

1 Philip J. Perry (CA Bar No. 148696)
Richard P. Bress
2 Andrew D. Prins
3 Alexandra P. Shechtel (CA Bar No. 294639)
LATHAM & WATKINS LLP
4 555 Eleventh Street NW, Suite 1000
Washington, DC 20004
5 Tel: (202) 637-2200
philip.perry@lw.com
6 *(additional counsel on signature page)*

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.¹ 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

27
28 ¹ This Amended Complaint uses the term “herbicide” for clarity because glyphosate is an 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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.