IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

JOHN BARNES,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Civil Action No. 21-A-444

MONSANTO'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT[1]

The evidence adduced at trial established, without question, that Monsanto's Roundup product complied with all applicable regulations governing its sale at all times. To this day, Roundup is sold legally in every state in the country. The evidence also established that, at all times, the Roundup label was approved by the Environmental Protection Agency ("EPA"), and that the EPA' scientific determination is, and always has been, that Roundup does not cause cancer.

[1] Defendant Monsanto Company renews and incorporates herein its Motions for directed verdict at the close of Plaintiff's evidence and the close of all evidence and now moves for a judgment notwithstanding the verdict on all of Plaintiff John Barnes' claims pursuant to O.C.G.A. § 9-11-50(b). Although the deadline for post-trial motions is ordinarily 30 days following entry of the judgement on the verdict, *see* O.C.G.A. § 9-11-50(b), O.C.G.A. § 5-5-40(a), Monsanto files this Motion for Judgment Notwithstanding the Verdict within 10 days of the entry of judgment on the verdict to trigger the automatic supersedeas as set forth in O.C.G.A. § 9-11-62. Monsanto has appropriately focused the Court's attention in this motion on the failures of proof by Plaintiff that, as a matter of law, require entry of judgment notwithstanding the verdict. Monsanto will be filing additional post-trial motions within the 30-day deadline. O.C.G.A. § 9-11-50(b), O.C.G.A. § 5-5-40(a). There are numerous other legal arguments regarding errors with evidentiary rulings, the jury charge, and other aspects of trial which are more appropriate for the new trial and/or remittitur motions which Defendant will timely file. *Id.* Defendant reserves all such arguments for these motions as is appropriate under the law.

EPA's position—that Roundup does not cause cancer—is consistent with the consensus view of regulatory and scientific bodies who have assessed the safety of Roundup. In the face of this overwhelming evidence, Plaintiff would have this Court sustain judgment in his favor—*of more than $2 billion*—based on Plaintiff's proof of a single purchase of Roundup in 2009.

This verdict cannot stand. After the Court's Order granting in part Monsanto's Motion for Directed Verdict at the Close of Plaintiff's Evidence and its Orders from the bench on March 19, 2025, all that remained was a single negligence claim[2] and Plaintiff's claim for punitive damages. Neither of these claims was supported by the evidence at trial. To support a verdict for negligence, a Plaintiff must establish, among other things, that a defendant's conduct was unreasonable. There was no such showing here: Plaintiff did not establish how a reasonable chemical company would have acted under the circumstances, and did not establish how merely selling a product to Plaintiff that complied (and still complies) with all regulatory requirements was unreasonable. Judgment notwithstanding the verdict is required for several reasons—each of which is sufficient, on its own, to grant the instant motion.

First, judgment for Monsanto is required on Plaintiff's negligence claim because Plaintiff adduced no evidence of the applicable standard of care or its breach. In fact, the evidence adduced at trial established only that Monsanto acted reasonably in light of the generally accepted state of scientific knowledge and guidance from EPA. Plaintiff's negligence claim also fails under every possible theory of products liability advanced in his operative complaint. The design-defect theory

[2] While Plaintiff's Second Amended Complaint includes a claim entitled "Product Liability," this is not a standalone claim, and following the Court's ruling on Monsanto's motion for directed verdict at the close of Plaintiff's evidence, it was subsumed entirely into a single negligence claim under theories of negligent design defect, negligent manufacturing defect, and negligent failure to warn. *Compare* Second Am. Compl. ¶¶ 231–246 (Count 5) with *id.* ¶¶ 262–270 (Count 8) (advancing the exact same claims).

fails as a matter of law because Plaintiff established no defect in the *design* of Roundup. Plaintiff's theory is that glyphosate, based on its inherent chemical properties, causes NHL. Plaintiff did not offer a way that glyphosate could be altered to remove its alleged NHL-causing properties or a differing design that would have been safer. Under the Restatement (Second) of Torts, § 402A, *comment k*,[3] when a manufacturer cannot "design out" the risk of harm the Plaintiff alleges, the manufacturer *as a matter of law* cannot be held liable under a design-defect theory. And Plaintiff's negligent manufacturing defect claim fails because Plaintiff did not pursue that claim or adduce any evidence showing that the Roundup products Plaintiff used differed in any way from how they were designed. Likewise, Plaintiff's negligent failure to warn claim fails because this Court has already ruled that Plaintiff offered no evidence that he would have heeded a cancer warning on a Roundup bottle if it had been there. Separately, a failure to warn claim is preempted by federal law. Under Georgia law, a plaintiff's claims that a defendant manufacturer "inadequately or inaccurately labelled the" product at issue are preempted by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). *See Banks v. ICI Americas, Inc.*, 264 Ga. 732, 737-38 (1994).

Second, whether or not the Court sustains the judgment as to Plaintiff's negligence claim (it should not), Plaintiff's claim for punitive damages fails for independent reasons, and the Court should enter judgment for Monsanto as to punitive damages. Under Georgia law, compliance with federal regulations creates a strong presumption against awarding punitive damages and requires a high burden of proof. Plaintiff neither overcame that presumption nor met that burden. The evidence at trial established—at most—a scientific debate about glyphosate's carcinogenicity, and Plaintiff failed to adduce evidence that Monsanto's actions meet Georgia's high bar to proceed to

[3] Georgia has adopted comment k to the Restatement (Second) of Torts, § 402A in the context of design defect theories. *Bryant v. Hoffmann-La Roche, Inc.*, 262 Ga. App. 401, 406 (2003).

the punitive damages phase of this trial. Moreover, Georgia law does not recognize awards of punitive damages based on mere negligence alone. The jury's verdict and award of punitive damages is unsupported by the evidence and controlling law. Finally, Monsanto has previously paid punitive damages for the exact conduct at issue in this case, and ordering Monsanto to do so again here would violate Due Process.

Third, Plaintiff's negligence claim fails because he did not adduce sufficient evidence of causation that could support the jury's verdict. Plaintiff's only causation expert, Dr. Durrani, failed to establish general causation—*i.e.*, that Roundup can cause NHL in humans—to a reasonable degree of medical certainty. Likewise, Dr. Durrani failed to establish specific causation—*i.e.*, that Roundup caused Mr. Barnes' marginal zone lymphoma ("MZL"). Dr. Durrani offered opinions lacking any assessment of the concepts of Mr. Barnes' absorbed dose or actual exposure, which the jury must have in order to determine causation. Dr. Durrani focused instead on the total number of days Plaintiff claimed he was "exposed" to (*i.e.*, used) Roundup, without accounting for any actual exposure or absorbed dose he may (or may not) have experienced. And Dr. Durrani's threadbare "differential diagnosis," in which he purported to rule *in* all possible causes of Plaintiff's NHL and then rule *out* possible causes other than Roundup, was insufficient. Dr. Durrani failed at each step of his purported differential diagnosis, as he had no sufficient basis to "rule in" Roundup use as the cause of Mr. Barnes' NHL, and his "ruling out" process was perfunctory and results-driven, providing the jury with nothing on which to base a specific causation finding beyond mere speculation. Dr. Durrani's testimony focused on Roundup exposure among entire human populations, or in animals, or in laboratory studies.[4] Dr. Durrani was the only

[4] As the Court is aware, Mr. Barnes had not purchased Roundup but had instead purchased Spectracide within the seven years prior to this trial.

witness who testified that Roundup exposure caused Plaintiff's MZL. But his testimony failed to meet the reliability requirements of O.C.G.A § 24-7-702 and did not reliably rule in Roundup as a cause of Plaintiff's MZL or rule out other likely alternative causes of Plaintiff's MZL. Without causation, Plaintiff's entire case fails.

Fourth, Plaintiff's state-law negligence claim is preempted under *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001). *Buckman* holds that "the relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law." 531 U.S. at 347. The way Plaintiff tried this case landed it in the heartland of *Buckman* preemption. And Plaintiff does not avoid preemption just because he never utters aloud the words "fraud on the EPA." Even a cursory look at the evidence and arguments adduced at the trial shows that Plaintiff's entire theory is that Monsanto hid information from the EPA. That type of presentation of evidence is expressly preempted by *Buckman* and its progeny.

These failings render the jury's verdict and award of damages against Monsanto entirely unsupported by and inconsistent with the law and the evidence. The Court should thus enter judgment in Monsanto's favor notwithstanding the verdict.

LEGAL STANDARD

Under O.C.G.A. § 9-11-50(b), if a jury returns a verdict, "the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed." A judgment notwithstanding the verdict is proper when "there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions therefrom, shall demand a particular verdict." *Stanfield v. Kime Plus, Inc.*, 210 Ga. App. 316, 317 (1993) (internal quotations and citations omitted). "Where a verdict for a

party is demanded as a matter of law and the jury has returned an adverse verdict, the grant of a judgment n.o.v. is not error." *Id*. (internal quotations and citations omitted). Indeed, if the evidence demands verdict for the Defendant, it is error to deny the Defendant's motion for judgment notwithstanding the verdict. *Wright Contracting Co. v. Davis,* 93 Ga. App. 810, 816 (1956).

ARGUMENT

I. Judgment for Monsanto is required on Plaintiff's negligence claim (the only substantive claim submitted to the jury).

A. Plaintiff did not meet his burden of adducing sufficient evidence to establish the standard-of-care element of any negligence claim.

Regardless of the underlying theory, under Georgia law, the elements of a products liability claim for negligence are "(1) a duty, or obligation, recognized by law, requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risk; (2) a failure on his part to conform to the standard required; (3) a reasonable close causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the interests of the other." *Marquis Towers, Inc. v. Highland Group*, 265 Ga. App. 343, 346 (2004). To prevail on his negligence claim—whether based on theory of negligent design defect, negligent manufacturing defect, or negligent failure to warn—Plaintiff was required to establish that Monsanto failed "to exercise reasonable care" in designing Roundup. *Maynard v. Snapchat, Inc*., 313 Ga. 533, 536 (2022). In a negligence action, the manufacturer's duty of care is "the traditional one of reasonable care, and the manufacturer need not provide . . . a product incapable of producing injury." *Ream Tool Co. v. Newton*, 209 Ga. App. 226, 228 (1993); *see also Maynard* at 537 (assessing "whether the manufacturer's conduct was reasonable" for purposes of a products liability negligence claim).

As an initial matter, judgment is proper on Plaintiff's negligence claim because—as explained below—Plaintiff failed to adduce sufficient evidence that could allow any reasonable jury to decide the issue of proximate causation in his favor. But Plaintiff's negligence claim fails for the additional reason that he presented no evidence whatsoever concerning the standard of care for the design of a pesticide or warning that would be allegedly applicable to a reasonable chemical company. Plaintiff did not put on any evidence that a reasonable manufacturer under the same or similar circumstances—especially where it is in full compliance with an entire regulatory regime—would have warned of any purported dangers in Roundup (in conflict with the regulatory requirements) or manufactured or designed Roundup differently. In fact, the very notion that a reasonable herbicide manufacturer would not be informed and guided by the world-wide scientific consensus—including the regulatory entity (EPA) which governs the labeling and sale of the product in the United States—in determining the safety of its product, is itself unreasonable. And that is doubly so where Plaintiff's theory is that a reasonable herbicide manufacturer should be expected to eschew that broad consensus and instead follow the view of one foreign entity that declared in 2015 (IARC) that Roundup might be carcinogenic, which was then rejected by almost every regulatory and scientific body, including the EPA.

Rather, the evidence established that Monsanto reviewed the vast scientific data and EPA's continued approval of the product for more than 40 years and concluded that Roundup is a safe product as manufactured and designed, and that the product did not require a cancer warning.

- Ex. A, 3/6/25 Trial Tr. at 1718:16–1719:23 (Dr. Reeves testifying that he has never seen evidence that Roundup's active ingredients, or formulated Roundup is carcinogenic);
- *id*. at 1720:2–1721:18 (Dr. Reeves explaining the body of science Monsanto relied on in determining to sell Roundup to the public);
- *id*. at 1742:23–1743:5 (Dr. Reeves testifying that since IARC's findings in 2015 the science shows that there is no relationship between the use of glyphosate and NHL);

- Ex. B, 3/10/25 Trial Tr. at 2443 (Dr. Farmer testifying that Monsanto "follow[s] what the EPA tells us to put on the label. And glyphosate, according to the EPA, is not a carcinogen for humans.");

- Ex. C, 3/11/25 Trial Tr. at 2695:15–2696:18, 2700:24–2704:3 (Dr. Farmer testifying that Monsanto conducted more than 80 genotoxicity studies on the Roundup formulation, and that none show genotoxicity in Roundup);

- Ex. I, 3/17/25 Trial Tr. at 3833:5–8, 3834:5–12 (Dr. Welch-DuJardin testifying that EPA "has repeatedly concluded that glyphosate is not a carcinogen" and that "EPA relies on the world's most extensive scientific database in reviewing and approving glyphosate").

