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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Dewayne Johnson Plaintiff, vs. Monsanto Company Defendant	Case No. CGC-16-550128 **[PROPOSED] ORDER DENYING MONSANTO'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT** Hon. Judge Suzanne R. Bolanos Hearing Date: October 10, 2018 Time: 2:00 p.m. Department: 504 Trial Date: June 18, 2018

This case came on for trial in the above-captioned matter on June 18, 2018 in Department 504 of the Superior Court of California, in and for the County of San Francisco, before the Honorable Suzanne R. Bolanos, Judge presiding. A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified. Following the hearing of all evidence, instructions from the court, and argument of all counsel, the cause was submitted to the jury on August 8, 2018. The jury deliberated and thereafter, on August 10, 2018, returned a unanimous verdict in favor of Plaintiff, Dewayne Lee Johnson, on his claims for Negligent Failure to Warn, Strict Liability Failure to Warn, Strict Liability Design Defect, and Punitive Damages. The jury awarded damages as follows: Past economic loss - $ 819,882.32; Future economic loss - $ 1,433,327.00; Past noneconomic loss - $ 4,000,000.00; Future noneconomic loss - $33,000,000.00; Punitive damages[1] - $250,000,000.00. Defendant, Monsanto Company, has filed a Motion for Judgment Notwithstanding the Verdict (JNOV) on each of Plaintiff's claims. For the reasons stated below Defendant's Motion is **DENIED.**

I. PROCEDURAL HISTORY

Defendant Monsanto Company ("Monsanto") is the manufacturer of various herbicides formulations containing the active ingredient glyphosate ("GBHs"). Plaintiff Dewayne Lee Johnson ("Mr. Johnson") alleges that he developed a form of non-Hodgkin's lymphoma (NHL), known as mycosis fungoides, following his exposure to the GBHs known as Ranger Pro and Roundup Pro

Plaintiff initiated the present action against Monsanto on January 28, 2016, demanding a trial by jury. On June 26, 2016, Monsanto filed its answer, also demanding a trial by jury. Plaintiff initially filed a Motion for Trial Preference on July 21, 2017, and the parties subsequently stipulated to a June 18, 2018 trial date. CMO 6. The parties agreed that Judge Curtis E. A. Karnow would conduct the hearings and issue rulings on Motions for Summary Judgment and Motions to Exclude Expert Opinions. CMO 6.

On May 17, 2018, the Court ruled that, "most of the opinions of Johnson's causation experts are admissible. These suffice as evidence of both general and specific causation. The motion for summary judgment on the basis of causation is denied." 5/17/2018 Order re: Summary Judgment and Sargon

[1] At oral argument the Court instructed counsel to address remittitur on punitive damages in the proposed order. Plaintiff maintains that a remittitur of the punitive damages award is not warranted. However, should the court deem the punitive damages excessive, Plaintiff would consider the Court's recommended remittitur.

Motions, p. 38 ("SJ Order"). The Court considered whether there was a triable issue of fact with respect to punitive damages. Monsanto moved for summary judgment on punitive damages on the basis that:

> (1) EPA determined that glyphosate is not carcinogenic; (2) Monsanto and its scientists have long believed in good faith that glyphosate-based herbicides and glyphosate are safe and do not cause cancer; (3) A recent study supports the conclusion that glyphosate is not carcinogenic; and (4) A recent district court found in the preliminary injunction context, that it would be misleading to warn that Monsanto's glyphosate-based herbicides [GBHs] cause cancer against the current scientific backdrop.[2]

Id. at p. 44. Judge Karnow rejected these arguments, finding that issue of punitive damages should be decided by the jury, not the court, holding "Johnson has carried his burden of producing evidence that a reasonable jury could find amounts to clear and convincing evidence of malice, fraud, or oppression." *Id.* at 45. Judge Karnow noted that "intentionally marketing a defective product knowing that it might cause injury and death is highly reprehensible." *Id.* (emphasis added).

