No. _____

In the
Supreme Court of the United States

MONSANTO COMPANY,

Petitioner,

v.

MIKE DENNIS,

Respondent.

On Petition for Writ of Certiorari to the California Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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July 24, 2026

QUESTION PRESENTED

In *Monsanto Co. v. Durnell*, 2026 WL 1825691 (U.S. June 25, 2026), this Court held that the Federal Insecticide, Fungicide, and Rodenticide Act "expressly preempts" "state-law failure-to-warn claim[s]" against Monsanto for failing to include "a cancer warning on Roundup's label" when the Environmental Protection Agency has declined to require one. *Id.* at *13. In this case, the California Court of Appeal affirmed judgment on a state-law failure-to-warn claim brought against Monsanto for failing to warn consumers that its Roundup products allegedly cause cancer.

The question presented is:

Whether, in light of *Durnell*, this Court should vacate the decision of the California Court of Appeal and remand this case for further proceedings not inconsistent with *Durnell*.

PARTIES TO THE PROCEEDING

Petitioner Monsanto Company was the defendant and appellant in the California Court of Appeal. Monsanto is not a publicly traded company and does not have a stock ticker symbol. Respondent Mike Dennis was the plaintiff and respondent in the California Court of Appeal.

CORPORATE DISCLOSURE STATEMENT

Petitioner Monsanto Company is an indirect, wholly owned subsidiary of Bayer AG (BAYRY), a publicly held corporation. No other publicly held corporation owns 10% or more of Monsanto's stock.

STATEMENT OF RELATED PROCEEDINGS

Dennis v. Monsanto Co., No. S294655 (Cal.) (petition for review denied Mar. 11, 2026);

Dennis v. Monsanto Co., No. D084130 (Cal. Ct. App.) (opinion and judgment issued Nov. 24, 2025);

Dennis v. Monsanto Co., No. 37-2021-00047326-CU-PO-NC (Cal. Super. Ct.) (amended judgment entered Apr. 8, 2024).

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PETITION FOR WRIT OF CERTIORARI

In *Monsanto Co. v. Durnell*, 2026 WL 1825691 (U.S. June 25, 2026), this Court held that the Federal Insecticide, Fungicide, and Rodenticide Act expressly preempts state-law failure-to-warn claims that seek to hold Monsanto liable for failing to warn consumers that its Roundup products allegedly cause cancer. In this case, respondent Mike Dennis obtained a judgment against Monsanto on the theory that it was required to warn consumers of glyphosate's alleged carcinogenicity through label warnings on Roundup. The California Court of Appeal held that FIFRA does not preempt respondent's failure-to-warn claims. That decision can no longer stand after *Durnell*. This Court should grant this petition, vacate the decision below, and remand for further proceedings not inconsistent with its decision in *Durnell*.

OPINIONS BELOW

The Supreme Court of California's order denying petitioner's petition for review is unreported but is reproduced at App.1. The opinion of the California Court of Appeal is reported at 339 Cal.Rptr.3d 175 and reproduced at App.2-29. The order of the Superior Court of California denying in part and granting in part petitioner's motion for judgment notwithstanding the verdict and denying petitioner's motion for a new trial is unreported but is reproduced at App.40-64.

JURISDICTION

The Supreme Court of California denied petitioner's petition for review on March 11, 2026. App.1. On May 20, 2026, this Court extended the time within which to file a petition for a writ of certiorari to

and including July 24, 2026. This Court has jurisdiction under 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The full text of 7 U.S.C. §136v(a)-(b) is reproduced at App.70.

STATEMENT OF THE CASE

In November 2021, respondent Mike Dennis sued Monsanto in California state court. 1 CoA.App.6. He alleged that he had used Roundup at his residential property for approximately 20 years beginning in 2000 and subsequently developed non-Hodgkin's lymphoma, which he attributed to his Roundup use. 1 CoA.App.60-61. Dennis asserted three causes of action: strict-liability design defect, strict-liability failure to warn, and negligence. 1 CoA.App.79-90. Each cause of action arose from the same core contention: that the glyphosate in Monsanto's Roundup product was carcinogenic, but Monsanto failed to alert consumers to that risk. *Id.*

Monsanto moved for summary judgment, arguing that FIFRA preempted each claim. 1 CoA.App.97. But the trial court, bound by an earlier California precedent in *Pilliod v. Monsanto Co.*, 282 Cal.Rptr.3d 679 (Cal. Ct. App. 2021), denied that motion. 1 CoA.App.98-99. After the close of evidence following an 18-day trial, the jury was presented with a verdict form that asked it to opine on Dennis' strict-liability design defect and failure-to-warn claims, and that bifurcated his negligence claim into negligent design defect and negligent failure-to-warn theories. App.30-34. The jury returned a partial verdict for Dennis: It rejected his design defect claims, but found for him on

his failure-to-warn claims. App.30-33. The jury awarded $7 million in compensatory damages and $325 million in punitives. App.33-34. Monsanto moved for judgment notwithstanding the verdict, which the Superior Court summarily denied, again citing *Pilliod*. App.60. The court remitted respondent's punitive damages from $325 million down to $21 million, bringing the total judgment to $28 million. App.53-54.

The California Court of Appeal affirmed, concluding that FIFRA did not preempt respondent's strict-liability and negligence claims based on a failure-to-warn theory. App.6-25. The Supreme Court of California denied Monsanto's petition for review. App.1.

REASONS FOR GRANTING THE PETITION

This petition presents the same issue addressed by this Court in *Durnell*. The jury found for respondent only on his failure-to-warn claims, which sought to hold Monsanto liable for failing to warn the public that glyphosate causes cancer, while rejecting his design defect claims. App.30-33. But as this Court explained in *Durnell*, FIFRA "expressly preempts" a "state-law failure-to-warn claim" when that claim seeks to hold a pesticide manufacturer liable for failing to include on its label a warning that EPA has repeatedly studied and rejected. 2026 WL 1825691, at *13.

The Court should grant this petition, vacate the decision below, and remand the case for further proceedings not inconsistent with *Durnell*. That is the course this Court has taken in similar cases in the wake of *Durnell*. *See, e.g.*, *Monsanto Co. v. Salas*, 2026

WL 1871318, at *1 (U.S. June 30, 2026); *Monsanto Co. v. Johnson*, 2026 WL 1871311, at *1 (U.S. June 30, 2026). There is no reason for a different approach here.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari, vacate the California Court of Appeal's decision, and remand the case for further proceedings not inconsistent with the Court's decision in *Durnell*.

Respectfully submitted,

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Appendix A

SUPREME COURT OF CALIFORNIA

No. S294655

MIKE DENNIS,

Plaintiff-Respondent,

v.

MONSANTO COMPANY,

Defendant-Appellant.

Filed: Mar. 11, 2026

En Banc

ORDER

The petition for review is denied.

GUERRERO
Chief Justice

Appendix B

CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT

No. D084130

MIKE DENNIS,

Plaintiff-Respondent,

v.

MONSANTO COMPANY,

Defendant-Appellant.

Filed: Nov. 24, 2025

OPINION

Mike Dennis was diagnosed with mycosis fungoides, a form of non-Hodgkin's lymphoma (NHL), after using Roundup, an herbicide manufactured and sold by Monsanto Company (Monsanto), monthly for approximately 20 years. Dennis sued Monsanto and alleged, among other claims, that they failed to warn consumers that using Roundup in accordance with widespread and common practice presented a substantial danger. The jury found Monsanto liable and awarded Dennis $7 million in economic damages and $325 million in punitive damages. The trial court granted Monsanto's motion for judgment notwithstanding the verdict (JNOV) in part and reduced the punitive damages to $21 million.

Monsanto appeals and asserts the trial court erred by failing to conclude Dennis's failure to warn claims were preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.) (FIFRA), and by failing to conclude that the punitive damages award violated due process by punishing Monsanto multiple times for the same conduct. We find no error and affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

In the operative first amended complaint, Dennis alleged that he applied Roundup around his home property on a monthly basis, throughout the year, every year from 2000 until 2020.

Roundup is a "non-selective herbicide used to kill weeds." Its main ingredient is glyphosate, which was discovered by Monsanto in 1970. In 2015, the International Agency for Research on Cancer, an agency of the World Health Organization, classified glyphosate as a Group 2A herbicide, meaning that it is probably carcinogenic to humans. The agency found that NHL is among the cancers most associated with exposure to glyphosate. Roundup also contains other ingredients that increases absorption of the active ingredient, glyphosate, into both plant leaves and human skin.

Dennis was diagnosed with mycosis fungoides, a form of NHL, in June 2020. Dennis alleged that his diagnosis was the direct and proximate result of his exposure to Roundup. He alleged further that Monsanto continued marketing and selling the product despite knowing that it carried a risk of

causing NHL and without providing adequate warning to consumers.

Dennis asserted causes of action for design defect, failure to warn (negligent and strict liability), and negligence against Monsanto. As to the failure to warn causes of action, the jury made the following findings on a directed verdict form:

> – Roundup has a risk of causing NHL that was known or knowable in light of scientific and medical knowledge that was generally accepted in the scientific community at the time of Monsanto's manufacture, distribution, or sale.
>
> – The potential risks of Roundup present a substantial danger to persons when used in accordance with widespread and commonly recognized practice.
>
> – Ordinary customers would not have recognized that potential risk.
>
> – Monsanto knew or should reasonably have known that Roundup can cause or was likely to cause NHL when used in accordance with widespread and commonly recognized practice.
>
> – Monsanto knew or should reasonably have known that users would not realize that danger.
>
> – Monsanto failed to adequately warn of the potential risks or danger and failed to adequately instruct on the safe use of Roundup.

> – A reasonable manufacturer, distributor, or seller under the same or similar circumstances would have warned of the danger or instructed on the safe use of Roundup.
>
> – The lack of sufficient warnings was a substantial factor in causing Mike Dennis's mycosis fungoides.

In addition, the jury found that Monsanto "engage[d] in conduct with malice, oppression or fraud committed by one or more officers, directors or managing agents of Monsanto acting on behalf of Monsanto."

Based on those findings, the jury awarded Dennis $2 million in past noneconomic losses, $5 million in future noneconomic losses, and $325 million in punitive damages.

Monsanto filed motions for a new trial and JNOV. As relevant to the present appeal, Monsanto asserted that FIFRA expressly and impliedly preempted Dennis's failure to warn claims, and that the punitive damages award must be set aside because it violated due process by punishing Monsanto multiple times for the same conduct and because the ratio of the punitive to compensatory damages was excessive.

