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; 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

DECLARATION OF ANDREW D. PRINS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF ANDREW D. PRINS

I, Andrew D. Prins, declare as follows in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned action:

1. I am an associate with Latham & Watkins LLP and an attorney of record for Plaintiff Monsanto Company in the above-captioned matter. I have personal knowledge of the matters set forth herein. If called and sworn as a witness, I could and would competently testify thereto.

2. As of the date of this filing, I am aware that California's Office of Environmental Health Hazard Assessment (OEHHA) has proposed, but not yet established, a "No Significant Risk Level" safe harbor for glyphosate exposures under Proposition 65. *See* OEHHA, Proposition 65, Chemicals Considered or Listed Under Proposition 65, Glyphosate, https://oehha.ca.gov/proposition-65/chemicals/glyphosate.

3. The California Attorney General maintains a database of Proposition 65 "notices of alleged violation" filed by private litigants under Proposition 65. These notices are precursors to litigation under the statute, which requires that plaintiffs not initiate suit until at least "60 days" after presenting the notice of alleged violation. Cal. Health & Safety Code 25249.7(d). The database can be accessed at: https://oag.ca.gov/prop65/60-day-notice-search (the AG Prop 65 Database).

4. I have reviewed the AG Prop 65 Database and have determined that many Plaintiffs submit notices to initiate litigation within days of the Proposition 65 warning's effective

date. For example, two days after the warning requirement became effective for "coconut oil diethanolamine," the Center for Environmental Health filed notices of alleged violation to twenty-two companies alleging a failure to warn. Similarly, two days after the warning requirement became effective for diisononyl phthalate, several different entities served notices of alleged violation against thirteen different companies alleging a failure to warn.

5. Attached hereto as Exhibit A is a true and correct copy of USDA, EIB No. 124, Pesticide Use in U.S. Agriculture: 21 Selected Crops, 1960-2008 (May 2014).

6. Attached hereto as Exhibit B is a true and correct copy of Michael Livingston et al., *Economic Returns to Herbicide Resistance Management in the Short and Long Run: The Role of Neighbor Effects*, Weed Sci., 2016 Special Issue.

7. Attached hereto as Exhibit C is a true and correct copy of Stephen O. Duke & Stephen B. Powles, Glyphosate: A Once-in-a-Century Herbicide, 64 Pest Mgmt. Sci. 319 (2008).

8. Attached hereto as Exhibit D is a true and correct copy of U.S. EPA, EPA/630/P-03/001F, Guidelines for Carcinogen Risk Assessment (Mar. 2005).

9. Attached hereto as Exhibit E is a true and correct copy of U.S. EPA, EPA-738-F-93-011, Registration Eligibility Decision (R.E.D.) Facts: Glyphosate (September 1993).

10. Attached hereto as Exhibit F is a true and correct copy of Eric Sfiligoj, *EPA Plans Response to IARC Glyphosate Finding…But Not Just Yet*, *CropLife*, Apr. 6, 2015, http://www.croplife.com/editorial/epa-plans-response-to-iarc-

glyphosate-finding-but-not-just-yet/.

11. Attached hereto as Exhibit G is a true and correct copy of OEHHA, Public Health Goal for Glyphosate in Drinking Water (Dec. 1997).

12. Attached hereto as Exhibit H is a true and correct copy of OEHHA, Public Health Goal for Glyphosate (June 2007).

13. Attached hereto as Exhibit I is a true and correct copy of Health & Consumer Prot. Directorate-Gen., European Commission, Review Report for the Active Substance Glyphosate, 6511/VI/99-final (Jan. 21, 2002).

14. Attached hereto as Exhibit J is a true and correct copy of WHO, WHO/SDE/WSH/03.04/97, Glyphosate and AMPA in Drinking-water: Background Document for Development of WHO Guidelines for Drinking-water Quality (rev. June 2005).

15. Attached hereto as Exhibit K is a true and correct copy of Int'l Programme on Chemical Safety, Environmental Health Criteria 159: Glyphosate (1994).

16. Attached hereto as Exhibit L is a true and correct copy of Eur. Comm'n, Renewal Assessment Report: Glyphosate, Volume 1 (rev. Mar. 31, 2015).

17. Attached hereto as Exhibit M is a true and correct copy of Akshat Rathi & Gideon Lichfield, *Why it Sometimes Seems Like Everything Causes Cancer*, Quartz, June 23, 2016, https://qz.com/708925/why-it-sometimes-seems-like-everything-causes-cancer/.

18. Attached hereto as Exhibit N is a true and correct copy of Int'l Agency for Research on Cancer (IARC), WHO, Some Organophosphate Insecticides and Herbicides, IARC Monographs

Volume 112 (2017).

19. Attached hereto as Exhibit O is a true and correct copy of *Agriculture Biotechnology: A Look at Federal Regulation and Stakeholder Perspectives: Before the S. Comm. on Agric., Nutrition, & Forestry*, 114 Cong. 261 (2015).

20. Attached hereto as Exhibit P is a true and correct copy of U.S. EPA, Glyphosate Issue Paper: Evaluation of Carcinogenic Potential (Sept. 12, 2016).