Plaintiff simply did not adduce any evidence that any pesticide manufacturer in similar circumstances would do what Plaintiff asks and shirk its regulatory obligations to offer a cancer warning based on unaccepted scientific opinions.

Monsanto operates within the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), the federal regulatory framework that controls what can and cannot be put on a pesticide warning label, and what claims can and cannot be made when selling or distributing a pesticide. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991–92 (1984); *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 372 (3d Cir. 2024). With respect to warnings about the supposed dangers of pesticides, a federal regulation provides that "any modification in the composition, labeling, or packaging of a registered product must be submitted with an application for amended registration." *See* 40 C.F.R. § 152.44(a); *see also In re Fosamax (Alendronate Sodium) Prod. Liability Litig.*, 118 F.4th 322, 356 n.26 (3d Cir. 2024) ("The regulations promulgated under that statute [FIFRA] provide that, barring certain exceptions, pesticide producers cannot change a product's labels unless the Environmental Protection Agency approves the change in advance."); *see also* Ex. I, 3/17/25 Trial Tr. at 3879:8–12 (Dr. Welch DuJardin testifying that "in the end, EPA is the only one that can decide what goes on th[e] label"); id. at 3882:22–25 (Dr. Welch DuJardin testifying that registrants cannot add cancer warnings without EPA's approval). A federal statute provides

that "it shall be unlawful for any person in any State to distribute or sell to any person . . . any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration." *See* 7 U.S.C. § 136j(a)(1)(B).

The evidence presented at trial showed that EPA has registered and approved Roundup for sale, without a cancer warning, since the 1970s. *See* Ex. D, 3/3/25 at 709:4–7; Ex. A, 3/6/25 1708:21–1711:9 (Dr. Reeves testifying that EPA has indicated that it would be false and misleading for the label to include a cancer warning); *id*. at 1723:14–1724:1; Ex. B, 3/10/25 Trial Tr. at 2443:6–11 ("We follow what the EPA tells us to put to the label. And glyphosate, according to the EPA, is not a carcinogen for humans."). Because Monsanto cannot change Roundup's label unilaterally, *see* 40 C.F.R. § 152.44(a); *In re Fosamax*, *supra*, or say that Roundup causes cancer when that claim would "substantially differ" from the label, *see* 7 U.S.C. § 136j(a)(1)(B), the negligence question for the jury is under what circumstances a reasonable pesticide manufacturer subject to FIFRA would have been required to ask EPA for a label change. Plaintiff, however, gave the jury no evidence with which to answer that question. He did not present any expert testimony, or even any fact testimony, informing the jury under what circumstances or based on what strength of evidence a reasonable pesticide manufacturer would seek a label change from EPA. The answer to that question "involves specialized matters beyond the ken of ordinary laypersons," and so Plaintiff needed expert evidence on the issue. *See Johnson v. Terminal Inv. Corp*., 2025 WL 545888, *7 (Ga. Ct. App. Feb. 19, 2025) (holding that mechanic's failure to comply with standard of care required expert testimony). Instead, the evidence showed that, had Monsanto advocated for a cancer warning on the Roundup label, EPA would have rejected that effort. Ex. I, 3/17/25 at 3982:21–3983:11 (Dr Welch-DuJardin testifying that EPA never directed

that there be a cancer warning on the Roundup label because "[t]he data shows that it is not a carcinogen. So EPA is not going to allow a cancer warning on the label . . . if the data doesn't show it"); *id*. at 3983:14–3984:6 (Dr Welch-DuJardin testifying that in her experience EPA would not have allowed a cancer wanting on Roundup if Monsanto advocated for one, because "everything on the label has to be based on the data, and EPA would consider that false and misleading because the data doesn't show it.").

Further, courts widely hold that, to satisfy its duty to consumers, a company need not bow to "a good faith scientific debate" and withdraw its product from the market at the first sign of disagreement. *Schueneman v. Arena Pharms., Inc.*, 840 F.3d 698, 709 (9th Cir. 2016). "[W]here there is a genuine disagreement on a particular question and where the weight of scientific knowledge supports the judgment reached by a manufacturer who is marketing a socially desirable product, the law cannot permit a jury merely to substitute its own judgment that another product, preferred by plaintiff's experts, would be better. Were it do so, the law itself would be inherently unreasonable, presenting manufacturers with a choice between Scylla and Charybdis." *Murphy ex rel. Murphy v. Playtex Fam. Prods. Corp.*, 176 F. Supp. 2d 473, 491 (D. Md. 2001), aff'd sub nom. *Murphy v. Playtex Fam. Prods. Corp*., 69 F. App'x 140 (4th Cir. 2003). That is precisely what happened in this trial.

Because the Plaintiff provided no evidence of anything more than a good faith scientific debate, the jury did not have sufficient evidence to determine what "standard of care" would apply to these circumstances, or whether Monsanto failed to conform to that standard of conduct. Judgment in Monsanto's favor on Plaintiff's negligence claim is thus required.

B. Judgment for Monsanto is required on Plaintiff's negligence-based product liability claim.

In addition to Plaintiff's failure to introduce evidence of the standard of care for a reasonable manufacturer under the same or similar circumstances, judgment for Monsanto is warranted on Plaintiff's negligence claim because it fails on the merits for the same fundamental reasons as his dismissed strict liability claims. However Plaintiff's remaining negligence claim is comprised—whether under a theory of negligent design, negligent manufacture, or negligent failure to warn—it fails as a matter of law because Plaintiff failed to introduce evidence of the required elements of such negligence claims.

1. A negligence claim under a design defect theory fails because Plaintiff offered no evidence of a reasonable alternative design.

The law recognizes that "[m]any products cannot be made completely safe for use and some cannot be made safe at all." *Ctr. Chem. Co. v. Parzini*, 234 Ga. 868, 870 (1975). Therefore, "the 'heart' of a design defect case is the reasonableness of selecting from among alternative product designs and adopting the safest feasible one." *Jones v. NordicTrack, Inc.*, 274 Ga. 115, 118 (2001). To demonstrate a reasonable alternative design, a plaintiff must show "evidence of what safety features were feasible at the time a product was designed," considering the "state of the art at the time the product was manufactured" and balancing a laundry list of other factors, including the usefulness of the product, the likelihood and avoidability of danger, and the ability to eliminate the danger without impairing the usefulness of the product or making it too expensive. *See Banks v. ICI Americas, Inc.*, 264 Ga. 732, 736 n.4, 5 & 6 (1994).

Plaintiff offered no evidence of a reasonable alternative design, as required by Georgia law. *See id.* at 736 n.4 (quoting Restatement (Third) of Torts: Product Liability, § 101, comment g, to say that "[l]iability for defective design attaches *only* when the plaintiff proves that the seller . . .

failed to adopt a reasonable, safer design that would have reduced the foreseeable risks of harm presented by the product." (emphasis in opinion)); *see Lyons v. Boehringer Ingelheim Pharms., Inc.*, 491 F. Supp. 3d 1350, 1368 (N.D. Ga. 2020) ("the Plaintiff has not put forward a 'safer alternative design' to Pradaxa . . . . As Plaintiff has failed to support allegations of some design defect in Pradaxa with any evidence, and these claims are dismissed."); *Kersey v. Dolgencorp LLC*, 2011 WL 1670886 (N.D. Ga. May 3, 2011) (granting motion for summary judgment where plaintiff showed no alternative design). Plaintiff offered zero evidence of a reasonable alternative design, thus, his negligence claim—if based on a theory of design defect—fails as a matter of law, and the Court should enter judgment for Monsanto.

Even if Plaintiff had cleared that hurdle, his design defect theory of negligence fails for another reason: Plaintiff failed to present any evidence that a defect in the *design* of Roundup rendered it unreasonably dangerous. To determine whether a particular product is defective in design, Georgia courts apply a risk-utility test that "incorporates the concept of 'reasonableness,' *i.e*., whether the manufacturer acted reasonably in choosing a particular product design, given the probability and seriousness of the risk posed by the design, the usefulness of the product in that condition, and the burden on the manufacturer to take the necessary steps to eliminate the risk." *Banks*, 264 Ga. at 734.[5] Under this balancing test, the risks inherent in a product design are

[5] Although the cases discussing reasonable alternative design pertain to strict liability claims—which are no longer at issue here—the rationale applies equally to Plaintiff's negligence claim, which contains reasonableness as an essential element. *Banks*, 264 Ga. at 735 n.3; *Jones v. Amazing Prods., Inc.*, 231 F. Supp. 2d 1228, 1238 (N.D. Ga. 2002) ("Georgia case law has typically assumed that a strict liability 'design defect' claim" carries the same elements as a negligence claim aimed at the same alleged shortcomings in the product."); *Woods v. A.R.E. Accessories, LLC*, 345 Ga. App. 887, 889-90 (2018) (the distinction between negligence and SL is not significant for a risk-utility analysis and reasonable alternative design is part of the risk-utility analysis).

weighed against the utility or benefit derived from the product. *Id.*; *Wheat v. Sofamor, S.N.C.*, 46 F. Supp. 2d 1351, 1361 (N.D. Ga. 1999) (applying Georgia law) ("In applying the risk-utility test, the trier of fact considers the availability of an alternative safer design, cost trade-offs, tactical market decisions, product development, research/testing demands (technological feasibility), varying corporate management styles, and regulatory restrictions."). "The outcome of the risk-utility test determines whether liability should be imposed even if a defect exists." *Wheat*, 46 F. Supp. 2d at 1361.

Plaintiff's "negligent design" theory at trial was that Roundup is unreasonably dangerous because its active ingredient, glyphosate, causes NHL. But at no point did Plaintiff argue that Roundup (or glyphosate) could be "redesigned" to have the same herbicidal, weed-killing properties as glyphosate or Roundup but not cause NHL. Because Plaintiff never established how glyphosate or any other "defect" (*i.e.*, its alleged carcinogenetic property) could have been and should have been designed out of the product, Plaintiff did not establish a cognizable design-defect claim. *See Banks*, 264 Ga. at 735 ("One factor consistently recognized as integral to the assessment of the utility of a design is the availability of alternative designs, in that the existence and feasibility of a safer and equally efficacious design diminishes the justification for using a challenged design."). Accordingly, because Plaintiff did not present a cognizable claim for design-defect, the Court should enter judgment in Monsanto's favor on Plaintiff's negligence claim.

2. A negligence claim under a manufacturing defect theory fails as a matter of law.

Plaintiff abandoned any manufacturing defect claim he might have had because he presented no argument or evidence at trial to support a manufacturing defect claim. To prevail on a manufacturing defect claim, a plaintiff must present evidence that a product contained "a defect that is measurable against a built-in *objective* standard or norm of proper manufacture." *Banks*,

264 Ga. at 734 n.2. Therefore, in a manufacturing defect case, the "product's defectiveness is determined by measuring the product in question against the benchmark of the manufacturer's designs." *In re Mentor Corp. ObTape Transobturator Sling Prods. Liab. Litig.*, 711 F. Supp. 2d 1348, 1365 (M.D. Ga. 2010).

Plaintiff advanced no argument on this subject nor introduced any evidence of an "objective standard or norm of proper manufacture," *Banks*, 264 Ga. at 734 n.2, and he adduced no evidence at trial that Roundup was not made as designed by Monsanto. As no evidence or argument was presented to the jury and the Plaintiff did not pursue this claim, it cannot support a negligence claim.

3. A negligence claim under a failure to warn theory fails because Plaintiff offered no testimony establishing that he would have heeded a cancer warning and because it is preempted by federal law.

a. Plaintiff would not have heeded a cancer warning.