The trial court found that the award of $325 million in punitive damages lacked a sufficiently reasonable relationship to the compensatory damages of $7 million. Accordingly, the court reduced the punitive damages award to $21 million. The court rejected Monsanto's remaining arguments and entered an amended judgment adjusting the punitive damages award.

Monsanto filed a timely notice of appeal.

II. DISCUSSION

Monsanto does not dispute the jury's verdict or its associated findings in this appeal. Monsanto raises two distinct legal arguments: 1) FIFRA preempts Dennis's failure to warn claims brought under California law; and 2) the punitive damages award, as adjusted, still violates due process by punishing Monsanto multiple times for the same conduct. We address each in turn.

A. FIFRA Does Not Preempt Dennis's Failure to Warn Claims

We first consider whether FIFRA preempts California state failure to warn claims arising from allegedly inadequate warnings regarding health risks associated with pesticides registered and labeled under FIFRA.

1. Federal Preemption

A state law, based either in statute or common law, can be preempted by the supremacy clause of the United States Constitution in one of two ways: by express preemption or implied preemption. (*Pilliod v. Monsanto Co.* (2021) 67 Cal.App.5th 591, 613 (*Pilliod*); *American Meat Institute v. Leeman* (2009) 180 Cal.App.4th 728, 745-746 (*Leeman*).)

Express preemption occurs "'when Congress "define[s] explicitly the extent to which its enactments pre-empt state law;"'" for example, by including express language in the federal statute. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 613.)

Implied preemption occurs "when state law 'regulates conduct in a field that Congress intended

the Federal Government to occupy exclusively,'" and when state law "'"actually conflicts with federal law,'"" either because "'"it is impossible to comply with both state and federal law'"" or because "'"the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.'"" (*Leeman*, *supra*, 180 Cal.App.4th at p. 746.) Preemption that arises because it is impossible to comply with both state and federal law is sometimes referred to as "'impossibility preemption.'" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 613.)

"Federal preemption of state law is a question of law that we review de novo." (*Pilliod*, *supra*, 67 Cal.App.5th at p. 614.)

2. *Bates v. Dow Agrosciences LLC*

In *Bates v. Dow Agrosciences LLC* (2005) 544 U.S. 431 (*Bates*), the United States Supreme Court considered whether, and to what extent, FIFRA preempts state law failure to warn claims, albeit in a slightly different context.

In *Bates*, a group of Texas farmers alleged that Dow failed to adequately warn them that its pesticide, "Strongarm," would stunt the growth of peanuts in soil with a pH level of 7.0 or greater. (*Bates*, *supra*, 544 U.S. at pp. 434-435.) Dow had conditionally registered Strongarm in March 2000 with a label that stated: "'Use of Strongarm is recommended in all areas where peanuts are grown.'" (*Id.* at p. 435.) However, the next year, after the plaintiff farmers had already used it on their peanut crops, Dow reregistered Strongarm with a supplemental label for specific states, including Texas, that read "'Do not apply Strongarm to soils with a pH of 7.2 or greater.'" (*Ibid.*) The farmers

alleged they applied Strongarm with the original label, that it did extensive damage to their crops, and that Dow failed to warn them of this known risk. (*Id.* at pp. 435-436.)

The trial court dismissed the farmers' claims, finding they were preempted by 7 U.S.C. § 136v(b), a provision of FIFRA that provides, "States [regulating pesticides] shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." (*Bates*, *supra*, 544 U.S. at p. 436.) The appellate court affirmed, highlighting a conflict amongst various state courts, and the United States Supreme Court granted certiorari to address the scope of federal preemption based on FIFRA. (*Bates*, at p. 437.)

The Supreme Court began with a brief history of state and federal pesticide regulations. (*Bates*, *supra*, 544 U.S. at p. 437.) "Prior to 1910 the States provided the primary and possibly the exclusive source of regulatory control over the distribution of poisonous substances." (*Ibid.*) The federal government entered the field through the Insecticide Act of 1910, followed by the original enactment of FIFRA in 1947, both of which delt primarily with licensing and labeling. (*Bates*, at p. 437.) FIFRA initially required all pesticides sold in interstate commerce to be registered with the Secretary of Agriculture. (*Bates*, at p. 437.) The Environmental Protection Agency (EPA) took over the registration process in 1970. (*Ibid.*)

"[S]purred by growing environmental and safety concerns, Congress adopted the extensive amendments" that transformed FIFRA into a more

comprehensive regulatory scheme in 1972. (*Bates*, *supra*, 544 U.S. at p. 437.) Under the more comprehensive FIFRA, "a manufacturer seeking to register a pesticide must submit a proposed label to EPA as well as certain supporting data. 7 U.S.C. §§ 136a(c)(1)(C), (F). The [EPA] will register the pesticide if it determines that the pesticide is efficacious (with the caveat discussed below), § 136a(c)(5)(A); that it will not cause unreasonable adverse effects on humans and the environment, §§ 136a(c)(5)(C), (D); 136(bb); and that its label complies with the statute's prohibition on misbranding, § 136a(c)(5)(B); 40 CFR § 152.112(f)."[1] (*Bates*, at p. 438.)

"A pesticide is 'misbranded' if its label contains a statement that is 'false or misleading in any particular.'" (*Bates*, *supra*, 544 U.S. at p. 438.) "A pesticide is also misbranded if its label does not contain adequate instructions for use, or if its label omits necessary warnings or cautionary statements. 7 U.S.C. §§ 136(q)(1)(F), (G)." (*Ibid.*) That includes warnings adequate to protect health. (7 U.S.C. § 136(q)(1)(G).)

"Because it is unlawful under [FIFRA] to sell a pesticide that is registered but nevertheless misbranded, manufacturers have a continuing obligation to adhere to FIFRA's labeling requirements." (*Bates*, *supra*, 544 U.S. at p. 438.) As part of this ongoing obligation, manufacturers also

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[1] As was particularly relevant in *Bates*, the EPA effectively stopped evaluating pesticide efficacy to allow a greater focus on environmental and health risks in the 1970's. (*Bates*, *supra*, 544 U.S. at p. 440.)

have a duty to report incidents of toxic effects not adequately reflected on a pesticide's label. (*Id.* at p. 439.) In response, the EPA may institute cancellation proceedings or other enforcement actions. (*Ibid.*)

Registration serves as prima facie evidence that a pesticide is not misbranded, but it is not a defense to misbranding. FIFRA states: "In no event shall registration of an article be construed as a defense for the commission of any offense under this subchapter. As long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of the subchapter." (7 U.S.C. § 136a(f)(2).)

FIFRA also expressly allows states to continue their own regulatory efforts. (*Bates*, *supra*, 544 U.S. at p. 439.) FIFRA addresses the authority of the states in 7 U.S.C. section 136v, which provides: "A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter." (*Id.*, § 136v(a).) However, "[s]uch 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." (*Id.*, § 136v(b).)

Thus, as the *Bates* court concluded, FIFRA is not "'sufficiently comprehensive'" to raise an inference that "'Congress ha[s] occupied the field to the exclusion of the States.'" (*Bates*, *supra*, 544 U.S. at pp. 441-442.) Rather, the statute "'leaves ample room for States and localities to supplement federal efforts.'" (*Id.* at p. 442.) "As a part of their supplementary role,

States have ample authority to review pesticide labels to ensure that they comply with both federal and state labeling requirements." (*Ibid.*) "Nothing in the text of FIFRA would prevent a State from making the violation of a federal labeling or packaging requirement a state offense, thereby imposing its own sanctions on pesticide manufacturers who violate federal law." (*Ibid.*)

With that background in mind, the *Bates* court turned to the question of whether the claims at issue there were preempted by 7 U.S.C section 136v(b). (*Bates*, *supra*, 544 U.S. at p. 442.) The court explained that certain state rules *could* be preempted by 7 U.S.C section 136v(b), but for preemption to occur, two conditions must be met. (*Bates,* at pp. 443-444.) "First, [the state law or rule] must be a requirement '*for labeling or packaging*'; rules governing the design of a product, for example, are not pre-empted. Second, it must impose a labeling or packaging requirement that is '*in addition to or different from* those required under this subchapter.' A state regulation requiring the word 'poison' to appear in red letters, for instance, would not be pre-empted if an EPA regulation imposed the same requirement." (*Id.* at p. 444.)

Addressing the claims at issue in *Bates*, the court explained: "It is perfectly clear that many of the common-law rules upon which petitioners rely do not satisfy the first condition. Rules that require manufacturers to design reasonably safe products, to use due care in conducting appropriate testing of their products, to market products free of manufacturing defects, and to honor their express warranties or other contractual commitments plainly do not qualify as

requirements for 'labeling or packaging.' None of these common-law rules requires that manufacturers label or package their products in any particular way. Thus, petitioners' claims for defective design, defective manufacture, negligent testing, and breach of express warranty [were] not pre-empted." (*Bates*, *supra*, 544 U.S. at p. 444.)

As to claims regarding the express warranty on the Strongarm label, the court explained, "a cause of action on an express warranty asks only that a manufacturer make good on the contractual commitment that it voluntarily undertook by placing that warranty on its product." (*Bates*, *supra*, 544 U.S. at p. 444.) The express warranty claims did not require Dow to make a warranty in the first instance, or to say anything specific therein, and therefore did not impose a requirement for "'labeling or packaging.'" (*Id.* at p. 445.) In rejecting the appellate court's "effects-based test," the *Bates* court explained that a "requirement is a rule of law that must be obeyed; an event, such as a jury verdict, that merely motivates an optional decision is not a requirement." (*Ibid.*)

The court found the fraud and negligent failure to warn claims were, however, "premised on common-law rules that qualify as 'requirements for labeling or packaging.'" (*Bates*, *supra*, 544 U.S. at p. 446.) Thus, for those claims, the court had to consider "whether [the] particular common-law duties [were] equivalent to FIFRA's misbranding standards." (*Id.* at p. 447.)

In addressing that question, the *Bates* court adopted a "parallel requirement" reading of 7 U.S.C section 136v(b). (*Bates*, *supra*, 544 U.S. at p. 447.) It found that 7 U.S.C section 136v(b) gives states the

"right to provide a traditional damages remedy for violations of common-law duties when those duties parallel federal requirements.'" (*Bates*, at p. 447.) It explained that where state and federal labeling requirements parallel one another, states are imposing additional *remedies*, not additional *requirements*. (*Id.* at p. 448.)

Finally, the court concluded: "To be sure, the threat of a damages remedy will give manufacturers an additional cause to comply, but the requirements imposed on them under state and federal law do not differ." (*Bates*, *supra*, 544 U.S. at p. 448.) That conclusion was consistent with the "long history of tort litigation against manufacturers of poisonous substances [which] adds force to the basic presumption against pre-emption." (*Id.* at p. 449.)

