

1 XAVIER BECERRA  
 Attorney General of California  
 2 SUSAN S. FIERING, State Bar No. 121621  
 Supervising Deputy Attorney General  
 3 DENNIS RAGEN, State Bar No. 106468  
 HEATHER C. LESLIE, State Bar No. 305095  
 4 LAURA J. ZUCKERMAN, State Bar No. 161896  
 Deputy Attorneys General  
 5 1515 Clay Street, 20th Floor  
 P.O. Box 70550  
 6 Oakland, CA 94612-0550  
 Telephone: (510) 879-1299  
 7 Fax: (510) 622-2270  
 E-mail: Laura.Zuckerman@doj.ca.gov  
 8 *Attorneys for Defendants Dr. Lauren Zeise,*  
*Director, Office of Environmental Health Hazard*  
 9 *Assessment, and Xavier Becerra, Attorney General*  
*of the State of California*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 **NATIONAL ASSOCIATION OF WHEAT**  
 16 **GROWERS ET AL.,**  
 17 Plaintiffs,  
 18 v.  
 19 **LAUREN ZEISE, IN HER OFFICIAL**  
 20 **CAPACITY AS DIRECTOR OF THE**  
 21 **OFFICE OF ENVIRONMENTAL**  
 22 **HEALTH HAZARD ASSESSMENT; AND**  
 23 **XAVIER BECERRA, IN HIS OFFICIAL**  
 24 **CAPACITY AS ATTORNEY GENERAL**  
 25 **OF THE STATE OF CALIFORNIA,**  
 26 Defendants.

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

**DECLARATION OF SUSAN S. FIERING  
 IN SUPPORT OF DEFENDANTS’  
 OPPOSITION TO AMICUS CURIAE  
 BRIEF OF THE CHAMBER OF  
 COMMERCE OF THE UNITED STATES  
 OF AMERICA AND THE CALIFORNIA  
 CHAMBER OF COMMERCE**

Date: February 20, 2017  
 Time: 1:30 p.m.  
 Courtroom: 5  
 Judge: The Honorable William B.  
 Shubb  
 Trial Date: None set.  
 Action Filed: November 15, 2017

1 I, Susan S. Fiering, do hereby declare:

2 1. I am an attorney admitted to practice before this Court and am currently counsel of  
3 record for Dr. Lauren Zeise, in her official capacity as Director of the Office of Environmental  
4 Health Hazard Assessment (“OEHHA”), and Xavier Becerra, in his official capacity as Attorney  
5 General of the State of California. I have personal knowledge of the matters set forth herein. If  
6 called and sworn as a witness, I could and would competently testify thereto.

7 2. I was the lead attorney of record for the People of the State of California in *People v.*  
8 *Tri-Union Seafoods, LLC, et al.*, Superior Court, County of San Francisco, Consolidated Case  
9 Nos.: CGC-01-402975; CGC-04-432394 (“*Tri-Union*”), a case brought under Health and Safety  
10 Code § 25249.5 et seq. (“Proposition 65”) for failure to warn consumers of exposure to mercury  
11 from canned tuna. Mercury is listed under Proposition 65 as a reproductive toxicant.

12 3. The “safe harbor” warning for reproductive toxicants that is currently in effect and  
13 that existed at the time of the trial in the *Tri-Union* matter is “WARNING: This product contains  
14 a chemical known to the State of California to cause birth defects or other reproductive harm.”  
15 Cal. Code Regs., tit. 27, § 25603.2(a)(2).

16 4. Attached hereto as Exhibits A and B are true and correct copies of two warnings  
17 developed by experts for the People and submitted to the court in connection with the *Tri-Union*  
18 litigation. Exhibit A is a warning intended to be provided through a shelf sign posted in the retail  
19 store in connection with the sale of canned tuna. Exhibit B is a warning intended to be included  
20 on the label of the canned tuna products.

21 5. The warning signs were attached to the Declaration of Edward G. Weil, Supervising  
22 Deputy Attorney General. In his declaration, Mr. Weil stated that the “California Attorney  
23 General takes the position that the [Exhibit A warning], if posted at locations where canned tuna  
24 is sold, provides a clear an [sic] reasonable warning about the mercury and mercury compounds  
25 in canned tuna, pursuant to Proposition 65. It also is the position of the Attorney General that the  
26 [Exhibit B warning label] . . . complies with the statute’s warning requirement if it is placed on  
27 the can of tuna.”  
28

1           6.     The trial court ruled that no warning was required for canned tuna and therefore did  
2 not address the issue of the adequacy of the warnings.

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

4           Dated: January 26, 2018

/s/ Susan S. Fiering  
SUSAN S. FIERING

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

www.seafood.gov 1-888-SAFEFOOD  
SAFE & SOUND TUNA ADVISORY

# CANNED TUNA ADVISORY

Pregnant and nursing women, women who may become pregnant, and young children should eat a limited amount of canned tuna and other fish.

**RECOMMENDED LIMITS\*:** Women and children in these groups can eat up to 12 ounces of fish and seafood per week, including

- 2 meals (12 oz) per week of canned light tuna, or
- 1 meal (6 oz) per week of albacore white tuna.

**BENEFITS:** Canned tuna and other fish provide high-quality protein and other essential nutrients. A diet containing a variety of fish and shellfish can contribute to heart health and proper growth and development. Women, men, and children can all benefit from eating fish.

**RISKS:** Canned tuna and many other fish contain trace amounts of mercury and related compounds. Mercury can build up in the body and harm the developing nervous system of an unborn baby or young child. Albacore white tuna has more mercury than light tuna.

\*This is based on recommendations from the U.S. Food and Drug Administration ("FDA") (for more information see the FDA website at [www.cfsan.fda.gov/seafood1.html](http://www.cfsan.fda.gov/seafood1.html) or call 1-888-SAFEFOOD.)

Canned Tuna Warning 20

365a

# EXHIBIT B

365b

**Warning: Canned Tuna contains mercury and related compounds.**

Mercury can harm a developing baby or young child. Eating fish has many benefits, but pregnant women and women of child-bearing age should eat no more than two meals (12 oz) of canned light tuna per week.

Griffin Tuna Warning 20