In its Order granting a directed verdict, this Court held that Plaintiff's strict liability failure to warn claim fails because he did not "provide any evidence that he would have stopped using the product had different warnings been placed on the product." 3/19/25 Order at 4–5. This ruling applies equally to a negligent failure to warn claim. Indeed, to support any failure-to-warn claim, a plaintiff must establish a causal link between his injury and the defendant's failure to warn. *See Daniels v. Bucyrus-Erie Corp.*, 237 Ga. App. 828, 829–30 (1999). Georgia law does not have a so-called heeding presumption, and does not—in the absence of any evidence—presume that, if a warning had been offered, the plaintiff would have *read* it nor that, if he had read it, he would have *heeded* it. *See id.*; *Dozier Crane & Mach., Inc. v. Gibson*, 284 Ga. App. 496, 500 (2007) ("Generally, where there is no evidence that a plaintiff read the allegedly inadequate warning, causation cannot be shown."); *Royal v. Ferrellgas, Inc.*, 254 Ga. App. 696, 705 (2002) (no failure

to warn where injured party did not heed warnings she read); *Porter v. Eli Lilly & Co.*, 291 F. App'x 963, 964 (11th Cir. 2008) (applying Georgia law; plaintiff could not show failure to warn where doctor testified that he would have prescribed drug even in the presence of the warning sought). And that standard does not change under a negligence theory. *Cobb Heating and Air Conditioning Co. v. Hertron Chem. Co.*, 139 Ga. App. 803, 804 (1976). In the absence of such a "heeding presumption," Plaintiff was required to provide testimony both (1) that he read the label and (2) that if the warnings which he faults Monsanto for not providing *had been* included on that label, ***he would have heeded it***. *See, e.g.*, *Jones v. Amazing Products, Inc.*, 231 F. Supp. 2d 1228, 1246–48 (N.D. Ga. 2002).

To this end, Plaintiff's counsel asked Dr. Donna Farmer at length about whether a hypothetical consumer would have used Roundup if the label had warned of a cancer hazard or even whether Plaintiff would have purchased and used it. *See* Ex. E, 3/7/25 Trial Tr. at 1910:12–1913:5 ("You think my client, Mr. Barnes, would buy your product if he knew it gave him Non-Hodgkin's lymphoma? Is that serious?"), 1915:17–1916:23 ("Certainly over the course of your life you have come across people who don't want to use Roundup because they think it causes cancer. You have seen that before, haven't you?"). But Plaintiff was never asked about and did not offer testimony regarding the only point that matters: whether *he himself* (Plaintiff John Barnes) would have ceased to use Roundup if the label warned him that IARC had labeled glyphosate a Category 2A carcinogen. *See Daniels*, 237 Ga. App. at 829–30; *Dozier*, 284 Ga. App. at 500; *Royal*, 254 Ga. App. at 705; *Porter*, 291 F. App'x at 964. This "heed" part of the test is the missing evidence at this trial. In fact, the evidence showed that Plaintiff did not comply with the clear directions on the sprayer he used, which directed him to wear long pants and a long-sleeve shirt. Ex. F, 3/14/25 Trial Tr. at 3582:20–24 ("Practically every time [I would spray Roundup], I would

wear a T-shirt, shorts, ankle socks, and tennis shoes); *id.* at 3620:18–23 (the sprayer Plaintiff used directed "always wear long-sleeved shirts, long pants, goggles, gloves, and durable shoes"); *see also* Ex. G, DX4403 (Ortho Sprayer). That evidence confirms that Plaintiff did not heed the directions on the sprayer label and is circumstantial evidence that he would not have heeded any additional warnings if they were on the Roundup label.

This failure of Plaintiff's evidence necessarily eviscerates Plaintiff's negligence claim (to the extent it is based on failure to warn) just as it did Plaintiff's strict liability failure to warn claim. *See Mann v. Coast Catamaran Corp.*, 254 Ga. 201, 202 (1985) ("claims of negligence . . . are but re-statements of the claims relative to defective design[.]"). It was not established that, in the presence of a cancer warning label, Plaintiff would not have used the product. Under Georgia law, the jury is not permitted to presume or infer that testimony into Plaintiff's case where it does not exist. Thus, Plaintiff's causal chain is missing a crucial link, and the Court should enter judgment for Monsanto on Plaintiff's negligence claim.

b. Plaintiff's failure-to-warn claim is expressly preempted by Georgia and federal law and is contrary to a newly passed Georgia statute.

Plaintiff's negligence claim under a failure-to-warn theory is expressly preempted by FIFRA, which is an independent basis to grant judgment notwithstanding the verdict. To achieve uniformity in pesticide labeling, FIFRA expressly preempts state labeling requirements beyond those required by the Federal Government: a "State shall not impose or continue in effect any requirements for labeling or packaging ***in addition to or different from*** those required under this subchapter." 7 U.S.C. § 136v(b) (FIFRA's "uniformity provision") (emphasis added). Dispelling any ambiguity on this point, on March 14, 2025, Georgia's Legislature passed Senate Bill 144, which will officially codify (upon the Governor's signature) that preemption and "clarify that a

manufacturer cannot be held liable for failing to warn consumers of health risks above those required by the United States Environmental Protection Agency with respect to pesticides." https://www.legis.ga.gov/legislation/70190. Plaintiff's failure-to-warn claim is premised on changes to state labeling requirements, as defined by FIFRA. *Bates v. Dow Agrosciences LLC*, 544 U.S. 431 (2005). Only "parallel requirements" survive preemption: state labeling requirements must be "equivalent to, and fully consistent with, FIFRA's misbranding provisions." *Id.* at 447. And to be clear, this is a recognition of the federal preemptive effect of FIFRA's labeling requirements over state law failure to warn claims under any theory, strict liability or negligence. Plaintiff's failure to warn claims, of any type, fail for this separate reason also.

The Supreme Court of Georgia recognizes this preemption, holding in *Banks* "that the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136-136y, preempts plaintiffs' claim that" a defendant manufacturer "inadequately or inaccurately labelled the" product at issue. 264 Ga. at 737–38. The *Banks* Court cited *Papas v. Upjohn*, where the Eleventh Circuit definitively held that "FIFRA expressly pre-empts state common law actions against manufacturers of EPA-registered pesticides to the extent that such actions are predicated on claims of inadequate labeling or packaging." 985 F.2d 516, 520 (1993). *Banks* is the controlling precedent in Georgia courts and bars Plaintiff's failure-to-warn claim.

Appellate courts of other jurisdictions agree. Specifically, on August 15, 2024, the Third Circuit held that analogous claims brought under Pennsylvania law based on the absence of a cancer warning on Roundup are preempted by FIFRA. *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 379–85 (3d Cir. 2024). Like this case, the plaintiff in *Schaffner* alleged that he was exposed to Roundup while using it as a property owner, that he later developed non-Hodgkin's lymphoma, and that Monsanto was liable under state law for failing to include a cancer warning on Roundup's

label. *See id.* The Third Circuit reversed the judgment that had been entered by the District Court in plaintiff's favor, concluding that "a pesticide's label must conform to its Preapproved Label with respect to precautionary statements," like cancer warnings. *Id.* at 397; *see also* 40 C.F.R. § 152.44(a) (requiring that "[o]nce a pesticide is registered and its proposed label is approved by the EPA," a registrant like Monsanto may not "distribut[e] or [sell] the pesticide with a modified label, unless and until an application for amended registration is submitted and approved."). Because EPA's approved labels did not contain a cancer warning, the Third Circuit held that state law duties to warn "impose[d] requirements that are different from those imposed under FIFRA, and [they were] therefore preempted by FIFRA." *Id.* at 371.

However, as the Third Circuit recognized, its "analysis differs from" that of its "colleagues in other courts." *Id.* at 399. Unlike the Third Circuit, the Ninth and Eleventh Circuits have held that FIFRA does not preempt state-law failure-to-warn claims that seek to hold Monsanto liable for not warning users of the potential carcinogenic effects of glyphosate. According to those courts, FIFRA does not preempt state-law claims so long as the elements of the claim can be said to "parallel" FIFRA's general misbranding prohibition. *See Carson v. Monsanto Co.*, 92 F.4th 980 (11th Cir. 2024); *Hardeman v. Monsanto Co.*, 997 F.3d 941 (9th Cir. 2021).

This Court is bound to follow *Banks* as the law of Georgia, the holding of which is consistent with *Bates*, the plain text of FIFRA, and other appellate courts to have considered the question. *See Schaffner*, 113 F.4th at 371; *Papas*, 985 F.2d at 518–20. In particular, the Court should find that Plaintiff's action is "predicated on claims of inadequate labeling or packaging" that fall within the ambit of FIFRA's express preemption clause. *Banks*, 264 Ga. at 737; *see Schaffner*, 113 F.4th at 371; *Bates*, 544 U.S. at 446.

Moreover, just like the claims in *Banks* and *Schaffner*, Plaintiff's failure to warn theory

imposes warning requirements that are "in addition to or different from" FIFRA's labeling requirements. Since Monsanto introduced Roundup in 1974, "EPA has repeatedly evaluated the health risks posed by glyphosate," *Shaffner*, 113 F.4th at 373, and it has "repeatedly . . . conclud[ed] that it is not likely to be carcinogenic to humans," *Hardeman*, 997 F.3d at 951. Consistent with that conclusion, EPA has repeatedly approved labels for Roundup that do not include a cancer warning. *See* Ex. A, 3/6/25 Trial Tr. at 1709:22–1711:9 (Dr. Reeves testifying that EPA has determined that a cancer warning on Roundup would be "false and misleading" and inappropriate); *id*. at 1723:20–1724:1 (warning labels have to be approved by EPA and Monsanto cannot change the label without EPA approval); Ex. B, 3/10/25 at 2450:14–16 (Dr. Farmer testifying that EPA has determined that a cancer warning on Roundup would be "false and misleading"). And as previously discussed, subsequent changes to the label must be approved by EPA. Thus, a jury verdict, in essence, requiring Monsanto to add a new cancer warning to Roundup's label requires a jury to determine that there was some warning that the manufacturer could have included on the label but failed to. But under EPA's rules, there is no additional warning the manufacturer can add on its own. Thus, under the verdict against Monsanto, state law effectively tells the manufacturer, "add this warning," while federal law tells it "do not." Thus, the Court should follow *Banks* to find that FIFRA expressly preempts Plaintiff's claims that Monsanto was required to include a cancer warning on Roundup when EPA has repeatedly decided such a warning is not warranted. And it should enter judgment for Monsanto on that basis.

II. Judgment for Monsanto is required on Plaintiff's claim for punitive damages.

A. At all times, Monsanto conformed its actions to the consensus scientific view—Plaintiff's evidence shows, at most, a scientific debate about the carcinogenicity of glyphosate and Roundup.

Plaintiff failed to introduce sufficient evidence to support a finding that Monsanto had "evil motive" or "deliberate disregard of the interests of others." *Welch*, 949 F. Supp. at 844 (quotations omitted). Instead, the jury heard evidence that EPA's consistent determinations have been that glyphosate is not likely to cause cancer at human-relevant exposures. *See, e.g.*, Ex. B, 3/10/25 Trial Tr. at 2443:6–11 ("[W]e follow what the EPA tells us to put on the label. And glyphosate, according to the EPA, is not a carcinogen for humans."). Although Plaintiff introduced evidence that IARC assembled in March 2015 to evaluate glyphosate and concluded that glyphosate is a probable human carcinogen, Plaintiff's evidence showed that IARC was the first—and only—international body to do so. *See* Ex. A, 3/6/25 Trial Tr. at 1504:4–1507:4; *but see* Ex. A, 3/6/25 Trial Tr. at 1742:23–1743:5 (Dr. Reeves testifying that since IARC's findings in 2015 the science shows that there is no relationship between the use of glyphosate and NHL); Ex. H, 3/12/25 Trial Tr. at 2858:12–15, 2860:14–2863:24 (Dr. Farmer discussing EPA's ruling on glyphosate released after IARC's 2015 determination in which EPA determined, based on "animal studies, the epidemiology studies, the genotox studies," that "glyphosate is not likely to be carcinogenic to humans").

For decades, the EPA has exhaustively reviewed the science evaluating the carcinogenicity of glyphosate, repeatedly determined that glyphosate does not cause cancer, and consistently approved Roundup for sale with a label that does not warn of cancer. Ex. A, 3/6/25 Trial Tr. at 1710:22–1711:3 (Dr. Reeves testifying that EPA has never believed the science merits a cancer warning on the Roundup label); Ex. B, 3/10/25 Trial Tr. at 2443:6–11 (Dr. Farmer testifying that

"as labelists, [Monsanto] follow[s] what the EPA tells [it] to put on the label. And glyphosate, according to the EPA, is not a carcinogen for humans"); Ex. I, 3/17/25 Trial Tr. at 3834:5–12 (Dr. Welch-DuJardin testifying that "EPA relies on the world's most extensive scientific database in reviewing and approving glyphosate" and that "more than a hundred EPA scientists across many different disciplines have been involved in the EPA's review of glyphosate and that EPA has never required a cancer warning for glyphosate.").