3. *Pilliod* Is Instructive Here

In *Pilliod*, our sister court relied on the analysis in *Bates* to analyze whether the plaintiffs' failure to warn and design defect claims, similar to the ones at issue here, were preempted by FIFRA. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 615.)

Like the plaintiff here, husband and wife, Alberta and Alva Pilliod, each developed NHL after using Roundup. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 600.) A jury found in favor of the Pilliods and awarded them compensatory and punitive damages. (*Ibid.*) On appeal, Monsanto asserted the Pilliods' failure to warn and design defect claims were preempted because they were based on state law labeling and packaging requirements that are "in addition to" and "different from" requirements imposed by FIFRA. (*Pilliod*, at p. 615.) The court rejected Monsanto's assertion,

concluding instead that Monsanto had identified "no state law requirements that are in addition to or different from the misbranding requirements imposed by FIFRA." (*Ibid.*)

As the *Pilliod* court explained, "To prove negligent failure to warn under California law, a plaintiff must show 'that a manufacturer . . . did not warn of a particular risk for reasons which fell below the acceptable standard of care, i.e., what a reasonably prudent manufacturer would have known and warned about.'" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 615.) "To prove failure to warn in strict liability, a plaintiff must show 'that the defendant did not adequately warn of a particular risk that was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution.'" (*Ibid.*)

Similarly, a pesticide is misbranded under FIFRA "if its labeling 'does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . are adequate to protect health' (7 U.S.C. § 136(q)(1)(F)) or if its label 'does not contain a warning or caution statement which may be necessary and if complied with . . . is adequate to protect health.' (7 U.S.C. § 136(q)(1)(G).)" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616.) As the *Pilliod* court held, "California common law therefore does not impose any requirements that are different from or in addition to the requirements of FIFRA." (*Ibid.*)

The *Pilliod* court also rejected Monsanto's argument, like the argument raised in this appeal, that any state law requirement for a cancer warning

would be preempted because the EPA had reviewed the factual basis for the label statements that were included on the product. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616.) The court found Monsanto's argument "disregard[ed] the provision in FIFRA that registration and approval of a label is not a defense to a claim of misbranding," and "ignore[d] the explication in *Bates* that 'FIFRA contemplates that pesticide labels will evolve over time, as manufacturers gain more information about their products' performance in diverse settings,' and the observation that 'tort suits can serve as a catalyst in this process.'" (*Ibid.*)

As both courts explained: ""'By encouraging plaintiffs to bring suit for injuries not previously recognized as traceable to pesticides such as [the pesticide there at issue], a state tort action of the kind under review may aid in the exposure of new dangers associated with pesticides. Successful actions of this sort may lead manufacturers to petition [the] EPA to allow more detailed labelling of their products; alternatively, [the] EPA itself may decide that revised labels are required in light of the new information that has been brought to its attention through common law suits. In addition, the specter of damage actions may provide manufacturers with added dynamic incentives to continue to keep abreast of all possible injuries stemming from use of their product so as to forestall such actions through product improvement."'" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616.)

In *Pilliod*, Monsanto also asserted that the state law claims were subject to impossibility preemption[2]

[2] As noted, *ante*, impossibility preemption is generally used to describe implied preemption that arises because it is impossible

because Monsanto could not change the Roundup label without EPA approval. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616.) But the *Pilliod* court was "not persuaded that the doctrine [(i.e., impossibility preemption)] can be reconciled with FIFRA, which confirms that states are authorized to regulate the sale and use of pesticides and authorizes states to ban the sale of a pesticide that it finds unsafe." (*Id.* at p. 617.) Accordingly, the *Pilliod* court found that FIFRA did not preempt the Pilliods' claims, either expressly or impliedly. (*Pilliod*, at p. 618.)

We find the *Pilliod* case persuasive and directly applicable to the arguments raised by Monsanto in this appeal. Dennis's failure to warn claims are like those at issue in *Pilliod*. And, notably here, Monsanto does not dispute the factual findings of the jury, including findings that there is a risk that Roundup may cause NHL, and that Monsanto knew or should have known about that risk.

Monsanto asserts Dennis cannot identify any statutory or regulatory provision that requires Monsanto to warn that glyphosate is a carcinogen, but of course this assertion completely overlooks the well-established fact that Roundup is impermissibly misbranded under FIFRA if its label omits necessary warnings or cautionary statements to protect health. (*Bates*, *supra*, 544 U.S. at p. 438; 7 U.S.C. §§ 136(q)(1)(F), (G).) Likewise, it also overlooks the fact that Monsanto had an ongoing duty under FIFRA to report incidents of toxic effects not adequately

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to comply with both state and federal law. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 613.)

reflected on a pesticide's label. (*Bates*, at p. 438.) To the extent that Monsanto effectively concedes that it knew or should reasonably have known that Roundup can cause NHL when used in accordance with widespread and commonly recognized practice, it had an obligation under FIFRA to report any known incidents and seek an amended label from the EPA. There is no evidence in the record before us that it did so.[3]

Monsanto continues to rely on the fact that the EPA has never *required* it to put a cancer warning on Roundup, but as the *Pilliod* court explained, that argument "disregards the provision in FIFRA that registration and approval of a label is not a defense to a claim of misbranding." (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616.) To the extent Monsanto asserts the EPA did not *allow* it to place a cancer warning on the Roundup label, Monsanto mischaracterizes the regulatory process. The EPA has never said Monsanto could *not* put a cancer warning on the Roundup label; and, indeed, Monsanto has never asked the EPA to permit such a label. Instead, Monsanto has consistently presented evidence to the EPA disputing the connection between Roundup and NHL and, thus, the EPA has not *required* the warning. Significantly, here, Dennis presented evidence that Monsanto acted

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[3] We hereby grant Monsanto's unopposed request to take judicial notice filed on February 10, 2025. We deny Monsanto's request to take judicial notice filed on June 24, 2025 as the documents were not before the trial court and are not necessary for the resolution of the appeal. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; *Guarantee Forklift, Inc. v. Capacity of Texas, Inc.* (2017) 11 Cal.App.5th 1066, 1075).

maliciously in misrepresenting the science to the EPA, and it appears the jury and the trial court agreed. Thus, the mere fact that the EPA approved a label for Roundup that does not contain a cancer warning does not establish that Roundup was not misbranded because it did not include a warning necessary to protect health. (7 U.S.C. §136(q)(1)(F); *Pilliod*, *supra*, 67 Cal.App.5th at p. 616.)

As explained in *Bates*, 7 U.S.C section 136v strikes a balance between the regulatory efforts of the states and the federal government and allows states to provide *remedies* for mislabeling violations so long as the relevant cause of action parallels FIFRA's labeling requirements. (*Bates*, *supra*, 544 U.S. at pp. 447-448.) Where, as here, the cause of action does not impose different or additional requirements, state tort suits can serve as a catalyst for manufacturers, like Monsanto, to provide additional information to the EPA and may aid in exposure of new dangers. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616.) That Monsanto has continually disputed the connection between Roundup and NHL before the EPA does not support a finding that the underlying state and federal requirements are different. At most, it supports an inference that Monsanto has thus far convinced the EPA (perhaps using nonobjective data) to maintain a different conclusion regarding the applicability or impact of certain parallel requirements to the Roundup product.

Monsanto asserts further that there is clear evidence the EPA would not have approved a cancer warning for Roundup, and therefore any state requirement to do so must be preempted. But, as we have explained, the EPA's previous decision not to

require a cancer warning on glyphosate pesticides like Roundup—based in part based on studies and arguments put forth by Monsanto—does not equate to evidence that the EPA would not *allow* a warning if Monsanto expressly sought (or supported) one for Roundup. Moreover, the EPA decisions that Monsanto points to relate generally to pesticides with the active ingredient glyphosate, and not to Monsanto's specific formula for Roundup.[4]

Here, the trial court found that Dennis presented evidence of "Monsanto's responses to scientific studies . . . and potential reclassification by regulatory agencies." That "evidence demonstrated not only the failure of Monsanto to adequately investigate the risk, but active efforts to limit research and shape scientific discourse regarding the risk." And, from that evidence, the jury could infer that "any limitation in the available knowledge of the risk was the result of Monsanto's efforts to suppress it, or at minimum to limit discourse and further investigation." Monsanto does not address, or dispute, these findings.

The trial court then concluded that *Pilliod* was directly on point, binding, and not distinguishable on the facts. Although not technically binding on this court, we agree and likewise follow the reasoning set forth in *Pilliod*. (*The MEGA Life & Health Insurance*

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[4] Monsanto relies on a 2019 letter from the EPA informing manufacturers that it would consider products including "the Proposition 65 warning language based on chemical glyphosate" to be misbranded. As Monsanto concedes, the EPA has since stated it could approve a labeling change if pesticide registrants requested it.

Co. v. Superior Court (2009) 172 Cal.App.4th 1522, 1529 [Although not bound by the decision of sister Courts of Appeal, we ordinarily follow them based on principles of stare decisis, absent good reason to disagree].)

4. We Are Not Persuaded by *Schaffner*

Monsanto urges this court to follow *Schaffner v. Monsanto Corp.* (2024) 113 F.4th 364 (*Schaffner*), a recent decision from the Third Circuit that departs from the reasoning in *Pilliod*. We have considered *Schaffner* but find it unpersuasive and therefore decline to follow it.

Like this case and *Pilliod*, the Schaffners alleged Monsanto violated Pennsylvania law by failing to include a cancer warning on Roundup, and Monsanto asserted their claims were preempted by FIFRA. (*Schaffner*, *supra*, 113 F.4th at p. 371.) The *Schaffner* court found that because the EPA approved a label for Roundup that omitted a cancer warning, any state law duty to warn about cancer and Roundup was different than the requirements imposed under FIFRA, and, thus, was preempted. (*Schaffner* at p. 371.)

In reaching that conclusion, the *Schaffner* court acknowledged that FIFRA "directly prohibits the distribution of pesticides whose labels fail to include warnings necessary to protect human health." (*Schaffner*, *supra*, 113 F.4th at p. 372.) The court also acknowledged that FIFRA requires manufacturers to inform the EPA if it learns of new information concerning a pesticide's risk after registration, and that it allows manufacturers to apply for an amended registration. (*Schaffner*, at pp. 373-374.) Finally, the *Schaffner* court acknowledged that the Ninth and

Eleventh Circuits rejected Monsanto's preemption argument in *Hardeman v. Monsanto Co.* (2021) 997 F.3d 41 and *Carson v. Monsanto Co.* (2024) 92 F.4th 980, respectively. (*Schaffner*, at p. 374.)