After reviewing Judge Karnow's orders, the Court advised counsel that Judge Karnow "has very carefully and thoughtfully gone through several motions...really engaged in rather significant and helpful case management. So I am disinclined to undo or set aside any of that work that he did, because I think that he made the right decisions with respect to all of his orders." 297:18-298:1. The Court denied Monsanto's Motions for Non-suit and Directed Verdict finding that there was sufficient evidence for a reasonable jury to find for Plaintiff on all causes of actions. 4026:13-4027:10, 4915:7-17 ("I think at this stage I'm required to give the [punitive damages] instruction."). As the standard for a Motion for JNOV is identical to that for a non-suit and directed verdict, Monsanto's Motion for JNOV is likewise denied.

II. LEGAL STANDARD

A motion for judgment notwithstanding the verdict functions as a demurrer to the evidence. *Moore v. City & County of San Francisco* (1970) 5 Cal.App.3d 728, 734. That is, the motion tests the legal sufficiency of the evidence supporting the verdict. *Beavers v. Allstate Ins. Co.,* 225 Cal.App.3d 310, 328.[3] For purposes of the motion, all evidence supporting the verdict is presumed true, and the court must

[2] The case considered by Judge Karnow was based on the fact that the EPA and "[s]everal international agencies have likewise concluded that there is insufficient evidence that glyphosate causes cancer" *Nat'l Ass'n of Wheat Growers v. Zeise,* 309 F. Supp. 3d 842, 852 (E.D. Cal. 2018). Judge Karnow, thus considered and rejected Monsanto's arguments that the findings of regulatory bodies can defeat a claim for punitive damages.

[3] Although made at different times, a JNOV, motion for nonsuit and motion for directed verdict are "analytically the same and governed by the same evidentiary standard." S*ee Cooper v. Takeda Pharmaceuticals,* 239 Cal. App. 4th 555, 572; California Judges Benchbook: Civil Proceedings TRIAL § 2.94 (Cal CJER 2017).

determine whether that evidence establishes facts that constitute a prima facie case. *Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 750.

The purpose of a motion for JNOV is not to afford a review of the jury's deliberations but to prevent a miscarriage of justice in a case in which the verdict rendered is without foundation. *Oakland Raiders v. Oakland-Alameda County Coliseum, Inc*. (2006) 144 Cal. 4th 1175, 1194. Therefore, in ruling on a JNOV motion, the trial court may not weigh the evidence or make its own credibility determinations. *King v. State of California* (2015) 242 Cal.App.4th 265, 287.) This means that the court must resolve all conflicting evidence against the moving party and draw every reasonable inference supported by the evidence in favor of the party who secured the verdict. *Fountain Valley, supra*, 67 Cal.App.4th at p. 750. "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." *King, supra*, 242 Cal.App.4th at p. 287, quoting *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.). When the evidence is conflicting or several inferences may be drawn from it, the judge must deny the motion. *Tun v. Wells Fargo Dealer Servs. Inc.*, (2016) 5 Cal. App. 5th 309, 333.

Furthermore, in ruling on a motion for JNOV, a court may not change a prior ruling as to the admissibility of evidence. "[W]e must take the record as we find it. We cannot strike or disregard any evidence favorable to the prevailing party merely because it was erroneously received." W*aller v. Southern California Gas Co*. (1959) 170 Cal.App.2d 747, 757; *Estate of Callahan* (1967) 67 Ca1.2d 609, 617. "In assessing whether judgment notwithstanding the verdict was properly granted, we consider the trial that was actually conducted, not the one that might have been conducted." *Garretson v. Harold Miller* (2002) 99 Cal.App.4th 563, 575.

III. Plaintiff Has Produced Substantial Evidence that GBHs Were a Substantial Factor in Causing Mr. Johnson's NHL.

A. General Causation

Monsanto asserts that JNOV should be granted because Plaintiff conceded at trial "that the epidemiology does not support causation here." MPA in support of JNOV, p. 3. This assertion is not

supported in the record. In fact, Plaintiff argued in closing that that the epidemiology did in fact support causation in conjunction with the animal studies and the mechanistic studies. Tr. at 5063:15-19; 5087:13-21; 5108:15-20. The epidemiology is inextricably linked with the animal and mechanistic data considered in the experts' causal analyses. The animal and mechanistic studies provide assurance to Plaintiff's experts that the association seen in the epidemiology studies is indeed a causal association.