Even affording Plaintiff all reasonable inferences, the evidence showed, at most, a debate among scientists about the carcinogenicity of glyphosate. In developing, marketing, and selling Roundup, Monsanto relied on a consensus in the scientific community that glyphosate is not a human carcinogen. *See, e.g.*, Ex. A, 3/6/25 Trial Tr. at 1720:2–1721:18 (Dr. Reeves explaining the body of science Monsanto relied on in determining to sell Roundup to the public); *id*. at 1709:22–1711:9 (EPA has determined that a cancer warning on Roundup would be "false and misleading" and inappropriate); Ex. E, 3/7/25 at 1954:7–12 (Dr. Farmer testifying that Monsanto did not change the label following IARC's 2015 determination "because EPA had said it wasn't carcinogenic, and the data to us also said it wasn't carcinogenic"). Accordingly, Plaintiff cannot establish that Monsanto acted recklessly from 1999 to 2020 (the period of Plaintiff's alleged exposure to Roundup) based on its decision to continue selling Roundup.

The current state of scientific knowledge supports Monsanto's position that glyphosate is not likely to be carcinogenic to humans, as does the recent Ninth Circuit Court of Appeals opinion in *National Association of Wheat Growers*, 85 F.4th 1263.[6] In *Wheat Growers*, the Ninth Circuit stated that "[w]hile IARC has concluded that glyphosate is probably carcinogenic to humans, *that*

[6] The Court precluded Monsanto from introducing evidence of the *Wheat Growers* opinion, but nonetheless permitted Plaintiff to mischaracterize and discuss portions of *NRDC*. *See* Motion *in Limine* Rulings at Pl. MIL No. 9; Monsanto MIL No. 5.

conclusion is not shared by a consensus of the scientific community." *Id.* at 1266 (emphasis added). The *Wheat Growers* opinion provides strong, direct support for Monsanto's position that, to date, the state of scientific knowledge does not support a conclusion that glyphosate is carcinogenic to humans. At the very least, the *Wheat Growers* opinion provides legal support for Monsanto's argument on the purely legal question whether Monsanto acted with evil motive or reckless indifference to others when selling the product, such that a claim for punitive damages can be submitted to the jury. Plaintiff did not put forth sufficient evidence establishing that Monsanto acted with an evil motive or reckless indifference to others, and so judgment for Monsanto should be granted as to Plaintiff's punitive damages claim. *See id.* at 1269 ("While IARC has concluded that glyphosate poses some carcinogenic hazard, federal regulators . . . and several international regulators have all concluded that glyphosate *does not pose* a carcinogenic hazard. No agency or regulatory body (including IARC) has concluded that glyphosate poses a carcinogenic risk, which is distinct from a carcinogenic hazard.") (emphasis in original). The evidence presented is insufficient to establish the required state of culpability to present a claim for punitive damages to the jury.

B. Monsanto's continual compliance with EPA regulations makes punitive damages against it unlawful.

"Compliance with . . . federal regulations is not the type of behavior which supports an award of punitive damages; indeed, punitive damages, the purpose of which is to 'punish, penalize or deter,' are, as a general rule, improper where a defendant has adhered to environmental and safety regulations." *Stone Man, Inc. v. Green*, 263 Ga. 470, 471–72 (1993); *see Bartja v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 218 Ga. App. 815, 818 (1995) (affirming grant of summary judgment to defendant where "[t]he evidence shows that [defendant] complied with federal regulations[.]").

To overcome this presumption, Plaintiff must have shown that Monsanto "engaged in a *deliberate* course of conduct which *knowingly* endangered those using" Roundup. *Uniroyal Goodrich Tire Co. v. Ford*, 218 Ga. App. 248, 255 (1995), *aff'd in part, rev'd in part on other grounds*, 267 Ga. 226 (1996), and *vacated in part on other grounds*, 224 Ga. App. 187 (1997) (emphasis added). And it must show this by "clear and convincing" evidence, meaning evidence that could provide the factfinder with "an abiding conviction that the truth of [Plaintiff's] factual contentions are 'highly probable'" and "instantly tilt[ing] the evidentiary scales in the affirmative." *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984); *United States v. Fatico*, 458 F. Supp. 388, 405 (E.D.N.Y. 1978), *aff'd*, 603 F.2d 1053 (2d Cir. 1979) ("the probabilities might be in the order of above 70% under a clear and convincing evidence burden").

A "deliberate course of conduct" may be shown through clear and convincing evidence that the defendant *knew* of the product defects that harmed a plaintiff, *knew* of available remedies, and *rejected* safer alternative designs "because of economic considerations." *See Gen. Motors Corp. v. Moseley*, 213 Ga. App. 875, 884–85 (1994), *overruled on other grounds by* 311 Ga. 439 (2021), and *abrogated on other grounds by* 269 Ga. 191 (1998). It may also be proven by showing that the defendant "refused to implement simple, relatively inexpensive solutions" already adopted by its competitors. *Mascarenas v. Cooper Tire & Rubber Co.*, 643 F.Supp.2d 1363, 1374 (S.D. Ga. 2009); *see Hernandez v. Crown Equip. Corp.*, 92 F. Supp. 3d 1325, 1356 (M.D. Ga. 2015) (denying punitive damages based on regulatory compliance; synthesizing Georgia cases).

But the "deliberate course of conduct" exception is "narrow" *Hernandez*, 92 F. Supp. 3d at 1356, and"[t]here is no such evidence of knowing endangerment in this case." *Uniroyal*, 218 Ga. App. at 255. Plaintiff's evidence reveals, at most, a debate and disagreement among scientists as to whether Roundup is capable of causing NHL. Plaintiff's counsel exerted extraordinary effort

in misconstruing emails, publications, and various documents to allege "a deliberate course of conduct" or that Monsanto "knowingly endangered" Roundup users. But hyperbole of counsel does not satisfy evidentiary requirements. *Id.*; Ex. E, 3/7/25 Trial Tr. at 1973:9–17 ("quite frankly, Mr. Findley, I find that you have been twisting words and all this throughout the examination of Dr. Farmer."); Ex. E, 3/7/25 Trial Tr. at 2126:24–25 (the Court admonishing Plaintiff's counsel that they were "putting different spins on what is in the documents," and that it was "unfair to the witness sometimes"); Ex. J, 3/19/25 Trial Tr. at 4531:23–4532:3 ("All I am asking you as far as what Donna Farmer testified to this jury about what Monsanto knew and what they were discovering relating to DNA damage associated with their product of Roundup[.]").

All that the evidence showed, however, is a discussion among scientists and regulatory experts at Monsanto, EPA, IARC, and in the pages of scientific journals as to whether IARC's classification of glyphosate is based on legitimate evidence and establishes a verifiable danger.

The very fact of those discussions, both within and outside of Monsanto, is proof that such a "deliberate course of conduct" does not exist here. *Uniroyal*, 218 Ga. App. at 255. At most, Plaintiff's evidence of Monsanto's internal communications shows scientific debate, an interested and conscientious response from Monsanto, and a willingness by Monsanto to engage with IARC and regulators on the issue of glyphosate safety. Ex. C, 3/11/25 Trial Tr. at 2726:24–2729:3 (Dr. Farmer expressing Monsanto's willingness to engage in the IARC process and how IARC prevented Monsanto from doing so); Ex. H, 3/12/25 Trial Tr. at 2819:6–2820:5 (Dr. Farmer testifying that after IARC, scientists around the world concluded that glyphosate "is not carcinogenic and that it is unlikely it would be carcinogenic to humans . . . [t]hat there is no risk"); *see also* Ex. I, 3/17/25 Trial Tr. at 3851:21–3852:9 (Dr. Welch-DuJardin testifying that it is "permissible for EPA employees to converse with registrant employees" and it is "[i]n fact, . . . part

of the job" because EPA has to communicate with the registrant regarding "what EPA is thinking when it comes to the data, what the results are, if they have to make changes to the label, if there's going to be any restrictions on the label"). There is no evidence—let alone clear and convincing evidence—that Monsanto was insincere in its engagement in this debate, that it rejected safer alternatives "because of economic considerations," *Moseley*, 213 Ga. App. at 885, or that it "refused to implement simple, relatively inexpensive solutions" already adopted by its competitors, *Hernandez*, 92 F. Supp. 3d at 1356.

For the Court to hold this evidence supports a "knowing[]" and "deliberate course of conduct" would impose an unjust and unreasonable expectation—namely, that any manufacturer must withdraw its product from the market any time unreliable (and minority view) science questions its safety. *Uniroyal*, 218 Ga. App. at 255. That is Plaintiff's argument, but it is not Georgia law. *See id.* Because Plaintiff failed to justify the application of this "narrow exception," *Hernandez*, 92 F. Supp.3d at 1356, "punitive damages . . . are . . . improper[.]" *Stone Man,* 263 Ga. at 472.

Even if the Court finds that a different view of the same communications could support a verdict for Plaintiff by a *preponderance* of the evidence, it does not constitute the *clear and convincing* evidence needed to support an award of punitive damages. *See Reeser v. Glover*, 2025 WL 600821, at *5 (Ga. Ct. App. Feb. 25, 2025); O.C.G.A. § 51-12-5.1(b). Above all, there is no clear and convincing evidence that Monsanto agreed with IARC's assessment that Roundup caused NHL—a complex scientific question on which scientific studies presented *by Plaintiff* are in conflict. Ex. K, (DX00663); *see* Ex. E, 3/7/25 Trial Tr. at 1954:7–12 ("[W]e disagreed with IARC in its classifying it as a carcinogen because the U.S. EPA had said it wasn't carcinogenic, and the data to us also said it wasn't carcinogenic."); Ex. H, 3/12/25 Trial Tr. at 2771:3–2773:16,

2774:18–2775:3, 2776:9–19, 2777:24–2778:2. Therefore, any alleged danger posed by Monsanto's sale of Roundup could not possibly have been "knowing[.]" *Uniroyal*, 218 Ga. App. at 255. This single point, taken alone, is enough under Georgia law to enter judgment for Monsanto on Plaintiff's claim to punitive damages.

Roundup has been continuously registered by EPA since 1974. There was no evidence that Monsanto has ever been out of compliance with any applicable federal regulation in its manufacture and sale of Roundup. And Plaintiff's alleged evidence of any "knowing[]" and "deliberate course of conduct," *Uniroyal*, 218 Ga. App. at 255, is lacking and depends only upon Plaintiff's counsel's framing and narration of documents in court. As noted in *Hernandez*, "that peg is too wobbly to support punitive damages." 92 F. Supp.3d at 1356. Because the evidence is far from clear and convincing (indeed, is entirely lacking), and any award of punitive damages is "improper." *Stone Man*, 263 Ga. at 472 (reversing award of punitive damages where defendant complied with applicable regulations).

The Court should enter judgment for Monsanto on punitive damages on the basis that (1) Monsanto has been continuously in compliance with all applicable regulations in its manufacturing and distribution of Roundup and (2) Plaintiff failed to show *by clear and convincing evidence* a "knowing[]" and "deliberate course of conduct" that could support a legally valid judgment of punitive damages. *Uniroyal*, 218 Ga. App. at 255.

