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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF SACRAMENTO

13 PHYSICIANS COMMITTEE FOR  
14 RESPONSIBLE MEDICINE, a 501(c)(3) non-  
15 profit corporation; DONALD D. FORRESTER,  
16 M.D., an individual and taxpayer; ANNA  
17 HERBY, R.D., C.D.E., an individual and  
18 taxpayer;

19 Petitioners / Plaintiffs,

20 v.

21 GAVIN NEWSOM, Governor of the State of  
22 California; JARED BLUMENFELD, Secretary  
23 for the California Environmental Protection  
24 Agency; LAUREN ZEISE, PH.D., Director of  
25 the Office of Environmental Health Hazard  
26 Assessment; CANCER IDENTIFICATION  
27 COMMITTEE; and THOMAS MACK, M.D.,  
28 M.P.H, Chair of the Carcinogen Identification  
Committee;

Respondents / Defendants.

CASE NO.: \_\_\_\_\_

**VERIFIED PETITION FOR WRIT OF  
MANDATE; AND COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

BY FAX

I. INTRODUCTION

This lawsuit seeks to compel the Governor to include processed meat on the State's list of chemicals known to cause cancer, as required by the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), due to the well-established association between eating processed

1 meat (e.g., hot dogs, sausages, luncheon meat, bacon, and turkey bacon) and developing colorectal  
2 cancer. A 2015 report by the World Health Organization announced that its International Agency  
3 for Research on Cancer (“IARC”) determined that processed meat is “carcinogenic to humans.”  
4 Consuming 50 grams of processed meat—about the size of one hot dog—per day increases the risk  
5 for colorectal cancer, pancreatic cancer, death from heart disease, and diabetes by 18, 19, 24, and  
6 32 percent, respectively.<sup>1</sup> This lawsuit also seeks an injunction against the unlawful agency  
7 practice of refusing to include certain known carcinogens on the Proposition 65 list after an  
8 authoritative body has deemed them such, based on the agency’s rationale of waiting for more  
9 information.

## 10 II. PARTIES TO THIS ACTION

- 11 1. Petitioner and Plaintiff Physicians Committee for Responsible Medicine (“Physicians  
12 Committee”) is a non-profit corporation headquartered at 5100 Wisconsin Ave., NW, Suite 400,  
13 Washington, DC 20016. Established in 1985, the Physicians Committee advocates for  
14 preventive medicine, supports higher ethical standards in research, and conducts clinical  
15 research, some of which is federally funded. The Physicians Committee’s membership includes  
16 approximately 170,000 health care professionals and concerned individuals, more than 25,000  
17 of whom reside in California.
- 18 2. The Physicians Committee has a long history of protecting the public from carcinogens and  
19 assisting individuals with cancer in leading healthier lives.
  - 20 a. In 1991, the Physicians Committee conducted a cancer prevention survey that showed that  
21 most members of the public were not aware of basic steps in cancer prevention.
  - 22 b. In 1993, the Physicians Committee created the Cancer Prevention and Survival Fund, which  
23 operated a hotline to assist those with cancer, distributed printed educational material to  
24 health care providers, and produced and distributed public service announcements regarding  
25 cancer prevention. The Physicians Committee also initiated its *Cancer Prevention and*  
26 *Survival Series* publication line.

27  
28 <sup>1</sup> Wolk A. Potential health hazards of eating red meat. *J Intern Med.* 2017;281:106–122.