Where, as here, there are different streams of data being considered by an expert, the Federal Judicial Center's Reference Manual on Scientific Evidence (3rd. Ed.) p. 21, instructs:

> In applying the scientific method, scientists do not review each scientific study individually for whether by itself it reliably supports the causal claim being advocated or opposed. Rather, as the Institute of Medicine and National Research Council noted, "**summing, or synthesizing, data addressing different linkages [between kinds of data] forms a more complete causal evidence model and can provide the biological plausibility needed to establish the association" being advocated or opposed.**

In reversing a trial court's exclusion of expert testimony, *Cooper v. Takeda Pharm. Am., Inc.* adopted this reasoning and held that "piecemeal rejection of individual studies was inappropriate" and it is essential that the "body of studies be considered as a whole.", 239 Cal. App. 4th 555, 589–90, (2015). Applying these standards, this Court previously held that:

> Johnson's experts do not view epidemiological evidence as dispositive on causation...They conceded that confounding and bias may explain the association found in the epidemiological evidence if the epidemiological evidence were viewed in isolation... Johnson's experts appreciated the risk the confounders could create an unreliable association between glyphosate exposure and NHL but believed, in light of the studies they reviewed and the other information that they considered, that potential confounders were not the cause of the association.

SJ Order at 6. Plaintiff's experts' offered these exact opinions at the trial of this case. The record makes clear that "Johnson's experts applied the Bradford Hill criteria" in considering all of the data which both parties agreed "are an acceptable means of evaluating causality if done correctly." *Id.* at 11; *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1235 (9th Cir. 2017) ("The Bradford Hill methodology refers to a set of criteria that are well accepted in the medical field for making causal judgments."). Dr. Neugut testified that "[i]t's the same criteria...that are used in the IARC Monographs, and they are used across the board by epidemiologists." Tr. 2643:1-4

Dr. Neugut explained that when you look at epidemiology in isolation you are only looking at a "statistical association." Tr. 2641:4-6. In order to reach a conclusion on whether that association is causal rather than simply statistical, one can apply the Bradford-Hill criteria. *Id.* at 2642:22-2643:4. Dr. Neugut

testified to the importance of biological plausibility to the Bradford-Hill criteria:

> Q. Would it be even remotely scientifically correct to just look at the policy [sic]?
> A. No. I mean, not to make a causal link based solely on the epidemiology.
> Q. You have to look at the totality of the evidence; right?
> A. That's what I showed in the Bradford-Hill criteria at the end of my direct testimony that you have to incorporate the dose-response relationship, the biological evidence like the toxicology that Dr. Portier spoke about. You have to think about it, you have to look at things, like I said, the specificity and the other factors, consistency the strength of association, et cetera.

Tr. 2737:4-17. After applying these factors, Dr. Neugut testified that "that there is indeed a causal association between glyphosate and NHL." Tr. 2643:24-26.

Dr. Portier likewise testified that Bradford-Hill instructs on how to "take epidemiology data and what factors play a role in leading to your decisions that the associations you see are causal and not just associations." Tr. at 2022:8-11. Dr. Portier testified that when the epidemiology is considered alone "there's a demonstrated association" and that "causality is reasonable here." Tr. at 1964:1-17. However, when he considered all of the data, including animal studies, genotoxicity studies, and mechanistic data, Dr. Portier firmly concluded that "glyphosate is carcinogenic, causing NHL in humans." Tr. at 1994:19-21. Dr. Portier explained that the fact you see lymphomas in every mouse study lends strong support for causality in humans. Tr. at 1834:18-1837:14. Dr. Portier also relied on strong evidence that: (1) GBHs are genotoxic in blood cells and lymphocytes of humans who are sprayed with GBHs (Tr. at 1973:16-1979:22); and that (2) glyphosate and GBHs have been shown to cause oxidative stress which can operate to promote tumors; (Tr. at 1990:10-1992) as part of his Bradford-Hill analysis. Dr. Nabhan likewise testified that in the absence of clinically controlled studies "you may be able to support these human studies by animal studies that were done." Tr. at 2891:7-9. Dr. Nabhan noted that the oxidative stress findings were important because "there is more oxidative stress" in NHL patients. Tr. at 2822:1-12

