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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATIONAL ASSOCIATION OF WHEAT
GROWERS; NATIONAL CORN GROWERS
ASSOCIATION; UNITED STATES
DURUM GROWERS ASSOCIATION;
WESTERN PLANT HEALTH
ASSOCIATION; MISSOURI FARM
BUREAU; IOWA SOYBEAN
ASSOCIATION; SOUTH DAKOTA AGRI-
BUSINESS ASSOCIATION; NORTH
DAKOTA GRAIN GROWERS
ASSOCIATION; MISSOURI CHAMBER
OF COMMERCE AND INDUSTRY;
MONSANTO COMPANY; ASSOCIATED
INDUSTRIES OF MISSOURI;
AGRIBUSINESS ASSOCIATION OF
IOWA; CROPLIFE AMERICA; AND
AGRICULTURAL RETAILERS
ASSOCIATION,

Plaintiffs,

v.

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

Defendants.

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.
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1 Dated: December 6, 2017

2 Respectfully submitted,

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