The *Schaffner* court declined to follow the previous cases and elected to "develop the law of express preemption under FIFRA" itself. (*Schaffner*, *supra*, 113 F.4th at p. 379.) The court proceeded in "three steps." (*Id.* at p. 381.) First, it concluded "that the Preapproval Regulation, 40 C.F.R. § 152.44, prohibited Monsanto from modifying Roundup's Preapproved Label in order to add the Cancer Warning," at least without seeking an amended approval. (*Ibid.*) Second, it concluded "the Preapproval Regulation establishes a 'requirement' for the purposes of preemption." (*Ibid.*) And third, it addressed the parallel-requirements test and concluded the Pennsylvania requirement was different because it allegedly required a cancer warning that was omitted from Roundup's preapproved label "and could not have been added to the Roundup label without violating the Preapproval Regulation." (*Id.* at pp. 381-382.)

In doing so, the *Schaffner* court acknowledged that Monsanto had never submitted an amended registration seeking to add a cancer warning, and that "a plaintiff might conceivably argue that FIFRA required Monsanto to submit such an application and that a state-law claim for breach of duty to warn could satisfy the parallel-requirements test because it is equivalent to that federal requirement [for amended registration]." (*Schaffner*, *supra*, 113 F.4th at p. 386, fn. 13.) The *Schaffner* court declined to address the

argument because the Schaffners had not explicitly raised it. (*Ibid.*)

In our view, overlooking this argument rendered the *Schaffner* court's analysis incomplete. Even if the Schaffners had not expressly asserted that Monsanto could have, but did not, seek an amended registration, it remains that both the ongoing duty and the ability to amend a registration are necessary components of FIFRA's regulatory scheme, and thus also necessary to the evaluation of whether the state and federal requirements are parallel. As the United States Supreme Court explained in *Bates*—which is binding on this court and the Third Circuit—FIFRA expressly permits states "'to provide a traditional damages remedy for violations of common-law duties when those duties parallel federal requirements,'" and such tort suits can serve as a catalyst for the labeling process. (*Bates*, *supra*, 544 U.S. at pp. 447, 451.) Here, as in *Pilliod*, the verdict does not impose a requirement that Monsanto include a cancer warning; rather, it enforces the parallel requirement that Monsanto include all warnings necessary to protect health and, in doing so, could serve to incentivize Monsanto to provide accurate reporting to the EPA and/or file an amended application seeking a cancer warning for Roundup. (See *Bates*, at p. 451.)

Similarly, the *Schaffner* court continually, and in our view, incorrectly, characterized an approved label that omits a certain warning as *requiring* such omission.[5] (See, e.g., *Schaffner*, *supra*, 113 F.4th at

[5] Addressing the plaintiffs' arguments, the *Schaffner* court agrees that "EPA registration cannot be 'dispositive of FIFRA compliance,'" but then goes on to conclude that registration

p. 385 [EPA "prohibited" Monsanto from adding a cancer warning].) That view "disregards the provision in FIFRA that registration and approval of a label is not a defense to a claim of misbranding," and "ignores the explication in *Bates* that 'FIFRA contemplates that pesticide labels will evolve over time, as manufacturers gain more information about their products' performance in diverse settings,' and the observation that 'tort suits can serve as a catalyst in this process.'" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616.) Accordingly, we reject that analysis. (*Caranci v. Monsanto Co.* (2025) 338 A.3d 151, 170 (*Caranci*) ["The holding in *Schaffner* implies that EPA's approval of a label is final and determinative that the label adequately warns of risks. We reject this implication. FIFRA provides that EPA approval merely creates a rebuttable presumption of compliance with FIFRA."].)

Monsanto asserts that the *Schaffner* court's reading is correct because deriving a duty to warn (i.e., requiring Monsanto to place a cancer warning on Roundup) from FIFRA's misbranding provisions would violate the rule against surplusage. It points to the following implementing regulations as more specific than the misbranding regulations: 1) "When data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements," (40 C.F.R. § 156.70(b) (2025)); 2) "Specific statements pertaining

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"affects the content of the requirements imposed under FIFRA, as registration determines what label the pesticide must bear." (*Schaffner, supra,* 113 F.4th at p. 397.) In our view, this is a distinction without meaning.

to the hazards of the product and its uses must be approved by the Agency" (*id.*, § 156.70(c)); and 3) "A registrant may distribute or sell a registered product with the composition, packaging and labeling currently approved by the Agency." (*Id.*, § 152.130(a).) And, Monsanto asserts further, based on these same provisions, that the alternate reading in *Pilliod* impermissibly places the "general" misbranding provision over these more specific labeling requirements.

But none of the regulations Monsanto points to change the fact that an approved label serves only as prima facie evidence, and not a defense to mislabeling. Nor do they preclude a manufacturer like Monsanto from providing relevant data to the EPA and asking it to approve a label that includes a warning label. Rather, these provisions demonstrate the parallel nature of the FIFRA regulations and California state common law failure to warn claims like those at issue here. FIFRA requires pesticide labels to bear precautionary statements when there is evidence of acute hazard to humans and requires the EPA to approve such labels when necessary. Monsanto had an obligation to provide the relevant data and ensure the approved label was complete.

Moreover, these arguments disregard the holdings in *Bates*. A verdict like the one at issue here, and in *Pilliod*, does not require Monsanto to place a cancer warning on Roundup, nor does any provision of FIFRA. Both state common-law and FIFRA require manufacturers of pesticides to include warnings necessary to protect human health, and FIFRA further requires them to inform the EPA if they learn

of new information concerning a pesticide's risk after registration. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 616; *Caranci*, *supra*, 338 A.3d at p. 170 ["FIFRA imposes additional requirements on manufacturers; in particular, it requires them not to sell pesticides without adequate health warnings"].) In our view, it is Monsanto that reads the relevant statutory provisions too narrowly.[6]

In sum, we decline to follow *Schaffner*. We instead follow the reasoning set forth in *Bates* and *Pilliod*, and, thus, are not persuaded that Dennis's claims are preempted by FIFRA.

B. The Punitive Damages Award Does Not Violate Due Process

Finally, we address Monsanto's assertion that the trial court erred by not concluding that the punitive damages award was excessive because it had already been sufficiently punished for its conduct.

"Well-established legal principles govern the award of punitive damages. 'Punitive damages are available where the plaintiff proves "by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice." (Civ. Code, § 3294, subd. (a).) "Malice" includes "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).)'" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 641.)

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[6] Monsanto also asserts the state common-law requirement is different because it includes products that are used *or misused* in an intended or reasonably foreseeable way. But here, there is no evidence Dennis's claims were based on a misuse of Roundup.

"Punitive damages are limited by principles of due process under the Fourteenth Amendment. [Citation.] 'An award of grossly excessive or arbitrary punitive damages is constitutionally prohibited because due process entitles a defendant to fair notice of both the conduct that will subject it to punishment and the severity of the penalty that may be imposed for the conduct.'" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 642.) When addressing whether an award of punitive damages is constitutionally excessive, we apply a de novo standard of review but give deference to the jury and the trial court's factual findings. (*Simon v. San Paulo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1172.)

As noted, here, the jury awarded $325 million in punitive damages, and the trial court reduced the award to $21 million. Monsanto asserts the reduced punitive damages award violates due process by punishing it multiple times for the same conduct. Monsanto does not raise any other arguments regarding due process or the sufficiency of the evidence supporting the malice finding or the award.

As the *Pilliod* court explained, "California courts have recognized that '[p]unitive damages previously imposed for the same conduct are relevant in determining the amount of punitive damages required to sufficiently punish and deter,' and that '[t]he likelihood of future punitive damage awards may also be considered, although it is entitled to considerably less weight.'" (*Pilliod*, *supra*, 67 Cal.App.5th at p. 649.) There, the court found "reprehensible conduct remains to be punished and deterred" because Monsanto

continued to sell Roundup without a cancer warning. (*Ibid.*)

Here, Monsanto asserts the record establishes that it has ceased production of glyphosate-based products at least for the consumer market in the United States. Notably, though, Monsanto does not allege that it has ceased selling glyphosate-based products altogether, or that it has agreed to include a cancer warning on those that it does continue to sell. And, as particularly relevant here, Monsanto does not suggest that it has taken any steps to address its alleged interference with the development of the scientific analysis of its product, a significant basis for the punitive damages award in this case. Instead, and although it concedes that there was substantial evidence to support the jury's malice finding, Monsanto continues to assert that the evidence of the underlying science, and thus, its alleged malice, is "conflicting."

Monsanto relies primarily on *State Farm Mut. Auto Ins. Co. v. Campbell* (2003) 538 U.S. 408 (*State Farm*) to support its assertion, but *Campbell* is readily distinguishable here. In *State Farm*, the plaintiffs alleged State Farm ignored evidence and took their case to trial based on "'a national scheme to meet corporate fiscal goals by capping payouts on claims company wide.'" (*Id.* at p. 415.) A jury awarded plaintiffs $2.6 million in compensatory damages and $145 million in punitive damages. (*Ibid.*) The trial court reduced the punitive damages award to $25 million but the Utah Supreme Court reinstated the original $145 million reward. (*Ibid.*)

In addressing the basis for that award, the United States Supreme Court noted that the Campbells had presented significant evidence of State Farm's conduct in other states, that at least some of the conduct was lawful where it occurred, and that "[a] State cannot punish a defendant for conduct that may have been lawful where it occurred." (*State Farm, supra,* 538 U.S. at pp. 420-421.) In that context, the court found that the punitive damages award was meant "to punish and deter conduct that bore no relation to the Campbells' harm," (*id.* at p. 422) and that "[p]unishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains." (*Id.* at p. 423.)

Here, by contrast, the punitive damage award was based on Monsanto's "highly reprehensible conduct" directly related to Dennis's physical harm and suffering. Moreover, the trial court found that Monsanto was "a multibillion-dollar company which intentionally used its vast resources over several decades to protect its profits over the safety of ordinary consumers [like Dennis], showing a reckless disregard for the health and safety of the public." Nevertheless, it did reduce the punitive damages award significantly, ultimately "strik[ing] a balance, *including by taking into account the prior punitive damage awards* and Monsanto's subsequent actions."

Given the trial court's findings, we are not persuaded that the reduced punitive damages award violates Monsanto's right to due process.

III. DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

KELETY, J.

WE CONCUR:

McCONNELL, P.J.

RUBIN, J.

Appendix C

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

No. 37-2021-00047326

MIKE DENNIS,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Filed: Oct. 31, 2023

VERDICT FORM

We, the Jury, answer the questions submitted to us as follows:

CLAIM OF NEGLIGENCE—MONSANTO.