- 1 c. In 1999, the Physicians Committee created The Cancer Project, which performs educational  
2 outreach on nutrition and cancer, supports human clinical research, studies the effects of diet  
3 changes in humans, and reviews the literature on factors affecting cancer risk.
- 4 d. In 2001, the Physicians Committee launched Food for Life, a community-based nutrition  
5 education program that teaches laypersons how certain foods and nutrients work to promote  
6 health and fight disease. Each Food for Life class features a nutrition lecture and live  
7 cooking demonstration in a group setting. The program offers a cancer prevention  
8 curriculum and operates in 44 states, including California, where it has its largest  
9 representation.
- 10 3. Many of the Physicians Committee's members joined the organization to obtain adequate  
11 representation of their interest in a safe and healthful diet free from risks. The Physicians  
12 Committee has a broad interest in ensuring that the health of its members and their children are  
13 preserved by Respondents' proper application of state laws intended to protect public health.  
14 The Physicians Committee brings this action on behalf of its members and to safeguard its own  
15 organizational interest in protecting public health. The interests of the Physicians Committee  
16 and its members are harmed by Respondents' failure to comply with the mandates of California  
17 law. The Physicians Committee has more than 25,000 California members, many of whom are  
18 directly affected by Respondents' violation of Proposition 65.
- 19 4. Plaintiff and Petitioner Donald D. Forrester, M.D., is a Physicians Committee member who has  
20 lived in California since 1975. Dr. Forrester's three children and six grandchildren also live in  
21 California. Dr. Forrester is a California real property taxpayer in the County of Sacramento.  
22 Prior to filing this writ and complaint, Dr. Forrester paid real property taxes to the County of  
23 Sacramento and taxes to the State of California. Dr. Forrester is a family medicine physician, a  
24 Fellow with the American College of Physician Executives, and a graduate of Intermountain  
25 Healthcare's Advanced Training Program in quality improvement. Dr. Forrester has 45 years of  
26 clinical experience and is an expert in, and speaks publicly about, the prevention and  
27 improvement of chronic diseases through lifestyle interventions. In these roles, Dr. Forrester is  
28 impacted by Respondents' failure to disclose to California residents that processed meat is a

1 cancer-causing substance. Dr. Forrester is a homeowner and resident of California who has an  
2 interest in having California's public health laws duly executed and the obligations on public  
3 administrators enforced.

4 5. Plaintiff and Petitioner Anna Herby, R.D., C.D.E, is a Physicians Committee member who  
5 resides in Mendocino County. Prior to filing this writ and complaint, Ms. Herby paid taxes to  
6 the State of California. Ms. Herby works with patients to help prevent and reverse chronic  
7 diseases through nutrition. As a registered dietitian, Ms. Herby is impacted by Respondents'  
8 failure to disclose to California residents that processed meat is a cancer-causing substance.  
9 Ms. Herby is a resident of California who has an interest in having California public health laws  
10 duly executed and the obligations on public administrators enforced.

11 6. Defendant and Respondent Gavin Newsom is the Governor of the State of California and is  
12 sued in his official capacity as Governor. Proposition 65 imposes a mandatory duty on the  
13 Governor to list chemicals that are known to cause cancer and to update that list at least  
14 annually. (Cal. Health & Safety Code § 25249.8 subd. (a).)

15 7. Defendant and Respondent Jared Blumenfeld is the Secretary for the California Environmental  
16 Protection Agency ("Cal. EPA") and is sued in his official capacity as Secretary. Secretary  
17 Blumenfeld has oversight authority over the Office of Environmental Health Hazard  
18 Assessment ("OEHHA"), pursuant to California Government Code sections 12850–12850.6.

19 8. Defendant and Respondent Lauren Zeise, Ph.D., is the Director of the OEHHA and is sued in  
20 her official capacity as Director. The OEHHA is the lead agency responsible for assisting the  
21 Governor in implementing the duties imposed by Proposition 65, and the OEHHA oversees the  
22 Carcinogen Identification Committee ("CIC") and establishes the agenda of the CIC.

23 9. Defendant and Respondent CIC constitutes the "state's qualified experts" under Proposition 65  
24 and is responsible for advising the Governor on chemicals that are required to be listed as  
25 causing cancer. (Cal. Health & Safety Code § 25249.8 subd. (b); 22 Cal. Code of Regulations  
26 ["C.C.R."] §§ 12102 subd (t), 12302 subd. (a), 12305 subd. (a).) The Governor is ultimately  
27 responsible for appointing the members of the CIC. (22 C.C.R. § 12302 subd. (b)(3).)

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1 10. Defendant and Respondent Thomas Mack, M.D., M.P.H., is the Chairperson of the CIC and is  
2 sued in his official capacity as Chairperson. As Chairperson, Dr. Mack has ultimate responsible  
3 for the action and inaction of the CIC.