C. Negligence alone does not support an award of punitive damages.

Under Georgia law, "punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of a conscious indifference to consequences," O.C.G.A. § 51-12-5.1(b), where

"conscious indifference" is defined as "an *intentional* disregard of the rights of another, knowingly or willfully disregarding such rights," *Gilman Paper Co. v. James*, 235 Ga. 348, 351 (1975) (emphasis added), and "wanton conduct is that which is so reckless or so charged with indifference to the consequences as to be the *equivalent in spirit to actual intent*." *McCalla Raymer, LLC v. Foxfire Acres, Inc.*, 356 Ga. App. 117, 126 (2020) (emphasis added). Punitive damages are instituted "to deter the wrongdoer from repeating his wrongful acts" but "cannot be imposed without a finding of some form of culpable conduct." *See Colonial Pipeline Co. v. Brown*, 258 Ga. 115, 118 (1988). "Something more than the mere commission of a tort is always required for punitive damages." *Welch v. Gen. Motors Corp*., 949 F. Supp. 843, 844 (N.D. Ga. 1996) (quoting *Banks*, 266 Ga. at 610).[7]

The Supreme Court has held clearly and repeatedly that "[a]llegations of simple negligence, absent a showing of an aggravating circumstance, will not support a claim for exemplary damages." *Ticor Const. Co. v. Brown*, 255 Ga. 547, 548 (1986) (citing *State Mutual Life Assoc. v. Baldwin,* 116 Ga. 855, 860 (1903); OCGA § 51-12-5). Even *gross* negligence, defined as the absence of even "slight diligence" by a defendant, is not sufficient to support an award of punitive damages in Georgia. *See* O.C.G.A. § 51-1-4; *Colonial Pipeline*, 258 Ga. at 122 (1988) ("There is general agreement that . . . mere negligence is not enough, even though it is so extreme in degree as to be characterized as 'gross,' a term of ill-defined content, which occasionally, in a few jurisdictions, has been stretched to include the element of conscious indifference to consequences, and so to justify punitive damages.") (quoting Prosser & Keeton, HANDBOOK ON THE LAW OF TORTS, p. 2 (5th ed., 1984)); *Wardlaw v. Ivey*, 297 Ga. App. 240, 242 (2009) ("Neither negligence nor gross

[7] An underlying tort is also always necessary to support a punitive damages claim. *Beverly v. Observer Pub. Co.*, 88 Ga. App. 490, 491 (1953) (explaining that, without one, "a claim for punitive damages alone will not lie").

negligence alone can support a punitive damages claim."); *BLI Const. Co. v. Debari*, 135 Ga. App. 299, 302 (1975) (same); *Hutcherson v. Progressive Corp.*, 984 F.2d 1152, 1155 (11th Cir. 1993) ("Negligence alone, even gross negligence, will not support an award of punitive damages.").[8]

While Georgia courts entertain claims of punitive damages for intentional torts, *see, e.g., McCalla Raymer*, 356 Ga. App. at 126 ("a claim for conversion . . . is an intentional tort and thus may support an award of punitive damages"), where the evidence shows, "at most, negligent breaches of the duties owed," no punitive damages may be awarded. *Tower Fin. Servs., Inc. v. Smith*, 204 Ga. App. 910, 918 (1992) (affirming *sua sponte* grant of summary judgment as to punitive damages because the allegations could only support negligence).

Plaintiff was required to show intent and "circumstances of aggravation or outrage, such as spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called willful or wanton." *Colonial Pipeline*, 258 Ga. at 121–22 (internal quotations omitted). Here, this means Plaintiff was required to show that Monsanto's sale of Roundup to Plaintiff from 1999 to 2020 was "outrageous" because of Monsanto's "evil motive" or "deliberate disregard." *Id.* The evidence Plaintiff introduced at trial came nowhere close to satisfying this high standard.

It is an indisputable principle of Georgia law that punitive damages cannot be supported by negligence alone. Because the only claim submitted to the jury was based on negligence and

[8] *See also Shan Fu v. Reed*, 13 F. Supp. 3d 1371, 1374–75 (M.D. Ga. 2014) ("Plaintiffs' Complaint sounds in simple negligence, and Georgia law is clear that "[n]egligence alone, even gross negligence, will not support an award of punitive damages."); § 8:53. Conduct justifying punitive damages, 2A American Law of Torts § 8:53 ("What is manifestly evident from the authorities is that mere or ordinary negligence will not support an award of punitive damages. The reason is simple: Acts of ordinary negligence reflect neither a state of mind nor conduct that justifies imposing a criminal-like penalty, in the form of punitive damages."); § 4-31. Complaint, Ga. Punitive Damages § 4-31 (2d ed.) ("The complaint must contain allegations showing more than simple negligence if punitive damages are to be awarded in an action.").

because there was no evidence of "outrageous" conduct, the punitive damages award in this case is contrary to law. The Court should enter judgment in Monsanto's favor as to Plaintiff's claim for punitive damages.

D. Plaintiff did not introduce evidence from which a reasonable juror could find Monsanto acted with malice or intentional wrongdoing.

None of the potential evidence to which Plaintiff may point is "outrageous" or shows that Monsanto acted with an "evil motive or "deliberate disregard of the interests of others." *Welch*, 949 F. Supp. at 844 (quotations omitted). In particular, Plaintiff did not introduce sufficient evidence to meet his burden of proof as to any of the topics below:

- Long-Term Carcinogenicity Testing of Formulated Roundup: Plaintiff introduced evidence that Monsanto never tested the formulated Roundup product in an 18–24-month carcinogenicity study in rodents, and tried to suggest that Monsanto either knew the results would show that formulated Roundup is carcinogenic or was afraid of the results. But the evidence supports that no study was necessary. Ex. C, 3/11/25 Trial Tr. at 2716:11–2717:11, 2718:13–2721:8. The consistent conclusion to be drawn from the data was that glyphosate and Roundup are not genotoxic. *Id*. at 2705:18–23. Furthermore, the evidence demonstrates that a long-term carcinogenicity study of formulated Roundup in rodents would not provide any meaningful data because the surfactant in formulated Roundup—like any soap—would irritate the rodents' digestive systems at the necessary dose level. *Id.* at 2718:13–2721:8. Additionally, it is undisputed that "genotoxic" is a generic term for DNA damage, and does not mean the same thing as carcinogenicity. *Id*. at 2688:19–2690:6. Moreover, these alleged failures occurred years before Plaintiff's use of Roundup. And of course, by the time Plaintiff used Roundup, the AHS and cohort studies showed no increased risk of carcinogenicity to humans. Again, nothing about Monsanto's conduct rises to the punitive damages standard. Monsanto had a good-faith belief that long-term carcinogenicity testing on formulated Roundup was not scientifically necessary, and Plaintiff introduced no evidence of intentional wrongdoing on Monsanto's part in this regard—particularly given that Plaintiff provided no evidence even suggesting what this kind of testing would show.

- Toxicity of Formulated Roundup: Plaintiff introduced generalized evidence suggesting that formulated Roundup is more toxic or genotoxic than glyphosate alone.[9] But the evidence does not show that Monsanto knew this to be true or was deliberately indifferent in testing Roundup's toxicity or genotoxicity. Rather, the evidence shows that a tremendous number

[9] Toxicity is not a proxy for carcinogenicity. Plaintiff failed to adduce evidence that in any way equates toxicity with carcinogenicity. Plaintiff's conflation of those terms undermines the jury's verdict because evidence of toxicity cannot establish causation of Plaintiff's MZL or support the jury's award of punitive damages.

of studies have been conducted showing that formulated Roundup is not genotoxic. *See* Ex. C, 3/11/25 Trial Tr. at 2695:15–2696:18, 2700:24–2704:3 (Dr. Farmer testifying that Monsanto conducted more than 80 genotoxicity studies on the Roundup formulation, and that none show genotoxicity in Roundup); Ex. L, 3/18/25 Trial Tr. at 4347:22–4348:19 (Dr. Vearrier testifying that epidemiological studies such as "Pahwa and De Roos are using formulated products" and show "no evidence of increased NHL across those studies"); *id*. at 4349:21–4351:6 (Dr. Vearrier explaining that rodent studies cannot be performed with the formulated product because the high dose of surfactants would cause the rodents to "have really bad GI upset and distress and end up dying" but that epidemiological studies are all done on formulated products). Plaintiff may point to an email from Dr. Farmer stating that Monsanto cannot say that Roundup is not a carcinogen. However, Dr. Farmer testified that her statement was referring to the lack of a long-term carcinogenicity study of formulated Roundup in rodents, which was not required by EPA, because it would not provide any meaningful data. *See* Ex. H, 3/12/25 Trial Tr. at 2945:21–2946:12, 2948:4–12; Ex. C, 3/11/25 Trial Tr. at 2716:11–2717:11, 2718:1–2721:8. Put in its proper context, this evidence plainly shows that Monsanto did not act with an evil motive or reckless indifference.

- IBT: Plaintiff presented evidence from the 1970s that IBT committed widespread scientific fraud, of which Monsanto (and dozens of other manufacturers including pharmaceutical companies and many other companies in the pesticide industry) was a *victim*. Monsanto cannot, as a matter of law, be punished for conduct by a third party of which Monsanto itself was the victim. IBT was an independent laboratory contracted by Monsanto and other companies to conduct toxicology testing on their products. Ex. D, 3/3/25 Trial Tr. at 710:23–711:1 (Dr. Reeves confirming that IBT was an outside vendor hired by Monsanto). Due to IBT's fraud, EPA invalidated the IBT rodent study submitted for Roundup's registration in 1974. In response to learning that some of IBT's studies were invalid—none of which were glyphosate studies—Monsanto repeated all of the studies in question. Ex. A, 3/6/25 at 1730:10–1731:12 (Dr. Reeves explaining why Monsanto redid the glyphosate studies IBT was hired to do, following the allegations of fraud involving IBT); *id.* at 1730:10–14 (Dr. Reeves testifying that the testing IBT performed on glyphosate had nothing to do with the fraud allegations). However, Monsanto was never accused of misrepresenting anything regarding glyphosate studies. Indeed, EPA never required Monsanto to remove Roundup from the market, and after Monsanto submitted data from the replacement studies to EPA, EPA re-registered glyphosate and classified glyphosate as a Class E carcinogen, meaning EPA found no evidence of carcinogenicity in humans from glyphosate use. Plaintiff also introduced evidence that Paul Wright, who worked at Monsanto before joining IBT and later returned to Monsanto before the fraud was discovered, was convicted of fraud. *See* Ex. D, 3/3/25 at 717:21–718:6, 722:21–25, 723:9–724:5, 724:21–727:23, 751:25–752:6 (testimony regarding Paul Wright and his role in the fraud at IBT). This testimony does not demonstrate that Monsanto acted with an evil motive or intent, given that Monsanto was a victim of the fraud that occurred at IBT. Ex. A, 3/6/25 Trial Tr. 1731:18–21 (Dr. Reeves testifying that Monsanto was not aware of the fraud allegations when they rehired Paul Wright).

- Ghostwriting Allegations: Plaintiff referred to a series of articles as evidence of supposed ghostwriting. *See* Ex. B, 3/10/25 Trial Tr. at 2360:7–2368:10, 2369:21–2370:8, 2371:11–16; Ex. C, 3/11/25 Trial Tr. at 2539:17–2540:7. However, the evidence presented at trial shows that Monsanto did not ghostwrite any of the articles Plaintiff references. *See, e.g.*, Ex. B, 3/10/25 Trial Tr. at 2366:22–25, 2367:9–21, 2367:25–2368:10 (Dr. Farmer testifying that Monsanto did not ghostwrite review article); Ex. H, 3/12/25 Trial Tr. at 2793:7–2797:23, 2798:20–2799:10, 2799:23–2800:3, 2800:7–10, 2801:17–2805:3 (Dr. Farmer confirming that Monsanto's and Monsanto personnels' contributions were stated in articles Plaintiff referenced as being ghostwritten). Further, plaintiff presented no evidence that any of the scientific information or data contained in these papers are false or misleading. Without evidence that the science in these papers was false or misleading, Plaintiff cannot carry his burden to show that Monsanto acted with an evil motive or intent, such that he is entitled to punitive damages based on this conduct.

- Monsanto's Response to the 2015 Finding by IARC: Plaintiff introduced evidence that IARC evaluated the carcinogenicity of glyphosate in 2015. IARC determined that glyphosate was probably carcinogenic to humans. But that evidence and the Monsanto company documents and testimony questioning the correctness of this conclusion does not show any intentional wrongdoing by Monsanto or other misconduct tantamount to intentional wrongdoing. The most Plaintiff showed is that Monsanto was aware that some scientific studies raised some questions about the possibility that Roundup could be carcinogenic, and that Monsanto disagreed with those findings and tried to communicate what it viewed as the more accurate scientific evidence to a wider audience. This certainly does not rise to the threshold of "clear and convincing" evidence needed to prove Monsanto knew or should have drawn a conclusion based on a small scattering of science, which it deemed low-quality, that Roundup causes cancer. This is especially true when EPA, EFSA, and ECHA have never drawn the conclusion that Roundup causes cancer, and the scientific consensus does not support a contrary position. *See Wheat Growers*, 85 F.4th at 1266.

Thus, Plaintiff's evidence falls far short of showing clear and convincing evidence of actual malice, which is required to support an award for punitive damages. Instead, Plaintiff's evidence shows—at most—the existence of a robust scientific debate, and Monsanto's good faith efforts to comply with the scientific findings of the EPA. Thus, Plaintiff did not make a submissible case for punitive damages.