1. Was Monsanto negligent in designing, manufacturing, or supplying Roundup?

☒ Yes ☐ No

If your answer to question 1 is yes, then answer question 2. If you answered no, proceed to question 3.

2. Was Monsanto's negligence a substantial factor in causing Mike Dennis's mycosis fungoides?

☐Yes ☒ No

Go to Question 3.

CLAIM OF NEGLIGENT FAILURE TO WARN—MONSANTO.

3. Did Monsanto know or should it reasonably have known that Roundup can cause NHL or was likely to cause NHL when used in accordance with widespread and commonly recognized practice?

☒ Yes ☐ No

If your answer to question 3 is yes, then answer question 4. If you answered no, proceed to question 8.

4. Did Monsanto know or should it reasonably have known that users would not realize the danger?

☒ Yes ☐ No

If your answer to question 4 is yes, then answer question 5. If you answered no, proceed to question 8.

5. Did Monsanto fail to adequately warn of the danger or instruct on the safe use of Roundup?

☒ Yes ☐ No

If your answer to question 5 is yes, then answer question 6. If you answered no, proceed to question 8.

6. Would a reasonable manufacturer, distributor, or seller under the same or similar circumstances have warned of the danger or instructed on the safe use of Roundup?

☒ Yes ☐ No

If your answer to question 6 is yes, then answer question 7. If you answered no, proceed to question 8.

7. Was Monsanto's failure to warn a substantial factor in causing Mike Dennis' mycosis fungoides?

☒ Yes ☐ No

Proceed to Question 8.

CLAIM OF DESIGN DEFECT—MONSANTO

8. Did Roundup fail to perform as safely as an ordinary consumer would have expected when used or misused in an intended or reasonably foreseeable way?

☒ Yes ☐ No

If your answer to question 8 is yes, then answer question 9. If you answered no, proceed to question 10.

9. Was the design of Roundup a substantial factor in causing Mike Dennis's mycosis fungoides?

☐Yes ☒ No

Go to Question 10.

CLAIM OF STRICT LIABILITY—FAILURE TO WARN—MONSANTO

10. Did Roundup have a risk of causing NHL that was known or knowable in light of the scientific and medical knowledge that was generally accepted in the scientific community at the time of their manufacture, distribution or sale?

☒ Yes ☐ No

If your answer to question 10 is yes, then answer question 11. If you answered no, proceed to question 15.

11. Did the potential risks of Roundup present a substantial danger to persons when used in accordance with widespread and commonly recognized practice?

☒ Yes ☐ No

If your answer to question 11 is yes, then answer question 12. If you answered no, proceed to question 15.

12. Would ordinary consumers have recognized the potential risks?

☐Yes ☒ No

If your answer to question 12 is no, then answer question 13. If you answered no, proceed to question 15.

13. Did Monsanto fail to adequately warn of the potential risks?

☒ Yes ☐ No

If your answer to question 13 is yes, then answer question 14. If you answered no, proceed to question 15.

14. Was the lack of sufficient warnings a substantial factor in causing Mike Dennis's mycosis fungoides?

☒ Yes ☐ No

Go to Question 15.

CLAIM FOR DAMAGES

If you answered yes to question 2, 7, 9, OR 14, then answer the questions below about damages for Mike Dennis. If you did not answer or answered no to question 2, 7, 9, AND 14, stop here, answer no further questions, and have the presiding judge sign and date this form.

15. What are Mike Dennis's damages?

Past noneconomic loss: [handwritten: 2,000,000]

Future noneconomic loss: [handwritten: 5,000,000]

Go to Question 16.

PUNITIVE DAMAGES

16. Did Monsanto engage in conduct with malice, oppression or fraud committed by one or more officers, directors or managing agents of Monsanto acting on behalf of Monsanto?

☒ Yes ☐ No

If your answer to question 16 is yes, then answer question 17. If you answered no, stop here, answer no further questions, and have the presiding judge sign and date this form.

17. What amount of punitive damages, if any, do you award to Mike Dennis?

$[handwritten: 325,000,000]

Signed: [handwritten: signature]

Presiding Juror

Dated: [handwritten: October 31, 2023]

Appendix D

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

No. 37-2021-00047326

MIKE DENNIS,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Filed: Dec. 7, 2023

JUDGMENT ON JURY VERDICT

This action came on regularly for trial on September 26, 2023, in Department 2103 of the San Diego Superior Court, Central Courthouse, the Honorable Kevin Enright presiding. Scott A. Love and Adam D. Peavy of CLARK, LOVE & HUTSON, PLLC, as well as Paul R. Kiesel of KIESEL LAW LLP appeared as attorneys for Plaintiff Mike Dennis, and Pamela J. Yates and Daniel Meyers of ARNOLD & PORTER KAYE SCHOLER LLP, as well as Lee Mickus of EVANS FEARS SCHUTTERT MCNULTY MICKUS appeared as attorneys for Defendant Monsanto Company.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified. After

hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court with its verdict as follows:

We, the Jury, answer the questions submitted to us as follows:

CLAIM OF NEGLIGENGE—MONSANTO.

1. Was Monsanto negligent in designing, manufacturing, or supplying Roundup?

☒ Yes ☐ No

2. Was Monsanto's negligence a substantial factor in causing Mike Dennis's mycosis fungoides?

☐ Yes ☒ No

CLAIM OF NEGLIGENT FAILURE TO WARN—MONSANTO.

3. Did Monsanto know or should it reasonably have known that Roundup can cause NHL or was likely to cause NHL when used in accordance with widespread and commonly recognized practice?

☒ Yes ☐ No

4. Did Monsanto know or should it reasonably have known that users would not realize the danger?

☒ Yes ☐ No

5. Did Monsanto fail to adequately warn of the danger or instruct on the safe use of Roundup?

☒ Yes ☐ No

6. Would a reasonable manufacturer, distributor, or seller under the same or similar circumstances have warned of the danger or instructed on the safe use of Roundup?

☒ Yes ☐ No

7. Was Monsanto's failure to warn a substantial factor in causing Mike Dennis' mycosis fungoides?

☒ Yes ☐ No

CLAIM OF DESIGN DEFECT—MONSANTO.

8. Did Roundup fail to perform as safely as an ordinary consumer would have expected when used or misused in an intended or reasonably foreseeable way?

☒ Yes ☐ No

9. Was the design of Roundup a substantial factor in causing Mike Dennis's mycosis fungoides?

☐Yes ☒ No

CLAIM OF STRICT LIABILITY—FAILURE TO WARN—MONSANTO.

10. Did Roundup have a risk of causing NHL that was known or knowable in light of the scientific and medical knowledge that was generally accepted in the scientific community at the time of their manufacture, distribution or sale?

☒ Yes ☐ No

11. Did the potential risks of Roundup present a substantial danger to persons when used in accordance with widespread and commonly recognized practice?

☒ Yes ☐ No

12. Would ordinary consumers have recognized the potential risks?

☐Yes ☒ No

13. Did Monsanto fail to adequately warn of the potential risks?

☒ Yes ☐ No

14. Was the lack of sufficient warnings a substantial factor in causing Mike Dennis's mycosis fungoides?

☒ Yes ☐ No

CLAIM FOR DAMAGES

15. What are Mike Dennis's damages?

Past noneconomic loss: $2,000,000

Future noneconomic loss: $5,000,000

PUNITIVE DAMAGES

16. Did Monsanto engage in conduct with malice, oppression or fraud committed by one or more officers, directors or managing agents of Monsanto acting on behalf of Monsanto?

☒ Yes ☐ No

17. What amount of punitive damages, if any, do you award to Mike Dennis?

$325,000,000

It appearing by reason of said verdict that Plaintiff Mike Dennis is entitled to judgment against Defendant Monsanto Company;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff Mike Dennis shall have judgment entered against Defendant Monsanto Company in the amount of $2,000,000 for past noneconomic loss and $5,000,000 for future noneconomic loss, as well as punitive damages in the sum of $325,000,000; and
2. This judgment against Defendant Monsanto Company shall be increased to include prevailing-party costs to Plaintiff Mike Dennis as later determined by the Court in the amount of $_____.

Dated: 12/07/2023 [handwritten: signature]
Honorable Kevin A. Enright
Judge of the Superior Court

Appendix E

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

No. 37-2021-00047326

MIKE DENNIS,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Filed: Feb. 26, 2024

MINUTE ORDER

The Court, having taken the above-entitled matter under submission on 02/23/2024 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court MODIFIES the tentative ruling as follows:

FINAL ORDER

Defendant Monsanto Company's ("Monsanto") motion for a new trial is **DENIED**. The Court is not persuaded that Monsanto has presented a valid basis for a new trial. The Court is not persuaded that there was an irregularity in the proceedings of the court

(CCP § 657(1)), excessive damages (CCP § 657(5)), insufficiency of evidence to justify the verdict (CCP § 657(6)), or that there was an error in law (CCP § 657(7)), sufficient to warrant a new trial.

Monsanto's motion for a verdict notwithstanding the judgment ("JNOV") is **DENIED** in part and **GRANTED** in part. Plaintiff's award of punitive damages is reduced to $21 million to comply with due process requirements. Monsanto's JNOV motion is otherwise **DENIED**.

Defendant's request for judicial notice is **GRANTED.** While the Court may take judicial notice of the existence of the documents, it does not take judicial notice of their interpretation. (*C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1104.) Additionally, although the Court may take judicial notice of the existence of court filings, it cannot accept the truth of their contents except for documents such as orders. (*Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 22.)

NEW TRIAL

Code of Civil Procedure section 657 contains the following limitation on the court's authority to grant a new trial: "A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." "A trial court has broad discretion in ruling on a new trial motion. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 119.)

Monsanto's motion argued that a new trial was warranted due to: (1) Plaintiff's attorney's repeated misconduct; (2) the Court's evidentiary rulings; (3) Plaintiff's expert's testimony should have been excluded; (4) the verdict is not supported by the weight of the evidence; and (5) Plaintiff's award of punitive damages was unsupported by the evidence, excessive, and in violation of due process.

The California Constitution states that the court may not grant a new trial on account of "any error as to any matter of procedure, unless, after an examination of the entire cause, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., Art. VI, § 13.) Assuming an error occurred, the Court is not persuaded that any error resulted in a miscarriage of justice. A miscarriage of justice results only if it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*Briley v. City of West Covina* (2021) 66 Cal.App.5th 119, 132 [internal quotations omitted].)

After weighing the evidence, the court is not persuaded that the jury clearly should have reached a different verdict.