21. Attached hereto as Exhibit Q is a true and correct copy of Fed. Inst. for Risk Assessment (BfR), BfR Communication No. 007/2015, Does Glyphosate Cause Cancer? (Mar. 23, 2015).

22. Attached hereto as Exhibit R is a true and correct copy of Gabriella Andreotti et al., *Glyphosate Use and Cancer Incidence in the Agricultural Health Study*, 110 JNCI: Journal of the National Cancer Institute 5 (Nov. 9, 2017).

23. Attached hereto as Exhibit S is a true and correct copy of Kate Kelland, *The WHO's Cancer Agency Left in the Dark Over Glyphosate Evidence*, Reuters, June 14, 2017.

24. Attached hereto as Exhibit T is a true and correct copy of Ben Webster, *Weedkiller Scientist was Paid £120,000 by Cancer Lawyers*, The Times, Oct. 18, 2017, https://www.thetimes.co.uk/article/weedkiller-scientist-was-paid-120-000-by-cancer-lawyers-v0qggbrk6.

25. Attached hereto as Exhibit U is a true and correct copy of Kiera Butler, *A Scientist Didn't Disclose Important Data – and Let Everyone Believe a Popular Weedkiller Causes Cancer*, Mother Jones, June 15, 2017, http://www.motherjones.com/environment/2017/06/monsanto-roundup-

glyphosate-cancer-who/.

26. Attached hereto as Exhibit V is a true and correct copy of Letter from Joan E. Denton, Director, OEHHA, to Dr. Paul Kleihues, Director, IARC, 2 (Feb. 7, 2002).

27. Attached hereto as Exhibit W is a true and correct copy of Press Release, Governor Brown Proposes to Reform Proposition 65 (May 7, 2013).

28. Attached hereto as Exhibit X is a true and correct copy of Anthony T. Caso, *Bounty Hunters and the Public Interest—A Study of California Proposition 65*, Engage, Mar. 2012.

29. Attached hereto as Exhibit Y is a true and correct copy of Leeton Lee, *Nailed by a Bounty Hunter—A California Prop 65 Violation Can Cost Your Company*, PPB Magazine, Jan. 24, 2013, https://web.archive.org/web/20130616164651/http://pubs.ppai.org/2013/01/nailed-by-a-bounty-hunter-a-california-prop-65-violation-can-cost-your-company/.

30. Attached hereto as Exhibit Z is a true and correct copy of OEHHA, Glyphosate Listed Effective July 7, 2017, as Known to the State of California to Cause Cancer (June 26, 2017), https://oehha.ca.gov/proposition-65/crnr/glyphosate-listed-effective-july-7-2017-known-state-california-cause-cancer.

31. Attached hereto as Exhibit AA is a true and correct copy of OEHHA, Notice of Intent to List: Tetrachlorvinphos, Parathion, Malathion, Glyphosate (Sept. 4, 2015), https://oehha.ca.gov/proposition-65/crnr/notice-intent-list-tetrachlorvinphos-parathion-malathion-glyphosate.

32. Attached hereto as Exhibit BB is a true and correct copy of Joseph Perrone, Ph.D., *Advocacy Groups Have Ulterior*

Motive in Wanting Weedkiller Banned, The Modesto Bee, June 21, 2017, http://www.modbee.com/opinion/state-issues/article157416894.html.

33. Attached hereto as Exhibit CC is a true and correct copy of Eur. Food Safety Auth. (EFSA), Peer Review of the Pesticide Risk Assessment of the Active Substance Glyphosate, DOI 10.2903/j.efsa.2015.4302 (Nov. 12, 2015).

34. Attached hereto as Exhibit DD is a true and correct copy of Food & Agric. Org. of the U.N. (FAO) and WHO, Joint FAO/WHO Meeting on Pesticide Residues: Summary Report (May 16, 2016).

35. Attached hereto as Exhibit EE is a true and correct copy of Pest Mgmt. Regulatory Agency, Health Canada, RVD2017-01, Re-evaluation Decision: Glyphosate (Apr. 28, 2017).

36. Attached hereto as Exhibit FF is a true and correct copy of Eur. Chems. Agency (ECHA) Press Release ECHA/PR/17/06, Glyphosate Not Classified as a Carcinogen by ECHA (Mar. 15, 2017).

37. Attached hereto as Exhibit GG is a true and correct copy of Austl. Pesticides & Veterinary Meds. Auth., Regulatory Position: Consideration of the Evidence for a Formal Reconsideration of Glyphosate (September 2016).

38. Attached hereto as Exhibit HH is a true and correct copy of Envtl. Prot. Auth., Gov't of N.Z., Review of the Evidence Relating to Glyphosate and Carcinogenicity (August 2016).

39. Attached hereto as Exhibit II is a true and correct copy of Food Safety Commission of Japan, Risk Assessment Report: Pesticides, Glyphosate Summary (September 2016).

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

Executed on December 6, 2017.

Washington, DC

/s/ Andrew D. Prins

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(Original signature retained by attorney Andrew D. Prins)