E. Punitive damages in this case are unconstitutionally cumulative.

Any punitive damages award here is also unnecessarily cumulative and would violate Monsanto's due process rights. The United States Supreme Court has consistently held that the Due Process Clause of the Fourteenth Amendment limits punitive damages awards and prohibits

punishment on bases that "create[] the possibility of multiple punitive damages awards for the same conduct." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423 (2003). "[I]f a single punitive damages award becomes unconstitutional when it can fairly be categorized as 'grossly excessive' in relation to a state's legitimate interests in punishment and deterrence, it follows that the aggregate amount of multiple awards may also surpass [the] constitutional threshold" of the Fourteenth Amendment. *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 51 (Tex. 1998). This limitation has heightened import in the context of mass tort litigation where, as here, a defendant may be subject to hundreds of individual lawsuits seeking punitive damages for the exact same alleged misconduct.

Monsanto has already paid more than $100 million in punitive damages based on nearly identical evidence—indeed, this case began with days of testimony from another trial. *See* Ex. M, Aff. of William J. Holley, II. Aside from plaintiff-specific details, Plaintiff's counsel in dozens of Roundup trials present very similar theories and allegations to those in this case, and almost nothing changes from one trial to the next. Importantly, Monsanto's behavior has been impacted by the punitive damages it has been forced to pay—Monsanto has ceased selling glyphosate-based products to the United States consumer lawn and garden market. *See* Ex. T, Aff. of James Guard. The cases in which Monsanto has already paid punitive damages arise out of the *exact same* conduct about which Plaintiff complains here. Those awards are more than sufficient to satisfy Georgia's interests in punishment and deterrence. Thus, federal and state due process guarantees prohibit further punitive damages awards. *See*, *e.g.*, *Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949, 959 (9th Cir. 2005) ("Due process does not permit courts . . . to create the possibility of multiple punitive damages awards for the same conduct."); *Racich v. Celotex Corp.*, 887 F.2d 393, 398 (2d Cir. 1989) ("We agree that the multiple imposition

of punitive damages for the same course of conduct may raise serious constitutional concerns, in the absence of any limiting principle."); *In re Sch. Asbestos Litig.*, 789 F.2d 996, 1005 (3d Cir. 1986) ("[P]owerful arguments have been made that, as a matter of constitutional law or of substantive tort law, the courts shoulder some responsibility for preventing repeated awards of punitive damages for the same acts or series of acts."). As the Court knows, much of the "company conduct" case put on by Plaintiff in this trial was testimony from another trial (Dr. Reeves' testimony from the *McKivison* trial in Philadelphia) which clearly demonstrates that Monsanto is being punished, once again, in the form of punitive damages - for the exact same conduct put forth previously, There is simply no justifiable basis to permit Plaintiff to pursue additional punitive damages awards in this trial.

In fact, many courts across the nation have recognized that multiple punitive damages awards for the same misconduct can violate federal constitutional protections. *See*, *e.g.*, *Juzwin v. Amtorg Trading Corp.*, 718 F. Supp. 1233, 1234 (D.N.J. 1989) ("the court abides by its previous ruling that repetitive awards of punitive damages for the same conduct violate a defendant's due process rights"); *In re "Agent Orange" Prod. Liab. Litig.*, 100 F.R.D. 718, 728 (E.D.N.Y. 1983) ("[W]hen a plaintiff recovers punitive damages against a defendant, that represents a finding by the jury that the defendant was sufficiently punished for the wrongful conduct. There must, therefore, be some limit, either as a matter of policy or as a matter of due process, to the amount of times defendants may be punished for a single transaction."), *aff'd sub nom. In re Agent Orange Prod. Liab. Litig. MDL No. 381*, 818 F.2d 145 (2d Cir. 1987); *see also Owens-Corning Fiberglas Corp.*, 972 S.W.2d at 49 ("when engaging in a substantive due process analysis of multiple punitive damage awards for the same conduct, courts should focus on the defendant's due process rights and whether the twin aims of punishment and deterrence have been adequately served rather

than on Plaintiffs' remedies"). Thus, the Court should enter judgment in favor of Monsanto on Plaintiff's punitive damages claim to avoid impermissibly duplicative and unconstitutionally excessive punishment for the same conduct.

III. Judgment for Monsanto is required on both Plaintiff's negligence claim and punitive damages claim because he did not meet his burden of establishing that Roundup is both capable of causing NHL, and actually caused his MZL.

To prevail on his negligence claim, and therefore, his punitive damages claim—which necessarily relies on an underlying intentional tort claim, *see Beverly*, 88 Ga. App. at 491—Plaintiff had to present sufficient evidence of causation—*i.e.*, that Roundup caused his NHL. *Butler v. Union Carbide Corp.*, 310 Ga. App. 21, 30 (2011) ("Causation is an essential element of a toxic tort case, and proof of causation in such cases generally requires reliable expert testimony." (internal quotations omitted)).

Causation in this case is two-fold. Plaintiff had to offer sufficient evidence both that (1) glyphosate or Roundup can cause NHL (general causation) and (2) Plaintiff's use of Roundup did cause his NHL (specific causation). *Georgia Power Co. v. Campbell*, 360 Ga. App. 422, 427 (2021) ("In addition to establishing exposure to a toxic chemical, 'a plaintiff must offer proof of general causation—that exposure to a substance is capable of causing a particular injury or disease—and proof of specific causation—that exposure to a substance under the circumstances of the case contributed to his illness or disease.'" (internal quotations omitted)). Because both inquiries involve complex, scientific, and medical assessments outside the understanding of laypersons, competent expert testimony was required. *See Butler*, 310 Ga. App. at 30. "Absent reliable expert testimony that exposure to [the defendant's product contributed to the development of [the plaintiff's disease], there is insufficient evidence to create a jury issue as to causation." *Id*.

Plaintiff relies exclusively on the testimony of his paid expert witness, Dr. Durrani, to meet

both his general and specific causation burdens. Dr. Durrani failed completely to reliably establish either causation prong beyond his *ipse dixit*. Meanwhile, Monsanto presented EPA's scientific assessments from 2015, 2016, and 2017, all of which concluded that glyphosate is not carcinogenic. Ex. H, 3/12/25 Trial Tr. at 2872:6–2873:15 (Dr. Farmer's testimony that the 2017 EPA review gave glyphosate "[t]he most favorable" safety designation possible); Ex. N, (DX04464), EPA, CARC, Glyphosate: Report of the Cancer Assessment Review Committee (Oct. 1, 2015); Ex. O, (DX04477), EPA, Office of Pesticide Programs, Glyphosate Issue Paper: Evaluation of Carcinogenic Potential (Sept. 12, 2016); Ex. P, (PX2906), EPA's 2017 Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential; *see also* Ex. J, 3/19/25 Trial Tr. at 4504:17–21 (Dr. Tomasetti testifying that epidemiological studies "strongly support" the conclusion that 95.6% of NHL is due to naturally occurring mutations). Not only that, but Dr. Durrani's testimony was flawed, superficial, and did not amount to sufficient expert testimony, rendering Plaintiff's causation theory wholly insufficient; without adequate causation evidence, Plaintiff's claims fail.

F. Plaintiff did not meet his burden of establishing that Roundup is capable of causing NHL.

EPA has concluded, consistent with the majority of studies, that "[o]verall, there is not strong support for the 'suggestive evidence of carcinogenic potential' cancer classification descriptor [for glyphosate] based on the weight-of-evidence . . . . The strongest support is for 'not likely to be carcinogenic to humans.'" *See* Ex. P, (PX2906), EPA's 2017 Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential; *see also,* Ex. N, (DX04464), EPA, CARC, Glyphosate: Report of the Cancer Assessment Review Committee (Oct. 1, 2015); Ex. O, (DX04477), EPA, Office of Pesticide Programs, Glyphosate Issue Paper: Evaluation of Carcinogenic Potential (Sept. 12, 2016).

Dr. Durrani's threadbare general causation opinion to the contrary was insufficient, as a matter of law, for a jury to conclude without speculation or conjecture that glyphosate or Roundup can cause NHL or its sub-type, MZL. Dr. Durrani's general causation testimony was extraordinarily brief and shallow. He said he disagreed with the conclusions of EPA, but he hardly explained his basis for doing so. *See id.* Meaningfully, Dr. Durrani agreed that the EPA's determination of non-carcinogenicity was shared by the American Conference of Governmental Industrial Hygienists and the National Toxicology Program—sources on which he conceded he would ordinarily rely when not testifying in Court. *See* Ex. Q, 3/13/25 Trial Tr. at 3401:16–3415:6. Notwithstanding his efforts to introduce studies as substantive evidence—which the Court properly rejected from coming into evidence—his only substantive testimony that could be construed in Plaintiff's favor was as follows:

- His understanding that IARC concluded there was "strong evidence that exposure to glyphosate or glyphosate-based formulations is genotoxic," but that not all genotoxicity leads to cancer. Ex. Q, 3/13/25 Trial Tr. at 3350:14–18, 3445:3–20;
- His understanding that there is "sufficient evidence for [Roundup causing] cancer in animals," but only "*limited evidence in humans for the carcinogenicity of glyphosate*." *Id*. at 3179:15–17, 3324:25–3325:4;
- His take-away from the 2018 Andreotti study that "five hundred and forty or so"[10] people out of 45,000 in the AHS who used glyphosate developed non-Hodgkin's lymphoma and that "three out of the four people or four out of the five people in the AHS . . . that got NHL were exposed to Roundup[.]" *Id*. at 3210:1–5, 3364:9–24;
- That Chang and Andreotti (2023) find "oxidative stress-induced DNA damage without exposure" but that the Chang study "is not designed or set out to make a causal connection," any link to cancer from that evidence is "inconclusive and controversial," and not one subject in the study was reported to have cancer. *Id*. at 3220:20–24, 3399:7–3400:6;
- And that Bolognesi (1997) finds a marker for oxidative stress in mice, but that a person can experience oxidative stress without experiencing any lasting DNA damage or cell mutation. *Id.* at 3225:21–3226–6, 3398:21–3399:6.

[10] Even this statistic was false, as Monsanto's counsel corrected Dr. Durrani—and Dr. Durrani agreed—that it was 440 out of 54,000—not 540, as he claimed. Ex. Q, 3/13/25 Trial Tr. at 3365:17–20.

None of this evidence speaks to causation. Thus, Dr. Durrani's testimony is insufficient on *the* essential issue in this case. *Butler*, 310 Ga. App. at 30; *see also Seymour Electrical & Air Conditioning Svc. v. Statom*, 309 Ga. App. 677, 681 (2011) (holding that the trial court erred in denying the defendant's motion for summary judgment where there was no expert medical testimony submitted to the trial court to establish the causal connection between the plaintiffs' respiratory conditions and the carbon monoxide in their house); *Allstate Ins. Co. v. Sutton*, 290 Ga. App. 154, 159–60 (2008) (holding that summary judgment was proper for the defendant where there was no expert medical testimony submitted to the trial court to establish the causal connection between the plaintiffs' respiratory conditions and the mold in their house).

Dr. Durrani's "understanding" from IARC that there is "limited evidence" that glyphosate "causes cancer in humans" is, by definition, not evidence supporting general causation *in humans* to a "reasonable certainty." Likewise, his observation that 440 glyphosate users *out of 54,000* in the AHS study developed NHL cuts *against* the notion that glyphosate or Roundup can cause NHL. Dr. Durrani's process—looking only at people who developed NHL, not the entire population of the AHS, and asking what percentage of people who *developed* NHL had been exposed to Roundup (75% of "520-some"), rather than looking at the percentage of people who were *exposed to Roundup* and developed NHL (.98%, less than one percent, of 44,932)—is textbook selection bias and cannot lead the jury to a "reasonable certainty." *See* "Selection Bias," Dictionary of Cancer Terms, https://www.cancer.gov/publications/dictionaries/cancer-terms/expand/S (accessed Mar. 24, 2025).[11] Dr. Durrani's "take-away" from the AHS inexplicably put the disease ahead of its supposed cause.