Attorney Misconduct

"Attorney misconduct can justify a new trial only if it is reasonably probable that the party moving for a new trial would have obtained a more favorable result absent the misconduct." (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1411.) In making its determination regarding whether the alleged misconduct caused the other party prejudice, the court "must examine the

entire case, including the evidence adduced, the instructions delivered to the jury, and the entirety of counsel's argument." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 296.)

In considering the attorney misconduct alleged by Monsanto, including viewing the statements in the context of the entire argument, the instructions provided to the jury, and the overall proceedings, the Court does not find that the alleged misconduct constituted prejudice as to warrant a new trial.

EVIDENTIARY RULINGS

- 2020 IRD and NRDC

Monsanto argued that a new trial was warranted because the Court erroneously allowed Plaintiff to offer evidence regarding the 2020 IRD and the NRDC opinions effect on it. Considering the limited nature of the evidence admitted, the Court's restrictions on what could be presented, Monsanto's ability to present evidence clarifying the lack of any change to the EPA's opinion, and the entirety of the proceedings, the Court does not find that this introduction of evidence prejudiced Monsanto that would support a new trial.

- Methamphetamine Use

Monsanto argued that a new trial was warranted because of the Court's exclusion of evidence of Plaintiff's prior use of methamphetamine and that Plaintiff "opened the door" to his substance use. A "court may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the

jury." (Evid. Code, § 352.) In this case, the Court thoroughly considered the highly prejudicial nature of the evidence of Plaintiff's methamphetamine use in comparison to its probative value and determined that the probative value was substantially outweighed by the danger of undue prejudice. Further, the alleged evidence offered by Plaintiff was not sufficient to "open the door" regarding his prior methamphetamine use. Accordingly, the Court's exclusion of this evidence does not support a new trial.

The Court also considered Monsanto's arguments that: Plaintiff's expert's testimony should have been excluded; the verdict was not supported by the weight of the evidence; and Plaintiff's award of punitive damages were unsupported by the evidence, excessive, and in violation of due process. The Court is not persuaded that the jury clearly should have reached a different verdict or decision and therefore a new trial is not warranted on these grounds. Aspects of these issues are addressed further in the Court's ruling on Monsanto's judgment notwithstanding the verdict, including its determination that, while not constituting a "miscarriage of justice," Plaintiff's award of $325 million in punitive damages violated due process.

Therefore, Monsanto's motion for a new trial is **DENIED.**

JNOV

A motion for judgment notwithstanding the verdict ("JNOV") is essentially "... a challenge to the sufficiency of the evidence to support the jury's verdict..." (*Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 703.) The

standards for ruling on a motion for JNOV are well established. "'The trial court's discretion in granting a motion for judgment notwithstanding the verdict is severely limited.' [Citation.] "'The trial judge's power to grant a judgment notwithstanding the verdict is identical to his power to grant a directed verdict [citations]. The trial judge cannot reweigh the evidence [citation], or judge the credibility of witnesses. [Citation.] If the evidence is conflicting or if several reasonable inferences may be drawn, the motion for judgment notwithstanding the verdict should be denied. [Citation.] 'A motion for judgment notwithstanding the verdict of a jury may properly be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence to support the verdict. If there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied.'"'" (*Hansen v. Sunnyside Products, Inc.* (1997) 55 Cal.App.4th 1497, 1510.)

Monsanto moves for judgment notwithstanding the verdict based on (1) Plaintiff not being entitled to punitive damages; (2) the award of punitive damages violating due process by being excessive and punishing Monsanto multiple times for the same conduct; (3) Plaintiff's failure to prove causation; (4) Federal Insecticide, Fungicide, Rodenticide Act ("FIFRA") preempting Plaintiff's failure to warn claim; and (5) Plaintiff's claims being barred by California's statutory and regulatory regime governing pesticides. For the reasons set forth below, the Court finds Plaintiff's award of $325 million in punitive damages violates due process by lacking a

"reasonable relationship" to the $7 million in compensatory damages awarded to the Plaintiff and therefore exceeds the constitutional threshold. The Court is otherwise not persuaded that Monsanto has satisfied the standards for granting judgment notwithstanding the verdict.

PUNITIVE DAMAGES

- Malice

Monsanto argued that Plaintiff failed to present sufficient evidence of malice to support an award of punitive damages and argues that it reasonably relied upon EPA, scientific studies and a consensus of the scientific community regarding Roundup not posing a cancer risk.

Punitive damages may only be awarded "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) Malice includes "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294 subd. (c)(1); *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "Malice" does not require evidence of an actual intent to harm and can be shown either by direct evidence or by implication through indirect evidence. (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299.) However, "a plaintiff must show more than negligence to recover punitive damages and instead must show that a defendant willfully and consciously ignored the dangers inherent in a product's design." (*Johnson v. Monsanto Company* (2020) 52 Cal.App.5th 434, 456.)

At trial, Plaintiff presented evidence that starting in the 1980's, Monsanto actively attempted to interfere with efforts by the EPA to classify glyphosate, the active component of Roundup, as a carcinogen; to shape scientific opinion to conform to Monsanto's perception of the safety of glyphosate and Roundup; and knowingly defended the safety of certain components of Roundup, despite having knowledge of their hazardous characteristics.

Plaintiff presented further evidence that Monsanto attempted to deceive the public, including by shopping for experts that may be counted on to adopt their preferred conclusion that Roundup was safe, rejecting opinions and recommendations that contradicted this conclusion, and failing to sufficiently test Roundup. This included evidence that Monsanto rejected its own retained expert, Dr. James Parry's, initial opinion on the genotoxicity of glyphosate and his recommendation that additional testing should be conducted to determine whether the components of the Roundup formulation increase the genotoxicity of glyphosate. Plaintiff also presented evidence, including internal emails, that Monsanto sought to influence and possibly manipulate outside scientific literature and opinions to support its desired conclusion, including by drafting articles, contacting authors, and having influential experts work "behind-the-scenes." This evidence strongly suggested Monsanto disregarded safety concerns and hindered transparent investigation of the risks, all while continuing to manufacture and market Roundup.

Monsanto presented evidence at trial that multiple scientific studies and reports by worldwide

scientific bodies, including the EPA, support its position that Roundup does not pose a cancer risk and disputed the applicability of the International Agency for Research on Cancer's ("IARC") 2015 classification of glyphosate as "probably carcinogenic to humans." Monsanto also presented evidence regarding the adequacy of its studies into the genotoxicity of glyphosate, Dr. Parry's later conclusion that glyphosate is not genotoxic, the transparency of its contributions to scientific articles, and evidence of its justifications for deciding whether to pursue follow up studies on its genotoxicity.

From such conflicting evidence, a jury could reasonably infer that Monsanto willfully and consciously ignored the dangers inherent in Roundup and continued to sell and market the product and therefore acted with malice sufficient to warrant imposing punitive damages.

- Due Process

Monsanto argued that the punitive damages award violates due process and is excessive because it imposes punitive damages for the same conduct for which punitive damages have already been awarded and the ratio of compensatory to punitive damages is unconstitutional. Plaintiff argued that Monsanto waived any argument regarding the cumulative punitive damage awards by not presenting the jury with evidence of the prior verdicts and that the ratio of punitive damages was warranted based on Monsanto's conduct.

Cumulative Awards

California courts have recognized that "[p]unitive damages previously imposed for the same conduct are

relevant in determining the amount of punitive damages required to sufficiently punish and deter." (*Stevens v. Owens-Corning Fiberglas Corp.* (1996) 49 Cal.App.4th 1645, 1661.) In conducting a due process review of an award of punitive damages, however, a court may consider evidence of other punitive damages awards, even if the evidence was not presented to the jury. (*Pilliod v. Monsanto Company* (2021) 67 Cal.App.5th 591, 649.) This is because a court is required to "make an independent determination whether the amount of the award exceeds the state's power to punish." (*Nickerson v. Stonebridge Life Ins. Co.* (2016) 63 Cal.4th 363, 375.) In reaching its independent determination of whether Plaintiff's award of punitive damages violates due process, the Court considered Monsanto's evidence that it has paid over $100 million in similar prior punitive damages awards, it had ceased production of glyphosate-based lawn products in the United States, and that its remaining inventory of such products will be sold off by the end of the second quarter of 2024.

Excessive Punitive Damages

Unlike compensatory damages, which seek to redress the concrete loss that a plaintiff has suffered, punitive damages are "intended to punish the defendant and deter future wrongdoing." (*Cooper Industries, Inc. v. Leatherman Tool Group, Inc.* (2001) 532 U.S. 424, 43 [*Cooper*].) "The amount of punitive damages offends due process under the Fourteenth Amendment as arbitrary only if the award is 'grossly excessive' in relation to the state's legitimate interests in punishment and deterrence." (*Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 558.) To

determine whether an award is grossly excessive a court must consider: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." (*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 418 [*State Farm*].) In considering these factors, the question for the court is not whether the jury's verdict is unreasonable based on the facts, but rather whether the award exceeds the state's power to punish. (*Nickerson*, *supra*, 63 Cal.4th 363, 375.)

The most important of these factors is the "degree of reprehensibility of the defendant's conduct." (*BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 575 [*Gore*].) In determining the reprehensibility of a defendant's conduct a court must consider: (1) whether the harm was physical rather than economic; (2) the defendant's indifference to or a reckless disregard of the health or safety of others; (3) whether the plaintiff was financially vulnerable; (4) if the conduct involved repeated actions or was an isolated incident; and (5) whether the harm was the result of intentional malice, trickery, or deceit, or mere accident. (*State Farm*, *supra*, 538 U.S. at 419.) In California, "intentionally marketing a defective product knowing that it might cause injury and death is 'highly reprehensible.'" (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1690.) Repeated misconduct is also considered more reprehensible, and evidence of great profit may also be relevant to show a greater degree of reprehensibility. (*State Farm*, *supra*, 538 U.S. at 423.)

Here, Plaintiff presented ample evidence of Monsanto engaging in highly reprehensible conduct, including evidence of Plaintiff's physical harm and suffering. Plaintiff further presented evidence contrasting his role as an ordinary consumer to that of Monsanto, a multibillion-dollar company which intentionally used its vast resources over several decades to protect its profits over the safety of ordinary consumers, showing a reckless disregard for the health and safety of the public.

While Monsanto presented evidence that it acted reasonably based on the available scientific evidence, there was sufficient evidence that would allow the jury to infer that Monsanto engaged in a course of highly reprehensible conduct at Plaintiff's, and the public's expense.

Excessive Compensatory Damages

Monsanto argued that Plaintiff's $7 million in compensatory damages do not bear a rational relationship to the evidence at trial and therefore include a punitive component that renders the jury's award of punitive damages grossly excessive. While Monsanto's Notice of Intention to File JNOV Motion did not assert excessive compensatory damages as a basis to enter judgment notwithstanding the verdict, the Court considered the compensatory damages in its due process analysis.