### 4 III. JURISDICTION AND VENUE

5 11. This Court has jurisdiction under Code of Civil Procedure sections 525, 526a, 1060, 1062,  
6 1085, and California common law. Petitioners are beneficially interested in the construction  
7 and enforcement of California laws requiring Respondents to publish a complete list of cancer-  
8 causing chemicals and the resultant protection of public health enabled by such publication.  
9 Petitioners have no other adequate remedy at law to enforce Respondents' duties.

10 12. Venue is proper in Sacramento County Superior Court because Petitioner Forrester resides in  
11 Sacramento County and because Respondents' failure to comply with their mandatory duties to  
12 list a known cancer-causing chemical causes Petitioner Forrester injuries in Sacramento County  
13 because the failure to list said chemical impacts business practices in Sacramento County.  
14 (Code Civ. Proc., § 393 subd. (b).)

### 15 IV. STATUTORY FRAMEWORK

#### 16 *State of California Proposition 65 Listing Process*

17 13. In 1986, California voters overwhelmingly enacted Proposition 65, the Safe Drinking Water and  
18 Toxic Enforcement Act. Proposition 65 requires the Governor to publish a list of chemicals  
19 known to cause cancer and to update the list at least annually. (Cal. Health & Safety Code §  
20 25249.8.)

21 14. "The purposes of Proposition 65 are stated in the preamble to the statute . . ." (*People ex rel.*  
22 *Lungren v. Sup. Ct.* (1996) 14 Cal.4th 294, 306.) The preamble states,

23  
24 The people of California find that hazardous chemicals pose a serious  
25 potential threat to their health and well-being, that state government  
26 agencies have failed to provide them with adequate protection, and that  
these failures have been serious enough to lead to investigations by  
federal agencies of the administration of California's toxic protection  
programs. The people therefore declare their rights:

- 27 (a) To protect themselves and the water they drink against  
28 chemicals that cause cancer, birth defects, or other  
reproductive harm.

1 (b) To be informed about exposures to chemicals that cause  
2 cancer, birth defects, or other reproductive harm.

3 (*Calif. Chamber of Commerce v. Brown* (2011) 196 Cal.App.4th 233, 258, quoting ballot  
4 language and citing Ballot Pamp., Gen. Elec. (Nov. 4, 1986) preamble, p. 53.)

5 15. Courts have held that Proposition 65 was a voter measure intended to remedy a failure of  
6 California's State agencies to act appropriately to protect the public from carcinogens, and since  
7 Proposition 65 is a "remedial statute" it "should be broadly construed to accomplish its  
8 protective purposes." (*Calif. Chamber of Commerce, supra*, 196 Cal.App.4th at pp. 259–260  
9 (citations omitted).)

10 16. The OEHHA assists the Governor in his duty to list harmful chemicals and thereby protect the  
11 public by imposing restrictions on business practices.

12 17. Proposition 65 creates four independent mechanisms by which chemicals are added to the list of  
13 those that cause cancer: (1) the CIC independently determines that a chemical causes cancer; (2)  
14 designated outside "authoritative bodies" have determined that a chemical causes cancer; (3)  
15 government agencies have formally required a chemical to be labeled or identified as causing  
16 cancer; and (4) the chemical is identified as "causing cancer" in certain Labor Code provisions.  
17 (Cal. Health & Safety Code § 25249.8 subd. (b).)

18 18. The Proposition 65 list "*shall include at a minimum* those substances identified by reference  
19 in Labor Code Section 6382(b)(1) . . . ." (Cal. Health & Safety Code § 25249.8, subd. (a),  
20 italics added.) Labor Code section 6382 subdivision (b)(1) refers to all "[s]ubstances listed as  
21 human or animal carcinogens by the International Agency for Research on Cancer."

22 19. It is indisputable that the published list required by Proposition 65 *must contain* "chemicals  
23 identified by the World Health Organization's International Agency for Research on Cancer  
24 (IARC) as causing cancer in humans or laboratory animals," as admitted by Respondent  
25 OEHHA at <https://oehha.ca.gov/proposition-65/how-chemicals-are-added-proposition-65-list>.