[11] "**Selection bias**: An error in choosing the individuals or groups to take part in a study. Ideally, the subjects in a study should be very similar to one another and to the larger population from

Additionally, the biomarker and oxidative stress testimony is a red herring: at most, it means that Roundup and blood cancer can cause the *same biomarker* of oxidative stress, which is all that Dr. Durrani actually said in his testimony. *See* Ex. Q, 3/13/25 Trial Tr. at 3397:8–13, 3399:7–22. And as Dr. Vearrier testified, the Chang and Andreotti (2023) study, for example, did not reach any "solid conclusions" because the authors could not "separate out the effects of glyphosate or Roundup from other causes of oxidative stress." Ex. L, 3/18/25 Trial Tr. at 4115:7–1; *see also id*. at 4117:17–20 (Dr. Vearrier testifying that in his opinion the Chang study does not support an association between Roundup use and NHL).

"Mere conclusory allegations" absent any "statistical correlation" with cancer is not the same as causation, and Dr. Durrani's testimony did not bridge the gap between these important concepts. *Motorola, Inc. v. Ward*, 223 Ga. App. 678, 679 (1996) ("When the plaintiff's evidence merely asserts that the defendant's conduct caused the plaintiff's injury, but fails to explain how, the defendant is entitled to summary judgment. . . . [A]ny lesser requirement would invite speculation and conjecture.") (internal quotations and citations omitted)); *see also* Ex. C, 3/11/25 Trial Tr. at 2585:15–23 (Dr. Farmer explaining that there is a difference between association and causation).

Rather, Dr. Farmer testified that the science is clear that "glyphosate and Roundup are not carcinogenic." Ex. B, 3/10/25 Trial Tr. at 2441:12–16; *see also* Ex. B, 3/10/25 Trial Tr. at 2443:6–11 ("[W]e follow what the EPA tells us to put on the label. And glyphosate, according to the EPA, is not a carcinogen for humans."); Ex. C, 3/11/25 Trial Tr. at 2585:18–23 ("[T]here is no evidence that Roundup causes Non-Hodgkin's lymphoma."); *see also* Ex. L, 3/18/25 Trial Tr. at 4091:18–

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which they are drawn (for example, all individuals with the same disease or condition). If there are important differences, the results of the study may not be valid."

4092:7 (Dr. Vearrier testifying that "there's a robust amount of data on both glyphosate and Roundup and NHL" and "[n]either glyphosate, the product, nor Roundup . . . are associated with Non-Hodgkin's lymphoma").

The overwhelming evidence presented over the course of *Plaintiff's* case was that glyphosate and Roundup do *not* cause NHL. *See, e.g.,* Ex. P, (PX2906), EPA's 2017 Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential; Ex. Q, 3/13/25 Trial Tr. at 3210:1–5, 3364:9–3365:21 (less than one percent of subjects in the Andreotti study developed NHL).[12] Against this evidence, Plaintiff adduced only a few limited, qualified and meager contentions on which no reasonable jury could conclude, by a preponderance of the evidence, that glyphosate or Roundup can cause NHL. Judgment should be entered for Monsanto on Plaintiff's negligence claim—and therefore the punitive damages claim—for failure to prove general causation.

G. Plaintiff did not meet his burden of presenting sufficient evidence that Roundup actually caused his MZL.

Plaintiff's only causation expert, Dr. Durrani—who is not an oncologist and has never diagnosed anyone with MZL, or any other subtype of NHL—purported to assess whether Mr. Barnes was exposed to a sufficient amount of Roundup to have caused his MZL. Ex. Q, 3/13/25 Trial Tr. at 3253:3–3254:12. Dr. Durrani also claimed to conduct a "differential diagnosis," in which he purported to first rule in all possible causes of Mr. Barnes' MZL, then rule out each possible cause except Roundup exposure as the specific cause of Mr. Barnes' MZL. These opinions were flawed, superficial, and did not amount to sufficient evidence to submit Plaintiff's causation theory to the jury.

[12] *But see* Ex. J, 3/19/25 Trial Tr. at 4439:8–16 (Dr. Tomasetti testifying that "the majority of these cancers . . . have nothing to do with environmental or hereditary factors but simply happen just because our bodies just normally having cells dividing[.]").

To establish specific causation, Dr. Durrani had to do more than offer generalized opinions about epidemiological literature; he had to reliably opine that Mr. Barnes' dermal exposure to Roundup caused his NHL. *See* Ex. R, Pretrial Order No. 288: Order Granting Motions to Exclude Experts Charles and Schneider, *In re: Roundup Products Liability Litigation*, Case No. 16-md-02741-VC (N.D. Cal. Nov. 15, 2023) (apart from relying on general causation opinions for their testimony, "the expert must separately conduct a reliable specific causation analysis."). Indeed, courts have recognized that an assessment of dose is central when assessing causation via exposure assessment. *See*, *e.g.*, *Butler v. Union Carbide Corp*., 310 Ga. App. 21, 40 (2011) ("It is improper for an expert to presume that the plaintiff must have somehow been exposed to a high enough dose to exceed the threshold (necessary to cause the illness), thereby justifying his initial diagnosis. This is circular reasoning.") (internal quotations omitted)); *McClain v. Metabolife Int'l, Inc.*, 401 F.3d 1233, 1242 (11th Cir. 2005) ("Dose is the single most important factor to consider in evaluating whether an alleged exposure caused a specific adverse effect."). The reason dose matters is simple: "all chemical agents are intrinsically hazardous" and "whether they cause harm is only a question of dose."); *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices and Prods. Liab. Litig.*, 892 F.3d 624, 639 (4th Cir. 2018); *Borg-Warner Corp. v. Flores*, 232 S.W. 3d 765, 770–73 (Tex. 2007) (discussing importance of dose on causation inquiry and reversing judgment in Plaintiffs' favor following jury trial where Plaintiffs failed to establish sufficient dose to cause alleged injuries); *see also* Ex. L, 3/18/25 Trial Tr. at 4195:17–25 (Dr. Vearrier testifying that "dose makes the poison, which means that things that are safe or innocuous at low doses like Tylenol, if they are taken at high enough doses cause liver injury. Toxicology is based on the foundation that as you go up in dose, you are going to have increasing effects. And that would be what we would want to see here if there's an association between Roundup and NHL"). Plaintiff's lone causation

expert never established the dose of glyphosate (if any) that was absorbed into Plaintiff's body. Therefore, judgment should be entered for Plaintiff's failure to prove specific causation.

H. Dr. Durrani's "exposure days" opinions did not offer the jury sufficient evidence of the relevant question it must answer on specific causation.

Dr. Durrani's methodology and opinions were based on Mr. Barnes' alleged dermal exposure to Roundup. Ex. Q, 3/13/25 Trial Tr. at 3236:15–23. Yet, Dr. Durrani did not offer any testimony regarding the amount of Roundup that came into contact and was absorbed into Mr. Barnes' skin—let alone that any unspecified amount was sufficient to cause his NHL. Never mind that "[d]ermal penetration has also been shown to be relatively low for human skin (<1%) indicating dermal exposure will only contribute slightly to a systemic biological dose." *See* Ex. P, (PX2906), EPA's 2017 Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential.

Dr. Durrani instead focused purely on the amount of time Mr. Barnes was potentially exposed to Roundup by some loose calculation of how much time he purportedly spent spraying. Ex. Q, 3/13/25 Trial Tr. at 3230:4–7, 3231:14–3234:23. Indeed, Dr. Durrani did not testify as to how much—if any—Roundup contacted Mr. Barnes' skin during the time he purportedly spent spraying the product, let alone penetrated his skin. Ex. Q, 3/13/25 Trial Tr. at 3236:18–23 (stating that it is not uncommon for Roundup to get onto his skin when mixing or using the product, but failing to quantify that contact in any way). Dr. Durrani, relying solely on Mr. Barnes' testimony regarding how often he sprayed Roundup, converted that time into 8-hour "exposure days" and compared those numbers to two different "thresholds" Dr. Durrani identified from the epidemiology literature which, according to him, establishes an increased risk of developing NHL for individuals whose "exposure days" exceed those thresholds of 10 or 13 lifetime days. *Id.* at 3421:17–3422:3; *id*. at 3234:24–7.

But Dr. Durrani did not explain how he could extrapolate from a generic calculation of

time spent spraying (as opposed to whether Roundup contacted Mr. Barnes' skin) to his opinion that glyphosate exposure caused Mr. Barnes' NHL. He focused exclusively on the time Plaintiff says he spent spraying Roundup and concluded that this—based on no more than his say-so—exceeded the 13-day exposure thresholds identified in certain epidemiological studies he reviewed. *Id.* at 3231:14–3234:23. Dr. Durrani did not even attempt to explain to the jury whether the epidemiological studies from which he pulled his exposure thresholds were being conducted for purposes of dose (they were not). Nor did he attempt to explain how Mr. Barnes' use of Roundup was, or was not, similar to the participants in those studies.[13]

Because his calculations focused solely on the amount of *time* Mr. Barnes spent spraying Roundup, Dr. Durrani's opinions were devoid of a dose response calculation—the relevant calculation for establishing absorption and causation. A dose response refers to the level of risk that corresponds to the amount of substance absorbed (*i.e.*, the dose) into a person's body. *See Butler*, 310 Ga. App. 21, 40–41 ("It is improper for an expert to presume that the plaintiff must have somehow been exposed to a high enough dose to exceed the threshold (necessary to cause the illness), thereby justifying his initial diagnosis.") (internal quotations omitted)). Dr. Durrani did not calculate, estimate, or even address the dose of glyphosate absorbed into Plaintiff's body.

[13] Epidemiological studies are only valuable for purposes of a causation assessment if a plaintiff shows that he is similarly situated to the participants in the studies. *See Merrell Dow. Pharm., Inc. v. Havner*, 953 S.W.2d 706, 720 (Tex. 1997) (To raise a fact issue on causation and thus to survive legal sufficiency review, a claimant must do more than simply introduce into evidence epidemiological studies that show a substantially elevated risk. A claimant must show that he or she is similar to those in the studies. This would include proof that the injured person was exposed to the same substance, that the exposure or dose levels were comparable to or greater than those in the studies, that the exposure occurred before the onset of injury, and that the timing of the onset of injury was consistent with that experienced by those in the study); *see also McManaway v. KBR, Inc.*, 852 F.3d 444, 453–55 (5th Cir. 2017) (citing *Havner* with approval and granting summary judgment on causation where Plaintiffs did not adduce sufficient expert testimony on causation).

Nor could he. Dr. Durrani—citing nothing—simply suggested that "exposure days" are a method of measuring how much glyphosate may have absorbed into Mr. Barnes' skin. Ex. Q, 3/13/25 Trial Tr. at 3229:15–3230:11. But a calculation of the number of times or "episodes" that Plaintiff sprayed Roundup—couched in terms of "exposure days"—in no way represents the amount of glyphosate that may have been absorbed into Mr. Barnes' skin. Without an absorbed amount, there is no "dose," and without a "dose," there is nothing for the body to "respond" to.

Dr. Durrani provided no evidence of Plaintiff's absorbed amount, and thus no evidence of dose. Indeed, Dr. Durrani's reliance on time thresholds from epidemiological studies, which were not being assessed for purposes of dose, does not equate to a specific causation opinion for Plaintiff. *See*, *e.g.*, *In re Roundup Prods. Liab. Litig*., 2023 WL 7928751, *3–4 (N.D. Cal. Nov. 15, 2023) (Judge Chhabria explaining why a specific causation expert's opinion was inadmissible and "problematic", stating "he seemed to say that as long as someone was exposed to glyphosate for over two lifetime days, the probability that the glyphosate exposure had caused their cancer was high").

And despite Dr. Durrani ignoring dose in favor of "exposure" duration, his opinion did not actually address Mr. Barnes' exposure but, rather, only the time he purportedly spent spraying. Ex. Q, 3/13/25 Trial Tr. at 3230:4–7, 3231:14–3234:23. In other words, Dr. Durrani did not differentiate between or even account for the amount of time Mr. Barnes spent spraying Roundup and his actual dermal exposure, let alone the differences in all the times that Mr. Barnes sprayed Roundup—the amount sprayed, his clothing, the weather, the amount of time spent spraying versus walking around, etc. *See e.g., id.* at 3426:10–22, 3427:22–3428:21. Given that Plaintiff's theory of causation here is dermal absorption of glyphosate, his claims fail as a matter of law where he presented no evidence of the dose of glyphosate or Roundup absorbed into his skin.