The testimony of Plaintiff's experts was further supported at trial by the testimony of the IARC working group members, Dr. Aaron Blair and Dr. Matthew Ross. These two completely independent scientists both agreed, based on the totality of the data, that GBHs were "probable" carcinogens. Blair Dep. at 70:10-15, 365:7-25; Ross Dep., 147:07-148:07. Dr. Ross believed that the mechanistic data was so strong that his group would have labeled GBHs a probable carcinogen even if the epidemiology was deemed insufficient. Ross Dep. at 104:7-105:10;147:07-148:07. According to Dr. Ross, "The mechanistic evidence that was deemed strong was the genotoxicity and the oxidative stress classification

. . . .. The important thing, in terms of operable in humans, is the fact that exposed humans showed evidence of genotoxicity, and cultured cells of human origin showed evidence of genotoxicity. Those were -- those then showed that this mechanism may operate in humans." *Id.*

Dr. Neugut testified that the odds ratio for ever using GBHs from all of the studies combined was about 1.3 - 1.5 for anyone who used GBHs more than once, but he further explained that "if you start to look at dose response of people who are really significantly exposed to glyphosate, got exposed in a more dramatic way, for longer periods of time, for higher doses, they're going to have a significantly higher risk." Tr. at 2617:21-2618-4, 2644:21-2645:1. Dr. Nabhan also reached the same conclusion after his review of the epidemiology studies. Tr. at 2825:9-18, 2827:15-2830:5. Here, McDuffie (2002) showed a statistically significant 2.12 odds ratio for GBH use greater than 2 days per year, Eriksson showed a 2.36 odds ratio for GBH use greater than 10 days and 2.26 odds ratio for greater than 10 years use. P-Exh. 0784 at 19, 23. De Roos (2003) showed a statistically significant doubling of the risk after adjusting for dozens of pesticides.[4] *Id.* at 18. Dr. Sawyer noted that Mr. Johnson's exposure was "far higher than that in the literature . . ." Tr. at 3673:25-3674:16.

In *Cooper*, it was proper for an expert offering a case-specific opinion to rely on the dose-duration analyses where the ever exposure analysis did not show an increased risk. 239 Cal. App. 4th 555, 588. (2015) (Proper to rely on secondary dose-response analysis where study "was designed to look first at 'ever exposure' to Actos® as the primary endpoint and then at length of exposure ("dose response") as the secondary endpoint."); *Id.* at 594, n. 18 ("In Azoulay, the authors found a statistically significant hazard ratio of 2.54 for patients exposed to more than 28,000 mg"). Furthermore, it is not necessary for the dose-response findings to be fully-adjusted for other risk factors. *Id.* at 589 (proper to rely on Azoulay even though it did not adjust for "risk factors for bladder cancer such as arsenic, occupational exposures, race/ethnicity"). As in *Cooper*, the epidemiology relied upon by Plaintiff's experts shows a higher risk for NHL in the dose-response analysis compared to the ever-never analysis.

Plaintiff's experts properly considered the totality of the evidence in opining that GBHs do cause NHL in humans; and in concluding that the epidemiology supports causation. There is thus substantial

[4] Epidemiology does not have to show a doubling of the risk to support causation. SJ Order at 10 ("Cooper does not mandate exclusion of these opinions for this purpose even if none of the studies shows a relative risk of greater than 2.0.")

evidence to support a jury's finding that GBHs can cause NHL.

B. Specific Causation

Dr. Chadi Nabhan, a hematologist and medical oncologist specializing in the treatment of lymphoid malignancies, testified that Mr. Johnson's exposure to the Roundup formulations was a substantial contributing factor in his development of NHL. Tr. 2799:4-15; 2887:13-18. In reaching his causation opinions, Dr. Nabhan reviewed epidemiology, animal studies, toxicology studies, thousands of pages of Mr. Johnson's medical records, correspondence from Mr. Johnson's employer, and relevant deposition transcripts. *Id*. at 2789-2795. Dr. Nabhan also personally met and examined Mr. Johnson. *Id*. at 2795:16-2796:7.

