

1 Philip J. Perry (CA Bar No. 148696)  
Richard P. Bress (admitted *pro hac vice*)  
2 Andrew D. Prins (admitted *pro hac vice*)  
Alexandra P. Shechtel (CA Bar No. 294639)  
3 LATHAM & WATKINS LLP  
555 Eleventh Street NW, Suite 1000  
4 Washington, DC 20004  
Tel: (202) 637-2200  
5 philip.perry@lw.com  
(additional counsel on signature page)  
6  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

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

20 Plaintiffs,

21 v.

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

26 Defendants.  
27  
28

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

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**

[Declarations of Joel Brinkmeyer, David Heering, Blake Hurst, Blake Inman, Mark Jackson, Greg Kessel, Mark Martinson, Ray McCarty, Dan Mehan, Chris Novak, Renee Pinel, Andrew Prins, Gordon Stoner, Dan Wogsland, and Kathy Zander filed and [Proposed] Order lodged concurrently herewith]

Hearing: Feb. 20, 2018  
Time: 1:30 p.m.  
Ctrm: 5

The Honorable William B. Shubb

Case Filed: Nov. 15, 2017

1           **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2           **PLEASE TAKE NOTICE** that on Tuesday, February 20, 2018, at  
3 1:30 p.m., or as soon thereafter as counsel may be heard in  
4 Courtroom 5 of the above titled Court, located in the United  
5 States Courthouse at 501 I Street, Sacramento, CA 95814, before  
6 the Honorable William B. Shubb, Plaintiffs will and hereby do  
7 move the Court to enter a preliminary injunction, enjoining  
8 Defendants and their officers, employees, or agents, and all  
9 those in privity with those entities or individuals, from  
10 listing, under § 25249.8 of California's Safe Drinking Water and  
11 Toxic Enforcement Act of 1986 (more commonly known as  
12 Proposition 65), glyphosate as a chemical known to the State of  
13 California to cause cancer, or enforcing or threatening to  
14 enforce Proposition 65 or any of its implementing regulations  
15 with regard to glyphosate, including the requirement that any  
16 "person in the course of doing business" provide a "clear and  
17 reasonable warning" before "expos[ing] any individual to"  
18 glyphosate. Cal. Health & Safety Code. § 25249.6.

19           This Motion is made on the grounds stated in the Memorandum  
20 of Points and Authorities filed herewith. The listing of the  
21 herbicide glyphosate as a "chemical known to the State to cause  
22 cancer" under Proposition 65 and its attendant warning  
23 requirement coerce Plaintiffs to provide a cancer "warning" with  
24 which they vehemently disagree and that is contrary to the  
25 nearly unanimous worldwide scientific consensus that glyphosate  
26 does *not* pose any risk of cancer. As explained in detail in  
27 Plaintiffs' Memorandum, the warning requirement violates the  
28 First Amendment to the United States Constitution's protections

1 against compelled speech. Plaintiffs urgently need this Court's  
2 help to prevent California from infringing those freedoms, the  
3 loss of which, "for even minimal periods of time, unquestionably  
4 constitutes irreparable injury." *Valle Del Sol Inc. v. Whiting*,  
5 709 F.3d 808, 828 (9th Cir. 2013). If the warning is allowed to  
6 go into effect, Plaintiffs also face reputational, competitive,  
7 and economic harms for which they cannot be compensated.  
8 Plaintiffs need relief sufficiently in advance of California's  
9 upcoming deadline on July 7, 2018 for implementing the  
10 Proposition 65 warning to mitigate or avoid these irreparable  
11 harms, which have already begun and span across U.S.  
12 agriculture.

13 In support of its Motion, Plaintiffs rely on the  
14 accompanying Memorandum of Points and Authorities; the  
15 Declarations of Joel Brinkmeyer, David Heering, Blake Hurst,  
16 Blake Inman, Mark Jackson, Greg Kessel, Mark Martinson, Ray  
17 McCarty, Dan Mehan, Chris Novak, Renee Pinel, Andrew Prins,  
18 Gordon Stoner, Dan Wogsland, and Kathy Zander, and the Exhibits  
19 attached thereto; such oral argument that may be properly  
20 presented at or before the time of the hearing; and upon any  
21 other matter the Court deems proper.

22 Plaintiffs anticipate that hearing of this Motion will  
23 require 1 hour. Plaintiffs do not anticipate calling live  
24 witnesses.

25  
26  
27  
28

1 Dated: December 6, 2017

2 Respectfully submitted,

3  
4 Catherine L. Hanaway (admitted *pro hac vice*)  
5 Matthew T. Schelp (admitted *pro hac vice*)  
6 Christopher C. Miles (CA Bar No. 268774)  
7 Natalie R. Holden (admitted *pro hac vice*)  
8 HUSCH BLACKWELL  
9 The Plaza in Clayton  
10 190 Carondelet Plaza Suite 600  
11 St Louis, Missouri 63105  
12 Tel. (314) 480-1903  
13 catherine.hanaway@huschblackwell.com  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

/s/ Philip J. Perry

Philip J. Perry (CA Bar No. 148696)  
Richard P. Bress (admitted *pro hac vice*)  
Andrew D. Prins (admitted *pro hac vice*)  
Alexandra P. Shechtel (CA Bar No. 294639)  
LATHAM & WATKINS LLP  
555 Eleventh Street NW  
Suite 1000  
Washington, DC 20004  
Tel: (202) 637-2200  
philip.perry@lw.com

*Attorneys for All Plaintiffs except Plaintiffs Western Plant Health Association and CropLife America*

Ryan S. Baasch (admitted *pro hac vice*)  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022-4834  
Tel: (212) 906-1368

Ann M. Grottveit (CA Bar No. 256349)  
KAHN, SOARES & CONWAY, LLP  
1415 L Street, Suite 400  
Sacramento, CA 95814  
Tel: (916) 448-3826  
agrottveit@kscsacramento.com

*Attorneys for Plaintiffs Monsanto Company and CropLife America*

*Attorney for Plaintiff Western Plant Health Association*

Trenton H. Norris (CA Bar No. 164781)  
ARNOLD & PORTER KAYE SCHOLER LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
Tel: (415) 471-3303

*Attorney for Plaintiff Monsanto Company*