26 20. California Courts have held—from the early days of Proposition 65—that identification of a  
27 chemical as cancer-causing under Labor Code section 6382 subdivision (b)(1) (i.e., chemicals  
28 identified by the IARC) leaves the Governor with *no discretion*; those chemicals identified by

1 the IARC as cancer-causing *must be listed*. (*AFL-CIO v. Deukmejian* (1989) 212 Cal.App.3d  
2 425, 432 (“*Deukmejian*”).)

3 21. In *Deukmejian*, the Governor argued that he had discretion to choose “which chemicals  
4 identified by reference to Labor Code section 6382, subdivisions (b)(1) and (d), should be listed  
5 without further scientific review and which should be referred to the panel of qualified experts.”  
6 (*Calif. Chamber of Commerce, supra*, 196 Cal.App.4th at p. 243, discussing the holding of  
7 *Deukmejian*.) The Court in *Deukmejian* rejected the Governor’s argument for discretionary  
8 listing, holding that “the provisions of section 25249.8, subdivision (a), admit of no such  
9 discretion. The section uses words classically defined as imposing a mandatory duty: ‘Such  
10 list shall include at a minimum those substances identified by reference in Labor Code section  
11 6382(b)(1) and those substances identified additionally by reference in Labor Code section  
12 6382(d).’” (*Deukmejian, supra*, 212 Cal.App.3d at p. 440 (emphasis in original).) “Defendant  
13 had no discretion to exclude from the initial list known carcinogenic and reproductive toxins  
14 referred to in Labor Code section 6382.” (*Id.*)

15 22. This decision was reiterated in the *California Chamber of Commerce* holding, in which the  
16 court stated unambiguously that cancer determinations by the IARC are always included: “the  
17 Proposition 65 list of chemicals ‘known to the state to cause cancer or reproductive  
18 toxicity’ *always* includes ‘at a minimum’ those substances identified by reference to Labor  
19 Code section 6382, subdivisions (b)(1) . . . .” (*Calif. Chamber of Commerce, supra*, 196  
20 Cal.App.4th at p. 259.)

21 ***California Code of Civil Procedure Section 526a and Common Law Taxpayer Standing***

22 23. California Code of Civil Procedure section 526a (“Section 526a”) provides, “An action to  
23 obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to,  
24 the estate, funds, or other property of a county, town, city or city and county of the state, may be  
25 maintained against any officer thereof, or any agent, or other person, acting in its behalf, either  
26 by a citizen resident therein . . . who is assessed for and is liable to pay, or, within one year  
27 before the commencement of the action, has paid, a tax therein.”

28

1 24. The primary purpose of Section 526a is to allow a large body of the citizenry to challenge  
2 governmental action that would otherwise go unchallenged in the courts because of the standing  
3 requirement. California courts have consistently construed Section 526a liberally to achieve  
4 this remedial purpose. California case law holds that Section 526a includes actions against  
5 State agents, and California common law also allows such actions. (*Serrano v. Priest* (1971) 5  
6 Cal.3d 584, 618; see also *Los Altos Property Owners Ass'n v. Hutcheon* (1977) 69 Cal.App.3d  
7 22, 26–30.)

8 ***Writ of Mandate: Beneficial Interest & Public Interest Standing***

9 25. Any person who is beneficially interested in the action or inaction of the government may seek  
10 a writ of mandate. (Cal. Code of Civ. Proc. § 1086.)

11 26. Notwithstanding the aforementioned taxpayer standing and beneficial interest standing  
12 principles, any person who seeks the enforcement of a public duty need not demonstrate that  
13 she or he has any legal or special interest in the result.