Dr. Nabhan performed a differential diagnosis to determine whether he could identify the causes of Mr. Johnson's NHL. Tr. 2815:4-17, 2841:17-2842:9. He considered the known risk factors and causes of NHL including age, race, immunosuppressant therapies, autoimmune diseases, skin conditions, occupation, occupational exposures and viruses. *Id*. at 2842-2852. Dr. Nabhan explained that sun exposure, tobacco, and alcohol are not known causes of NHL and could therefore be excluded. *Id*. at 2852-2853. After conducting his differential diagnosis, Dr. Nabhan concluded that Mr. Johnson's only known risk factors were his race (African American) and Roundup exposure. Tr. 2853:19-23. Dr. Nabhan therefore concluded that Roundup was the most substantial contributing factor to Mr. Johnson's NHL. *Id*. at 2853:24-2854:2.

Monsanto contends that Dr. Nabhan's testimony is unreliable and inadmissible because Dr. Nabhan did not adequately consider and definitively rule out idiopathic[5] causes of Mr. Johnson's NHL. Monsanto does not argue that Dr. Nabhan ignored other identifiable causes or known risk factors but, rather, that Dr. Nabhan failed to account for the unknown. Tr. 4949:16-20. Dr. Nabhan's trial testimony, however, confirms that he did in fact consider idiopathic causes in reaching his causation opinions.

Dr. Nabhan does not dispute that he is unable to identify a cause of NHL in the majority of his patients. Tr. 2990:6-14; 2997-2998. Nonetheless, Dr. Nabhan opined that Mr. Johnson's cancer was not idiopathic and that there was substantial evidence that his NHL was caused by his exposure to the

[5] A disease that is idiopathic is one that does not have a known cause. *Wendell v. GlaxoSmithKline LLC*, 858 F. 3d 1227, f. 3 (2017)

Roundup: a "known carcinogen causing non-Hodgkin's lymphoma." Tr. 2997:5-10. Dr. Nabhan explained that because Mr. Johnson was much younger than the average patient who developed the disease this raised a "red flag" that his cancer is not likely to be idiopathic and more likely to be caused by an exposure.[6] Tr. 2842:23-2844:19.

This testimony is sufficient under the applicable substantial factor test for causation. It is not necessary for Plaintiff to "establish the negligence of the defendant 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." *Cooper v. Takeda Pharmaceuticals,* (2015) 239 Cal. App. 4th 555, 578 (emphasis in original). JNOV would only be appropriate "if the existence of an alternative explanation, supported by substantial evidence and not mere speculation, as a matter of law *defeated* the explanation proffered by [plaintiff]." *Id*.

Dr. Nabhan's methodology in this case is nearly identical to the differential diagnosis accepted by the Court of Appeals in *Cooper v. Takeda Pharmaceuticals,* (2015) 239 Cal. App. 4th 555. Indeed, the trial court in *Cooper* excluded plaintiff's expert oncologist, in part, on the expert's acknowledgment that "he has a lot of patients in this age group who have bladder cancer, and he can find no cause." *Id*. at 593. The expert in *Cooper* further acknowledged that "there are so many possible causes and so much still unknown about the causation of bladder cancer..." *Id.* at 585. However, the Court held that "[b]are conceivability of another possible cause does not defeat a claim: the relevant question is whether there is 'substantial evidence' of an alternative explanation for the disease." *Id*. at 586. Here there is no substantial evidence of an alternative explanation put forth by Defendant that could defeat Plaintiff's claim as a matter of law. *Id.* at 578.

The decision in *Wendell v. GlaxoSmithKline LLC*, 858 F. 3d 1227 (2017) is also instructive. The plaintiff in *Wendell*, like Mr. Johnson, was diagnosed with a T cell lymphoma, a subtype of NHL. *Id*. at 1231. The trial court excluded plaintiff's causation experts on the basis that "they could not completely

[6] *See e.g.* (W.D. Ky. Apr. 28, 2011) *Dickson v. Nat'l Maint. & Repair of Kentucky, Inc*., No. 5:08-CV-00008, 2011 WL 12538613, at *11 (The Court finds that Dr. Brautbar's differential diagnosis adequately accounts for other possible causes of Plaintiff's disease, including idiopathic origin. Dr. Brautbar specifically noted the fact that Plaintiff was young when he was diagnosed with multiple myeloma, which is exceptionally rare.")