A lower ratio of punitive to compensatory damages may be necessary to satisfy due process requirements when a plaintiff is awarded significant compensatory damages that may include a punitive aspect and therefore be duplicative. (*State Farm*, *supra*, 538 U.S. 408, 426.)

In this case, Plaintiff presented substantial evidence that he suffered serious physical and emotional injuries. As described above, Plaintiff presented evidence of the serious effect his symptoms, diagnosis, treatment, and prognosis had on his physical and emotional well-being, including severe pain, embarrassment, fear of dying, depression, and his ability to maintain employment. While Monsanto argued that the Plaintiff's cancer is in remission and minimize the extent of his treatment, Plaintiff presented evidence that he underwent treatment for nearly two years before finally being diagnosed with cancer and that even though his cancer is in remission, his doctors expect that it will return. The likely seriousness of his future cancer risk is supported by evidence that his doctors recommended reserving chemotherapy treatment for the time when his cancer does return.

Accordingly, Plaintiff's presented substantial evidence to support his award of $7 million in compensatory damages.

Ratio of Punitive Damages

Monsanto argued that the punitive damages award of $325 million in relation to the $7 million in compensatory damages is excessive and violates due process.

The Supreme Court has rejected the imposition of any rigid benchmark or mathematical formula for establishing a ratio between actual and punitive damages. (*State Farm*, *supra*, 538 U.S. at p. 425.) Any award of punitive damages "must bear a 'reasonable relationship' to compensatory damages or to the actual or potential harm to the plaintiff." (*Bullock*, *supra*, 198

Cal.App.4th at p. 563.) Accordingly, California courts "have adopted a broad range of permissible ratios [between punitive and compensatory damages]-from as low as one to one to as high as 16 to 1-depending on the specific facts of each case." (*Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 88.) In determining the proper ratio, courts consider the reprehensibility of the defendant's conduct, the nature of plaintiff's injury, and other relevant facts. (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1313.) Since an award of punitive damages must always be based upon the particular facts and circumstances of the case, an award of substantial compensatory damages alone, does not preclude an award of punitive damages that exceed them. (*Pilliod*, *supra*, 67 Cal.App.5th at p. 648.) Ultimately, "what ratio is reasonable necessarily depends on the reprehensibility of the conduct, the most important indicium of the reasonableness of the award" (*Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, 1207 [internal quotations and citations omitted].)

While the prior awards were not a major factor in its decision, the Court is still convinced that Plaintiff's award of $325 million in punitive damages violates due process by lacking a "reasonable relationship" to the $7 million in compensatory damages awarded to the Plaintiff and exceeds the constitutional threshold. (*See Bullock, supra*, 198 Cal.App.4th at p. 563.) In this case, the lack of economic damages and the substantial compensatory damages for plaintiff's non-economic damages, when considered in conjunction with the highly reprehensible conduct of Monsanto, the need to punish Monsanto, and to deter Monsanto from such conduct, justifies an award of $21 million in

punitive damages. Such a ratio of 3 to 1 strikes a balance, including by taking into account the prior punitive damage awards and Monsanto's subsequent actions, and therefore does not exceed the state's power to punish.

Thus, Plaintiff's award of punitive damages is reduced to $21 million.

CAUSATION

Monsanto argued that judgment should be entered in its favor because there is no reliable foundation for the specific causation opinions presented by Plaintiff's two experts. In particular, Monsanto argued that (1) Dr. Durrani did not adequately consider Plaintiff's dose or exposure and therefore his opinion on causation is not reliable; and (2) the experts relied on epidemiology studies that did not properly account for confounders.

A "trial court acts as gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 771-772.) The court, however, doesn't weigh the opinion's persuasiveness, but rather "must simply determine whether the matter relied on can provide a reasonable basis for the opinion or whether that opinion is based on a leap of logic or conjecture. The court does not resolve scientific controversies." (*Id.* at 772.) Accordingly, since each study may have strengths and weaknesses, a court should not engage in piecemeal rejection of individual studies and instead must consider the body of the studies relied

upon by an expert as a whole. (*Cooper*, 239 Cal.App.4th at 589.)

"To show that a defendant's product is a substantial factor in causing a plaintiff's disease, the plaintiff need not establish the product 'as the proximate cause of injury with absolute certainty so as to exclude every other possible cause of a plaintiff's illness, even if the expert's opinion was reached by performance of a differential diagnosis.' [Citation.] Instead, 'the plaintiff must offer an expert opinion that contains a reasoned explanation illuminating why the facts have convinced the expert, and therefore should convince the jury, that it is more probable than not' that the product was a cause-in-fact of the disease. [Citation.] Then the burden shifts to the defendant to prove 'the existence of an alternative explanation, supported by substantial evidence and not mere speculation,' to defeat the plaintiffs' explanation as a matter of law. (*Pilliod,* supra, 67 Cal.App.5th at p. 623 [quoting *Cooper v. Takeda Pharmaceuticals America, Inc.* (2015) 239 Cal.App.4th 555, 578].) "The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 978.)

Exposure Days and Absorption

Dr. Durrani testified that his methodology was the same as used in prior studies, was also based on his experience as a practicing physician, and estimated a person's exposure history by analyzing units of exposure to determine the applicable dose over an extended period of time. Dr. Durrani further

testified he utilized this method in evaluating the Plaintiff's exposure and that based upon the scientific literature, Plaintiff was eight times more likely to develop non-Hodgkin's lymphoma. Dr. Durrani also presented evidence of the scientific studies and literature that support these findings. Additionally, the use of exposure days in order to assess whether a specific dose caused a plaintiff's disease has been utilized in similar cases. (See *Phillips v. Honeywell Int'l Inc.* (2017) 9 Cal.App.5th 1061, 1086-1087.)

While Monsanto argues that Dr. Durrani should have adopted a different methodology that incorporated additional assessments based on actual absorption and exposure rates, Dr. Durrani presented sufficient explanation of the basis for his methodology, his justification for utilizing them, and the foundation of his opinion on causation for his opinion to be presented to a jury. The Court is not responsible for resolving scientific disputes.

Epidemiology Studies

Monsanto also argued that Plaintiff's experts improperly relied on epidemiological studies of health outcomes that were unadjusted for exposure to other pesticides in formulating their opinions on the specific cause of Plaintiff's non-Hodgkin's lymphoma. Dr. Durrani testified that he relied upon multiple studies, including epidemiology, animal studies, and mechanistic data in order to evaluate causation. Further, both of Plaintiff's experts testified that in formulating their opinions they considered both adjusted and unadjusted data, and the risk of confounders on the results. Both experts concluded that based on the entirety of the information they

reviewed, confounders, such as exposure to other pesticides, were not the cause of association between glyphosate and non-Hodgkin's lymphoma. While Monsanto's expert Dr. William Reeves testified that certain case control studies contradicted Plaintiff's experts' opinions regarding the association between glyphosate use and non-Hodgkin's lymphoma, resolution of this dispute and the credibility of the competing opinions was properly left to the jury.

Lack of Studies Addressing Mycosis Fungoides

Monsanto further argued that Plaintiff's expert's opinions on causation are also undermined because the studies did not address Plaintiff's specific set of non-Hodgkin's lymphoma, Mycosis Fungoides. Plaintiff argues that such studies were not required to support his expert's opinions.

Plaintiff's experts both testified that epidemiological literature rarely addresses non-Hodgkin's lymphoma subsets such as Mycosis Fungoides. Both experts also testified however that due to the rarity of Mycosis Fungoides, it was proper to look at the broader category of non-Hodgkin's lymphoma in order to reach their conclusion. (See *Wendell v. GlaxoSmithKline LLC* (9th Cir. 2017) 858 F.3d 1227, 1236 [exclusion of expert testimony due to the absence of certain test concerning a specific rare subset of cancer was improper since it is not always possible to conduct studies of rare conditions].)

Importantly, Monsanto did not present any evidence that this omission of certain studies was intentional or a scientific basis for undermining their findings. Accordingly, resolution of the credibility of

Plaintiff's experts' opinions on causation despite the absence of specific studies on Mycosis Fungoides was properly left to the jury and Monsanto's JNOV motion is denied on this basis.

FAILURE TO WARN

Monsanto argued that Plaintiff's failure to warn claims fail because the risk of non-Hodgkin's lymphoma due to Roundup was never generally recognized as prevailing in the scientific community and that recent scholarship and regulatory agency opinions undermine the ruling in *Pilliod*. Plaintiff argued that the ruling in *Pilliod* is controlling and that he presented sufficient evidence that the jury could infer that the potential cancer risk associated with glyphosate and Roundup was known or knowable at the time.

"A duty to warn arises when a 'potential risk,' here the risk of cancer, is 'known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution.' [Citation.] 'A "potential risk" is one "existing in possibility" or "capable of development into actuality."'" (*Pilliod*, *supra*, 67 Cal.App.5th 591, 622 [quoting *Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 1002].)

In this case, just as in *Pilliod*, Plaintiff presented "substantial, if disputed, evidence that there is a risk of cancer from exposure to glyphosate and Roundup, and the risk was knowable, even if not known, in light of the best scientific and medical knowledge that was available." (*See Pilliod*, *supra*, 67 Cal.App.5th at p. 623.) As discussed in detail above, Plaintiff presented

ample evidence of Monsanto's responses to scientific studies on the potential risk of cancer associated with glyphosate and Roundup, and potential reclassification by regulatory agencies. Plaintiff's evidence demonstrated not only the failure of Monsanto to adequately investigate the risk, but active efforts to limit research and shape scientific discourse regarding the risk.

From this evidence, the jury could infer that the potential cancer risk associated with glyphosate and Roundup was known or knowable in light of the best scientific and medical knowledge at the time it was manufactured, distributed, and sold to the Plaintiff and that any limitation in the available knowledge of the risk was the result of Monsanto's efforts to suppress it, or at minimum to limit discourse and further investigation.

Monsanto did present evidence that following IARC's 2015 classification of glyphosate as a probable human carcinogen that governmental regulatory agencies, including the EPA, rejected it and reaffirmed their prior conclusions. Plaintiff, however, presented evidence that these agencies did not rely on the best scientific data. In particular, Plaintiff presented evidence that the EPA relied primarily on industry sponsored studies, rather than the peer reviewed published literature that the IARC relied upon, and that the EPA's conclusion was vacated and then withdrawn.

Accordingly, Plaintiff presented substantial evidence to support his failure to warn claim and Monsanto's JNOV motion is DENIED on this basis.