14 V. STATEMENT OF FACTS

15 27. In 2015, the IARC, through the World Health Organization, released a report summarizing the  
16 work of 22 scientists who had assessed epidemiological studies investigating the association of  
17 cancer with consumption of processed meat in many countries, from several continents, and  
18 with diverse ethnicities and diets. Based on this comprehensive assessment, the IARC  
19 “classified consumption of processed meat as ‘carcinogenic to humans’ (Group 1) on the basis  
20 of sufficient evidence for colorectal cancer.”<sup>2</sup>

21 28. Group 1 is the IARC’s highest evidence classification, applying to substances identified as  
22 “Carcinogenic to humans.” The IARC’s lower evidence classifications include “Probably  
23 carcinogenic to humans” and “Possibly carcinogenic to humans” and can be seen at  
24 <https://monographs.iarc.fr/agents-classified-by-the-iarc/>.

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26  
27 <sup>2</sup> Bouvard V, Loomis D, Guyton KZ, et al. Carcinogenicity of consumption of red and processed  
28 meat. *Lancet Oncology*. 2015;16:1599–1600.



1 29. Although the IARC listed processed meat as a human carcinogen nearly five years ago, the  
2 OEHHA still refuses to include processed meat on the Proposition 65 list.

3 30. In June 2017, the OEHHA stated that it had not taken action in response to the IARC's  
4 classification because the OEHHA was "waiting for the Monograph to be published" and would  
5 "continue to monitor the IARC website and publications and will take appropriate action when  
6 the Monograph is published and we have reviewed it." The OEHHA previously made this  
7 "waiting for the monograph" argument to another court in a Proposition 65 lawsuit, and that  
8 Court found the OEHHA's reasoning "unpersuasive." The case is *Sierra Club, et al. v.*  
9 *Schwarzenegger*, RG07356881 (Alameda Sup. Ct., order dated July 9, 2010) ("*Sierra Club*").<sup>3</sup>

10 31. In *Sierra Club*, the court characterized the issue as follows: "Plaintiffs argue that Defendants  
11 violate a mandatory statutory duty by refusing to place chemicals on the Proposition 65 list after  
12 they have been added to the IARC list (available on the IARC website), but before the  
13 monograph addressing these chemicals is published." (Court Order, Exh. A, at p. 2.) In *Sierra*  
14 *Club*, the defendants argued to the court that they have a practice of waiting for the monographs  
15 to be issued, and that it is helpful to wait for the monographs because the monographs  
16 sometimes have a different description of the substances than the website listing. (*Id.* at pp. 3–  
17 4.) The court held as follows:

18 The Court finds this argument to be unpersuasive. The Court agrees  
19 with Plaintiffs that Defendants' practice cannot be reconciled with the  
20 clear language of Labor Code §6382, subdivision (b)(1), which is  
21 phrased in terms of 'substances listed . . . by [IARC],' with no  
22 reference to monographs. Under *AFL-CIO v. Deukmejian* (1989) 212  
23 Cal.App.3d 425, OEHHA has a mandatory duty to list any chemical  
24 for which IARC has concluded there is 'sufficient' evidence of cancer  
25 in humans or animals. This includes those agents added to the IARC  
26 list, whether or not the final monograph has been published.

27 (*Id.* at pp. 4–5.)

28 32. In August 2017, the Physicians Committee reminded the OEHHA that by waiting for the IARC  
monograph's publication, the OEHHA was violating California law.

<sup>3</sup> *Sierra Club* was consolidated and, on appeal, became *Calif. Chamber of Commerce v. Brown* (2011) 196 Cal.App.4th 233.

1 33. The OEHHA responded by stating, “We believe that the best course of action is for us to review  
2 the IARC Monograph on processed meats once it is available.”

3 34. In March 2018, the OEHHA’s Chief Counsel met with livestock and meat lobbyists regarding  
4 the OEHHA’s duty to include processed meat on the Proposition 65 list and admitted that the  
5 *Sierra Club* case was binding on the OEHHA. The OEHHA Chief Counsel sent a group email  
6 to the lobbyists and others who attended the meeting, stating:

7  
8 As a follow-up to our meetings today, attached is the trial court order  
9 I mentioned. While it doesn’t directly apply in the situation we  
10 discussed today where a chemical has not been adequately defined in  
the IARC website listing, the order was not appealed and is still  
binding on OEHHA.