rule out the possibility that [plaintiff's cancer] was idiopathic." *Id*. at 1237.[7] The Ninth Circuit held that the trial court abused its discretion by excluding case-specific causation opinions on the basis of a high rate of idiopathic cancer and the inability to rule out an idiopathic origin. *Id.* The Court explained:

> We do not require experts to eliminate all other possible causes of a condition for the expert's testimony to be reliable. It is enough that the proposed cause "be a substantial causative factor." This is true in patients with multiple risk factors, and analogously, in cases where there is a high rate of idiopathy. *Id*. (internal quotations omitted).

Dr. Nabhan's testimony, and the inferences drawn therefrom, demonstrate that he adequately considered idiopathic causes in performing his differential diagnosis. In the absence of any substantial evidence that some "unknown" cause might have affected Mr. Johnson there is no basis for this Court to exclude Dr. Nabhan's causation testimony.

IV. PUNITIVE DAMAGES

In denying Monsanto's motion for nonsuit, this Court allowed the issue of punitive damages to be submitted to the jury. Based on Plaintiff's evidence, this Court could not hold, as a matter of law that "no reasonable jury could find the plaintiff has presented clear and convincing evidence on the disputed issue." *Hoch v. Allied-Signal, Inc*., 24 Cal.App.4th 48, 60. Whether the *court* deems the plaintiff's evidence less than clear and convincing is not the standard. "Where reasonable minds could differ as to whether the evidence would support punitive damages, the resolution of the conflicting inferences and the weighing of opposing evidence is for the jury; for the court to grant a nonsuit in that circumstance, or the appellate court to affirm a judgment of nonsuit, would be to usurp the jury's function." *Id*. at 59.

The evidence supporting punitive damages, viewed in the light most favorable to the Plaintiff, was summarized by this Court in denying summary judgment:

> The internal correspondence noted by Johnson could support a jury finding that Monsanto has long been aware of the risk that its glyphosate-based herbicides are carcinogenic, and more dangerous than glyphosate in isolation, but has continuously sought to influence the scientific literature to prevent its internal concerns from reaching the public sphere and to bolster its defenses in products liability actions.

SJ Order at 45. Judge Karnow noted that "intentionally marketing a defective product knowing that it might cause injury and death is highly reprehensible" *Id.* (citing *Boeken v. Philip Morris Inc.* (2005)127

[7] Like Dr. Nabhan, the expert in *Wendell* considered the fact that plaintiff's NHL might have been idiopathic but that "when you have a patient with obvious and known risk factors, you tend to assume that those risk factors were the cause." *Wendell,* 858 F. 3d at 1235.

Cal.App.4th 1640, 1690.

At JNOV this Court may not weigh the credibility of Monsanto's arguments that its subjective belief in the safety of glyphosate and regulatory approval absolves it of liability. "The law in California is that punitive damages are permitted in product liability actions precisely because '[g]overnmental safety standards and the criminal law have failed to provide adequate consumer protection against the manufacture and distribution of defective products. [Citations.] Punitive damages thus remain as the most effective remedy for consumer protection against defectively designed mass produced articles. *Buell–Wilson v. Ford Motor Co*. (2006) 141 Cal.App.4th 525, 562 vacated on other grounds in *Ford Motor Co. v. Buell–Wilson* (2007) 550 U.S. 931, 127 S.Ct. 2250[8] (citing G*rimshaw v. Ford Motor Co*. (1981) 119 Cal.App.3d 757, 810). Furthermore, punitive damages are available even where "there was a 'reasonable disagreement' among experts" *Id.* at 559-560. The jury is "entitled to" reject the claims of Defendant's experts in reaching a verdict on punitive damages. *Id.*

Monsanto is not absolved of responsibility based on testimony of its employees that they did not believe the results of studies showing that GBHs were genotoxic or carcinogenic. Monsanto has a duty to "warn of the potential risks" of GBHs and not just the ones its scientists agree with. CACI 1205. "If the sole opinion(s) of one biased actor within that complex system can govern and control the nature, timing, and dissemination of information, and warnings, the system breaks down." *In re Actos (Pioglitazone) Prod. Liab. Litig.*, (W.D. La. Oct. 27, 2014)No. 6:11-MD-2299, 2014 WL 5461859, at *47 (rejecting contention that Defendant's subjective believe that product does not cause cancer precludes a finding of punitive damages).

