mission is to promote agronomically sound and  
28 environmentally safe use and handling of plant health products and services for the production of

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