Whether measured in days, minutes, hours, or years, the amount of time a person spends spraying a product like Roundup, in the abstract, says nothing about that person's dose. Assuming *arguendo* that there is some dose that might cause cancer, for glyphosate to have caused Plaintiff's NHL through dermal absorption, it must have had contact with his skin and must have been absorbed into his bloodstream. Dr. Durrani's "exposure days" opinions were completely silent on both of those concepts, instead using time spent spraying Roundup (even if there was no evidence that any of the Roundup contacted his skin) as a proxy for exposure, and exposure as a proxy for dose. That evidence was insufficient for the jury to conclude that Mr. Barnes absorbed a dose of Roundup that was capable of causing cancer.[14] Because Plaintiff's only testifying expert was unable to calculate how much Roundup came into contact with Mr. Barnes' skin, the jury should not have been allowed to speculate whether enough Roundup was absorbed into his body, such that it was the cause of his NHL. Where there is no causation, there is no liability. Judgment for Monsanto is required on both claims.

I. Dr. Durrani's courtroom "differential diagnosis" is not sufficient evidence of specific causation.

Dr. Durrani also purported to perform what he called a "differential diagnosis" to determine whether, in fact, Plaintiff's use of Roundup was the cause of his NHL. Ex. Q, 3/13/25 Trial Tr. at 3241:24–3242:7. Broadly speaking, "differential diagnosis" refers to the process "by which a physician considers all relevant potential causes of the symptoms and then eliminates alternative causes based on a physical examination, clinical tests, and a thorough case history." *Bowers v. CSX Transportation, Inc.*, 369 Ga. App. 875, 882 (2023). The process requires an expert to first "rule in" all potential causes—*i.e.*, "to compile a comprehensive list of hypotheses that might

[14] Indeed, there is no evidence in the record to establish that *any* dose of Roundup is capable of causing NHL.

explain the set of salient clinical findings under consideration." *Clausen v. M/V New Carissa*, 339 F.3d 1049, 1057 (9th Cir. 2003). The expert must then "rule out" each possible cause using a conventional scientific method until only the most likely cause remains. *Id.*

Dr. Durrani testified that his so-called "differential diagnosis" led him to the conclusion that Mr. Barnes' Roundup use was the sole contributing factor that caused his NHL. Ex. Q, 3/13/25 Trial Tr. at 3247:11–22. That purported differential diagnosis was a superficial, perfunctory, and outcome-driven opinion.

Merely invoking the terminology associated with a differential diagnosis does not make it admissible or sufficient evidence. Dr. Durrani must show that he actually applied the generally accepted methodology—which he failed entirely to do. *Mason v. Home Depot U.S.A., Inc.*, 283 Ga. 271, 280 (2008) ("expert opinions employing differential diagnosis must be based on scientifically valid decisions as to which potential causes should be 'ruled in' and 'ruled out.'") (citing *Ervin v. Johnson & Johnson, Inc*., 492 F.3d 901, 904 (7th Cir.2007)). For the differential diagnosis opinions of Dr. Durrani to be sufficient, such that the complex question of medical causation could be submitted to the jury, he had to meaningfully, and reliably, rule in all the potential causes of Mr. Barnes' NHL and then rule out everything except the most likely cause. *See Smith v. CSX Transportation, Inc.*, 343 Ga. App. 508, 515–16 (2017) (explaining that differential diagnosis is not admissible where trial court finds expert did not apply method reliably).

Dr. Durrani's differential diagnosis was insufficient for numerous reasons. Because Dr. Durrani had no opinion whatsoever on the actual amount of Roundup Mr. Barnes' skin was exposed to or the dose of glyphosate he allegedly received, he failed entirely to offer sufficient evidence that Roundup was a potential cause of Mr. Barnes' NHL. Instead, he focused on the irrelevant question of how *long* and how many *times* Mr. Barnes sprayed Roundup. As far as Dr.

Durrani was concerned, whether Mr. Barnes wore personal protective equipment, whether he was spraying downwind, or whether he walked for 10 minutes in between spraying weeds, or any other factual issue was irrelevant to his analysis. To Dr. Durrani, the only factors that merited consideration were whether Mr. Barnes sprayed and how long a spraying session lasted, no matter how much was sprayed during that time. This "analysis" does not provide a sufficient basis to "rule in" Roundup in the first place. *See Butler*, 310 Ga. App. 21, 47 (holding that "dose-response with an established threshold for when dose starts to cause harm would be necessary for a proper differential diagnosis to be done").

Dr. Durrani also failed at the "ruling out" stage in which he failed to rule out all other risk factors or alternative explanations other than Roundup, ***including Plaintiff's exposure to other chemicals and pesticides***—namely Spectracide. *See* Ex. S, THD proffer evidence; Ex. U, L. Barnes proffer evidence. *But see* Ex. Q, 3/13/25 Trial Tr. at 3327:10–3328:22 (dismissing Plaintiff's exposure because "[t]here was no evidence that he was actually exposed to Spectracide"). Dr. Durrani failed to meaningfully consider other risk factors and alternative explanations. *Id*. Although Dr. Durrani testified that he ruled out a number of risk factors for Mr. Barnes' NHL other than Roundup, Dr. Durrani's testimony was devoid of any explanation for why the non-Roundup risk factors were not the cause of Mr. Barnes' NHL. *Guinn v. AstraZeneca Pharms*. LP, 602 F.3d 1245, 1253 (11th Cir. 2010) ("[A]n expert must provide a reasonable explanation as to why he or she has concluded that [any alternative cause suggested by the defense] was not the sole cause of the plaintiff's injury.") (internal quotations omitted). Instead, Dr. Durrani would simply define a risk factor and rule it out, without mentioning why the risk factor had—in his opinion—no relationship to Mr. Barnes' cancer diagnosis. *See, e.g.*, Ex. Q, 3/13/25 Trial Tr. at 3245:16–3246:12. In that vein, Dr. Durrani also never ruled out actinic keratosis or hypogonadism,

which are risk factors with statistically significant increased risk for developing NHL that Plaintiff had. This is not a proper differential diagnosis.

Finally, Dr. Durrani could not rule out the most likely explanation for Mr. Barnes' development of NHL—random replication errors. Dr. Durrani did not even *attempt* to rule out random replication errors as the cause of Mr. Barnes' NHL. *See* Ex. L, 3/18/25 Trial Tr. at 4344:13–4345:17 (Dr. Vearrier explaining the importance of ruling out chance in statistical analysis; "[W]hat we would want to see is a consistent positive finding across studies. If you consistently see that across studies, then that is indicative that something is a carcinogen."); Ex. J, 3/19/25 Trial Tr. at 4422:21–4423:7 (Dr. Tomasetti testifying that "the majority of the mutations that contribute to cancer are due to what we call just natural replication errors."); *id.* at 4502:14–18 (testifying that the American Cancer Society now lists random mutations as the most common mutation type).

Dr. Durrani did not consider any of the factors he purported to analyze to reach his conclusions, much less offer the jury any testimony explaining how these risk factors may or may not have contributed to Mr. Barnes' NHL diagnosis, how they were weighted, or why they could be disregarded. Dr. Durrani simply "checked the box" to arrive at his preordained conclusion. Indeed, on this evidence, the only basis for the jury to find that Roundup was a possible cause of Mr. Barnes' NHL was Dr. Durrani's "say so." But it is black-letter law that the *ipse dixit* of an expert witness is not a sufficient basis for their opinions. *See Bowers v. CSX Transportation, Inc.*, 369 Ga. App. 875, 881 (2023) ("[A]n expert cannot simply assert that an employee was exposed to some unknown amount of a potential carcinogen, and some unknown amount of that potential carcinogen can cause cancer, so therefore exposure to that carcinogen did cause the employee's cancer: that's just the type of opinion that is connected to the data only by the *ipse dixit* of the

expert, and need not be accepted by the Court.") (internal quotations omitted). The so-called differential diagnosis performed by Dr. Durrani was not sufficient to submit the question of specific causation to the jury. Judgment should be entered for Monsanto.

IV. Judgment for Monsanto is required because Plaintiff's state law claims are premised on a theory of manipulating the EPA and therefore preempted by federal law under *Buckman*.

Plaintiff's negligence and punitive damages claims, both of which are state-law claims, must be dismissed under *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001), which holds that "the relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law." *See* 531 U.S. at 347. In *Buckman*, the Supreme Court held that federal law preempted "state-law causes of action claiming that [the defendants] made fraudulent representations to the FDA . . . and, as a result, the [medical] devices were improperly given market clearance and were subsequently used to the plaintiff's detriment." *Id.*, at 347. The Court explained that allowing state law to instead govern the relationship between "a federal agency and [those] it regulates" would interfere with the federal scheme. *See* 531 U.S. at 347. Among other things, state law might encourage regulated entities to submit "a deluge of information that the Administration neither wants nor needs, resulting in additional burdens" on the federal agency. *Id.*, at 351. The Supreme Court also pointed out that the agency itself was "empower[ed] . . . to punish and deter fraud against the Administration," and that allowing state law to punish supposed misrepresentations would "skew" the relationship between federal agencies and those they regulate. *Id.* at 342.

Courts have applied *Buckman* to find state-law claims preempted when a "critical element" of the claim is the "propriety of disclosures made . . . to a federal agency." *Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d 1199, 1207 (9th Cir. 2002) (holding that a state-law claim alleging fraud

against EPA was preempted under *Buckman*); *see also Giglio v. Monsanto Co.*, 2016 WL 1722859, at *3 (S.D. Cal. Apr. 29, 2016) (claims that Monsanto "failed to adequately warn the EPA of the dangers of Roundup and concealed information from and/or misrepresented information to the EPA . . . are preempted by FIFRA."); *Williams v. Dow Chem. Co.*, 255 F. Supp. 2d 219, 232 (S.D.N.Y. 2003) (citing *Buckman* for the conclusion that "FIFRA also preempts state-law claims that allege 'fraud on the EPA.'"); *Hardin v. BASF Corp.*, 290 F. Supp. 2d 964, 973 (E.D. Ark. 2003) (citing *Kimmel* for the conclusion that "the principles of implied conflict preemption bar Plaintiffs from pursuing a claim that BASF withheld information from the EPA").

Plaintiff's trial evidence confirms that judgment on his state-law claims is required as a matter of law because those claims rely on a "fraud on the EPA" theory. For example, Plaintiff made one of his "true/false" questions that "reasonable chemical companies should not manipulate the regulatory process." Ex. D, 3/3/25 Trial Tr. at 768:3–8, 804:7–11. Additionally, Plaintiff repeatedly asked about Monsanto's interactions with EPA, and what information Monsanto did or did not provide to EPA, all to suggest that Monsanto manipulated or failed to disclose information to EPA. *Id.* at 770:21–805:20 (thirty-five pages of testimony about interactions with EPA); Ex. A, 3/6/25 Trial Tr. at 1542:6–1549:8 (questioning Dr. Reeves about Monsanto's "access" to EPA); *id.* at 1765:13–1768:13 (pages of questions about what Monsanto told EPA); Ex. E, 3/7/25 Trial Tr. at 2081:17–2082:12 (questioning Dr. Farmer about a 1985 document discussing "persuading" EPA). This evidence demonstrates Plaintiff's approach to his state-law claims is focused exclusively on Monsanto's engagement with the federal regulatory process. Plaintiff does not avoid preemption by never saying the magic words, "fraud on the EPA." Plaintiff's evidence and arguments adduced at the trial show that Plaintiff's entire presentation from start to finish was that Monsanto hid information from the EPA, the type of argument expressly preempted by *Buckman*

and its progeny.

This reliance on a "fraud on the EPA" theory is squarely preempted by federal law. *Buckman*, 531 U.S. at 347. State-law claims cannot be used to police the "propriety" of disclosures to a federal agency, or to determine if a federal agency has been "manipulated," or to impose liability or damages if a jury thinks the disclosures were unreasonable under state law. *Nathan Kimmel*, 275 F.3d at 1207; *Buckman*, 531 U.S. at 353 (holding state-law claim was preempted when the federal regulatory process is a "critical element in" the plaintiffs' case). Because Plaintiff chose to try his case the way he did, preemption of his claims follows as a matter of law. Judgment for Monsanto is required.

CONCLUSION

For the foregoing reasons, the Court should enter judgment in favor of Monsanto on all of Plaintiff's remaining claims notwithstanding the jury's verdict.

Respectfully submitted this 4th day of April, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I caused to be served the foregoing **MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT** by filing a copy of such document with PeachCourt's e-Filing system, which will send notice of such filing to all counsel of record in this matter.

This 4th day of April, 2025.

/s/ *William J. Holley, II*
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