Under the exemplary damage statute "malice does not require actual intent to harm. [Citation.] Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences." *Pfeifer v. John Crane, Inc*. (2013) 220 Cal. App. 4th 1270, 1299. Furthermore, Courts have long recognized that when circumstantial evidence supports an inference that a manufacturer puts

[8]Although this opinion was vacated with respect to constitutional limits of punitive damage awards, the California Supreme Court continues to cite this case with respect to the availability of punitive damage awards. *Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal. 4th 788, 796.

its own interests ahead of the safety of consumers, punitive damages are warranted. *Grimshaw v. Ford Motor Company* (1981) 119 Cal.App.3d 757, 813,814; *West v. Johnson & Johnson Products, Inc.* (1985) 174 Cal.App.3d 831, 869 supra, (affirming award of punitive damages where evidence showed that adequate testing would have revealed an association between tampon use and toxic shock, that the manufacturer's testing was inadequate, and that the manufacturer decided not to do any further testing even with faced with consumer complaints.)

Here, the evidence demonstrates that Monsanto was regularly being informed of valid science demonstrating that their GBH produces had the potential to harm, but sought to combat that evidence rather than share that information with its customers. Monsanto's conduct was laid out in a May 26, 1999 email from Dr. William Heydens describing Monsanto's overall agenda as getting "people to get up and shout Glyphosate is Non-toxic[.]'" in order to counter negative data. Ex. 378.

A. Monsanto's Early Regulatory Action Support Jury's Punitive Damages Findings:

On March 13, 1985, nine days after the EPA proposed to classify glyphosate as a Class C [possible] oncogene based on a mouse study showing an increase in kidney tumors, Monsanto's argued to the EPA that it should not move forward with classifying glyphosate as a possible carcinogen because "the initiation of formal regulatory action would have serious negative economic repercussions." Tr. at 3851:20-22, 3996:11-13. The EPA then requested that Monsanto repeat the mouse study using more animals to increase the power of the study, but Monsanto refused. 3895:19-3897:19.

B. Monsanto's Handling of Dr. Parry's Report Supports Jury's Punitive Damages Findings:

Plaintiff presented evidence that Monsanto disregarded the opinions and advice of Dr. James Parry regarding the genotoxicity of glyphosate and glyphosate-based herbicides (GBHs). In the 1990's, several published studies concluded that glyphosate was genotoxic. Monsanto retained Dr. James Parry ("Dr. Parry") "a recognized genotox expert" to review these independent studies. Exhibit 263 at 2. Dr. Parry concluded in 1999 that "[t]he overall data provided by the four publications provide evidence to support a model that glyphosate is capable of producing genotoxicity both in vivo and in vitro by a mechanism based upon the production of oxidative damage." Farmer Tr. at 151:13-25. Dr. Parry then examined Monsanto's internal studies and did not change his conclusions. Ex. 220, p. 12. Dr. Parry pointed out that there was an "absence of adequate data" to make a firm conclusion about the genotoxicity

of GBHs. *Id.* He recommended a series of eight experiments to be conducted to determine if GBHs are genotoxic and then consider the "possibility of susceptible groups within the human population." *Id.* at pp. 33-34. Dr. William Heydens of Monsanto, upon receiving the Parry Report decided that Monsanto simply is not "going to do the tests Parry suggests." Ex. 221. Dr. Portier, Plaintiff's expert, reviewed Dr. Parry's recommendations and Monsanto's testing and concluded that Monsanto conducted only one of the eight experiments recommended by Dr. Parry. Tr. 1997:19-22 (Q. So of all of Dr. Parry's recommendations asking for affirmative action, only one of them was done in this study? A. Yes.). Defendant produced no experts to rebut Dr. Portier's opinion. Dr. Parry even offered to conduct the tests for Monsanto, but Monsanto refused to provide him the necessary samples after it discovered that there was a mutagenic response with the tallow amine (a surfactant in GBHs) sample. Ex. 267, p. 6.