11 The trial court order (from *Sierra Club*) emailed by the Chief Counsel is attached as Exhibit A to  
12 this Petition.

13 35. In March 2018, the IARC published its monograph detailing the scientific justification for  
14 classifying processed meat as carcinogenic to humans.

15 36. In March 2019, the OEHHA responded to the Physicians Committee’s renewed request for  
16 action by stating, “We expect in approximately the next two months that we will complete our  
17 review and determine the applicability of the IARC document to Proposition 65.”

18 37. In June 2019, the OEHHA stated that it still had not finished reviewing the IARC monograph,  
19 despite having had the monograph for well over a year.

20 38. In August 2019, the OEHHA responded to the Physicians Committee’s renewed request for  
21 action by stating that it was “evaluating our options for next steps. . . . At this point, we think it  
22 is in everyone’s best interest for us to finish the process and announce our next step. We  
23 believe this will be in a matter of weeks.”

24 39. In September 2019, the Physicians Committee met by telephone with the OEHHA, whose  
25 officials said that the agency would make a determination regarding processed meat by January  
26 2020.

1 40. As of the filing of this actions, the OEHHA still has not included processed meat on the  
2 Proposition 65 list despite the IARC's determination that it was a human carcinogen in 2015,  
3 and despite having the IARC monograph since March 2018.

4 V. CAUSE OF ACTION

5 **Writ of Mandate (Traditional and/or Statutory)**

6 41. Petitioners re-allege and incorporate by reference all of the foregoing allegations as if fully set  
7 forth herein.

8 42. Petitioners are concerned members of the public, taxpayers, and a public interest organization  
9 dedicated to improving human health.

10 43. Respondents are public agencies and agents with a clear and present ministerial duty to include  
11 processed meat on the Proposition 65 list.

12 44. Respondents' failure to list processed meat as a known cancer-causing substance directly  
13 impacts Petitioners and their communities.

14 45. The IARC listed processed meat as a human carcinogen, and the clear language of California  
15 statutes and case law directs Respondents to *immediately* include processed meat on the  
16 Proposition 65 list.

17 46. Respondents have improperly delayed the listing of processed meat for years, continually  
18 putting off Petitioners with promises of a determination within weeks or months; at this point,  
19 Respondents have waited approximately five years since the IARC classified processed meat as  
20 a carcinogen, and two years since the IARC released the monograph. This is the exact agency  
21 "foot dragging" that was the basis for the enactment of Proposition 65, which found that "state  
22 government agencies ha[d] failed to provide [the public] with adequate protection, and that  
23 these failures have been serious enough to lead to investigations by federal agencies of the  
24 administration of California's toxic protection programs."

25 47. Respondents have an unlawful practice of delaying the public's request for the listing of  
26 chemicals known to cause cancer. Respondents' unlawful practice is to claim that they need to  
27 wait for the IARC monograph before listing the identified chemical, a delay tactic that a state  
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court rejected nearly a decade ago in a court order that even the Chief Counsel of the OEHHA concedes is binding on Respondents.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully pray that this Court issue an Order for:

- a. Injunctive and Declaratory relief stating that Respondents must promptly include processed meat on the Proposition 65 list;
- b. Declaratory relief stating that Respondents may not refuse to include a substance on the Proposition 65 list once the IARC has listed as a human carcinogen on the ground that Respondents are waiting for the IARC to publish a corresponding monograph;
- c. Petitioner to be awarded costs of this action and attorney's fees; and
- d. Other relief as this Court considers just and proper.

Respectfully submitted,

Dated: March 11, 2020

**EVANS & PAGE**

By: 

Corey Page, Esq.  
Attorney for Petitioners/Plaintiffs

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**VERIFICATION**

I, MARK KENNEDY, am the vice president of legal affairs for petitioner/plaintiff Physicians Committee for Responsible Medicine, one of the petitioners herein, and I am authorized to make this verification on its behalf. I hereby certify that I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and the contents thereof are true and accurate to the best of my knowledge and belief.

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

Dated: March 11, 2020



Mark Kennedy