FIFRA PREEMPTION

Monsanto argues that all of Plaintiff's claims are preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 et seq. Plaintiff argues that this contention lacks merit and has been previously rejected in *Pilliod*, which is binding precedent on this Court.

It undisputed that *Pilliod, supra*, 67 Cal.App.5th at p. 591, is binding authority on the Court. (See *Auto Equity Sales, Inc. v. Superior Ct. of Santa Clara Cnty.* (1962) 57 Cal.2d 450, 455.) *Pilliod* is directly on point, and Monsanto raises similar arguments that were previously rejected in *Pilliod*, as well as in Monsanto's prior motion for summary judgment/summary adjudication. (ROA 473.)

Defendant has not met its burden to show express or implied preemption bars Plaintiff's claims. Defendant has not provided evidence that Plaintiff's common law claims impose any labeling requirements that are different from or additional to the misbranding requirements of FIFRA, or that it is impossible for Defendant to comply with federal and state law. (*Hardeman v. Monsanto Company* (9th Cir. 2021) 997 F.3d 941, 954-958.) Nor do the facts or arguments offered by Defendant (relying on non-FIFRA statutory schemes) demonstrate that *Pilliod* is distinguishable or the ruling in *Pilliod* is inconsistent with the provisions under FIFRA.

Accordingly, Monsanto's JNOV motion is DENIED on this basis.

CALIFORNIA STATUTORY AND REGULATORY REGIME

Monsanto contends all of Plaintiff's claims are barred by the California Food and Agriculture Code ("FAC") § 11501.1(a) and regulations by the California Department of Pesticide Regulation pursuant to that statutory scheme.

"As a general rule, unless expressly provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules. A statute will be construed in light of common law decisions, unless its language clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter." (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1193, citations omitted.) Accordingly, "[t]here is a presumption that a statute does not, by implication, repeal the common law. Repeal by implication is recognized only where there is no rational basis for harmonizing two potentially conflicting laws." (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297, citations omitted.)

The general rule is that statutes do not supplant the common law unless it appears that the Legislature intended to cover the entire subject or, in other words, to "occupy the field." (*I. E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285.) "[T]he phrase 'occupy the field' may convey displacement either of all other law, without limitation or, alternatively, of only local law by a higher law." (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 76, citations omitted.)

FAC § 1150.1(a) provides: "This division and Division 7 (commencing with Section 12501) are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides ***to the exclusion of all local regulation***. Except as otherwise specifically provided in this code***, no ordinance or regulation of local government***, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way ***attempt to regulate any matter*** relating to the registration, sale, transportation, or use of pesticides, and any of these ordinances, laws, or regulations are void and of no force or effect. (Emphasis added.) "If the director determines ***that an ordinance or regulation***, on its face or in its application, is preempted by subdivision (a), the director shall notify the promulgating entity that it is preempted by state law." (*Id.*, § 1150.1(b), emphasis added.)

Here, the terms of the FAC specifically indicates an intent to occupy the regulatory field "to the exclusion of all local regulation" and voids "ordinance or regulation of local government" concerning certain regulations on pesticides. In contrast, nothing in the FAC indicates an intent to preempt common law claims, including Plaintiff's claims.

Nor does Monsanto's reliance on *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502 compel a different finding. Although Monsanto cites language from *Jacobs Farms* indicating the use of pesticides in

California is heavily regulated and California law overlaps with the comprehensive federal scheme, the *Jacobs Farm* court held California's statutory scheme concerning pesticides did not preempt or displace common law tort claims related to the use of pesticides where the pesticides that the defendant applied to fields near plaintiff's farm migrated to plaintiff's land, contaminated plaintiff's crop, and rendered the crop unmarketable. The *Jacobs Farm* court noted: "[a]lthough the scope of the statutory and regulatory scheme is broad, it provides no means of compensation for crop losses resulting from pesticide use." (*Jacobs Farm*, *supra*, 190 Cal.App.4th at p. 1522.) "Since the law makes no provision for a damages remedy, section 14003 implies that injured persons retain the right to sue for damages under the common law." (*Ibid.*) The *Jacobs Farm* court also cited the savings clause under § 12999.2, which expressly confirms that the "remedies or penalties" provided by Division 7 are "in addition to the remedies or penalties available under any other law." "Given these savings clauses, it is reasonable to conclude that the Legislature intended, as a general matter, to allow for common law claims seeking damages. Defendant does not contend otherwise." (*Jacobs Farm*, *supra*, 190 Cal.App.4th at p. 1522.)

Here, Monsanto does not address the explicit language of the FAC indicating a limited displacement as to local ordinances and regulations. Additionally, Monsanto does not cite any statutory provision under the FAC that compensates an individual injured by exposure to pesticides. (See *Jacobs Farm*, *supra*, 190 Cal.App.4th at p. 1522.) Nor does Monsanto provide sufficient argument it would be liable for misbranding

by California Department of Pesticide Regulation regulations. (See *John Norton Farms, Inc. v. Todagco* (1981) 124 Cal.App.3d 149, 173 ["the registrant of an economic poison still has a duty to give specific warnings of harm attendant to its use of which it is aware or should be aware"]; see also 3 CCR §§ 6242, 6243.)

Monsanto has not shown Plaintiff's claims are either preempted or displaced by the FAC. Accordingly, Monsanto's JNOV motion is DENIED on this basis.

CONCLUSION

For all the reasons outlined above, Monsanto's motion for a new trial is **DENIED**. The Court **GRANTS** Monsanto's motion for JNOV in part and reduces Plaintiff's award of punitive damages to $21 million dollars in order to comply with due process requirements. Monsanto's motion for JNOV is otherwise **DENIED**.

The minutes are the order of the Court. No formal order is required.

IT IS SO ORDERED.

[handwritten: signature]

Judge Kevin A. Enright

Appendix F

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

No. 37-2021-00047326

MIKE DENNIS,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Filed: Apr. 8, 2024

AMENDED JUDGMENT ON JURY VERDICT

This action came on regularly for trial on September 26, 2023, in Department 2103 of the San Diego Superior Court, Central Courthouse, the Honorable Kevin Enright presiding. Scott A. Love and Adam D. Peavy of CLARK, LOVE & HUTSON, PLLC, as well as Paul R. Kiesel of KIESEL LAW LLP appeared as attorneys for Plaintiff Mike Dennis, and Pamela J. Yates and Daniel Meyers of ARNOLD & PORTER KAYE SCHOLER LLP, as well as Lee Mickus of EVANS FEARS SCHUTTERT MCNULTY MICKUS appeared as attorneys for Defendant Monsanto Company.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified. After

hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court with its verdict as follows:

We, the Jury, answer the questions submitted to us as follows:

CLAIM OF NEGLIGENGE—MONSANTO.

1. Was Monsanto negligent in designing, manufacturing, or supplying Roundup?

☒ Yes ☐ No

2. Was Monsanto's negligence a substantial factor in causing Mike Dennis's mycosis fungoides?

☐ Yes ☒ No

CLAIM OF NEGLIGENT FAILURE TO WARN—MONSANTO.

3. Did Monsanto know or should it reasonably have known that Roundup can cause NHL or was likely to cause NHL when used in accordance with widespread and commonly recognized practice?

☒ Yes ☐ No

4. Did Monsanto know or should it reasonably have known that users would not realize the danger?

☒ Yes ☐ No

5. Did Monsanto fail to adequately warn of the danger or instruct on the safe use of Roundup?

☒ Yes ☐ No

6. Would a reasonable manufacturer, distributor, or seller under the same or similar circumstances have warned of the danger or instructed on the safe use of Roundup?

☒ Yes ☐ No

7. Was Monsanto's failure to warn a substantial factor in causing Mike Dennis' mycosis fungoides?

☒ Yes ☐ No

CLAIM OF DESIGN DEFECT—MONSANTO.

8. Did Roundup fail to perform as safely as an ordinary consumer would have expected when used or misused in an intended or reasonably foreseeable way?

☒ Yes ☐ No

9. Was the design of Roundup a substantial factor in causing Mike Dennis's mycosis fungoides?

☐Yes ☒ No

CLAIM OF STRICT LIABILITY—FAILURE TO WARN—MONSANTO.

10. Did Roundup have a risk of causing NHL that was known or knowable in light of the scientific and medical knowledge that was generally accepted in the scientific community at the time of their manufacture, distribution or sale?

☒ Yes ☐ No

11. Did the potential risks of Roundup present a substantial danger to persons when used in accordance with widespread and commonly recognized practice?

☒ Yes ☐ No

12. Would ordinary consumers have recognized the potential risks?

☐Yes ☒ No

13. Did Monsanto fail to adequately warn of the potential risks?

☒ Yes ☐ No

14. Was the lack of sufficient warnings a substantial factor in causing Mike Dennis's mycosis fungoides?

☒ Yes ☐ No

CLAIM FOR DAMAGES

15. What are Mike Dennis's damages?

Past noneconomic loss: $2,000,000

Future noneconomic loss: $5,000,000

PUNITIVE DAMAGES

16. Did Monsanto engage in conduct with malice, oppression or fraud committed by one or more officers, directors or managing agents of Monsanto acting on behalf of Monsanto?

☒ Yes ☐ No

17. What amount of punitive damages, if any, do you award to Mike Dennis?

$325,000,000

Thereafter, on January 22, 2024, the Court awarded Plaintiff Mike Dennis $276,170.73 in costs pursuant to his Memorandum of Costs.

Additionally, on February 26, 2024, the Court issued a Minute Order denying in part and granting in part Defendant Monsanto Company's motion for

judgment notwithstanding the verdict. Specifically, "to comply with due process requirements," the Court reduced Plaintiff Mike Dennis's award of punitive damages from $325,000,000 to $21,000,000. The Court's Minute Order denied Defendant Monsanto Company's motion for a new trial.

It appearing by reason of said verdict that Plaintiff Mike Dennis is entitled to judgment against Monsanto Company;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff Mike Dennis shall have judgment entered against Defendant Monsanto Company in the amount of $2,000,000 for past noneconomic loss and $5,000,000 for future noneconomic loss, as well as punitive damages in the sum of $21,000,000; and
2. This judgment shall be increased to include prevailing party costs to Plaintiff Mike Dennis as later determined by the Court in the amount of $276,170.73; and
3. Plaintiff Mike Dennis shall therefore have judgment entered against Defendant Monsanto Company in the total amount of $28,276,170.73, plus interest at the legal rate.

Dated: 04/08/2024 [handwritten: signature]

Honorable Kevin A. Enright
Judge of the Superior Court

Appendix G

RELEVANT STATUTORY PROVISION
7 U.S.C. §136v(a)-(b)

(a) In general

A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

(b) Uniformity

Such 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.