C. Monsanto's Ghostwriting Practices Support the Jury's Punitive Damages Findings:

Despite Dr. Parry's conclusion in 1999 that glyphosate and GBHs could be genotoxic and that more testing was needed, Monsanto proceeded to ghostwrite a paper (Williams (2000)) that contained the material misrepresentation that "under present and expected conditions of use, Roundup herbicide does not pose a health risk to humans." Heydens Dep. at 402:1-4. Williams (2000) also makes the claim that GBHs are "non-carcinogenic and non-genotoxic." Id. at 1888:7-11. A jury could find these statements false because Dr. Parry's data and the earlier studies he analzyed indicated that Roundup may indeed pose a health risk to humans and may be genotoxic.

No Monsanto employee is listed as an author on Williams (2000) despite the fact that William Heydens admits in a 2015 email that Monsanto did "the writing" and the experts just "edit and sign their names, so to speak." P-Exh. 362, at 2. Dr. Heydens denies at deposition what he admitted in this email, but the jury was entitled to believe his admission in the email and disbelieve his contradictory deposition testimony. 402:1-404:12. Dr. Heydens is referenced in the acknowledgement section for providing "scientific support," but that acknowledgement is false because it does not provide readers with the vital information that Monsanto employees actually wrote the paper and that the experts simply edited and signed their names. *Id.* The reader is not informed that the conclusions of Williams (2000) are the conclusions of Monsanto and not an independent assessment of the evidence.

Plaintiff presented evidence that ghostwriting is "unethical" and "deceptive;" and that there are

guidelines that "everyone goes by" in determine what is "honest/ethical" in authorship. Ex. 261. Plaintiff's expert, Dr. Charles Benbrook, testified that ghostwriting is unethical:

> A. Because it's very important for people reading the scientific literature to have knowledge of who conducted the research and interpreted the results and wrote the paper. That's considered very important in evaluating the quality of the research, the reliability of the research, the independence of the research, whether there was a conflict of interest of some sort. So it's truthfulness in authorship is a central feature of scientific publishing integrity.

Tr. at 3898:10-23. If Monsanto is listed as an author, the reader would give the conclusion less weight because as noted by Daniel Goldstein, Monsanto's Director of Medical Toxicology, "we have some limitations on our credibility when we are speaking as Monsanto publicly." Goldstein Tr. at 75:22-25.

For example, a Monsanto employee who drafted a manuscript on the genotoxicity of GBHs in 2012 was removed as an author because "the manuscript turned into such a large mess of studies reporting genetoxic effects, that the story as written stretched the limits of credibility among less sophisticated audiences." P-Exh. 445, p. 2. Therefore, it was decided that a way to "help enhance credibility is to have an additional author on the papers who is a renowned specialist in the area of genotoxicity. Monsanto identified Dr. David Kirkland as the best candidate." Id. This paper was written for the specific purpose of being "a valuable resource in future product defense against claims that glyphosate is mutagenic or genotoxic." P-Exh. at 443. Claims made by Plaintiff in this litigation.

Defendant acknowledges that Williams (2000) was important for its business. In a 2010 PowerPoint describing Williams (2000) as an "invaluable asset", Monsanto notes that they are facing "regulatory reviews" with an increased "focus on claims in the peer-reviewed literature." P-Exh. 373 at 17. Monsanto notes that "Williams has served us well in toxicology over the last decade," but they need a "stronger arsenal of robust papers scientific papers." Id. Because of the need for a stronger arsenal, Monsanto proceeded to ghostwrite parts of at least three more articles relating to genotoxicity and carcinogenicity of GBHs. P-Exh. 258, P-Exh. 445, p. 2, P-Exh. 391 at 3. Williams (2000) and the Kier and Kirkland article were relied upon by the EPA in evaluating glyphosate in 2016. D-Exh. 2481, p. 99.

Defendant additionally participated in ghostwriting to gain an advantage in this litigation. Due to the "severe stigma" of the IARC classification of glyphosate as a 2A carcinogen, Monsanto decided to ghostwrite a new article to "Provide additional support ('air cover') for future regulatory reviews" and for "litigation support." P-Exh. 391 at 3. Monsanto decided that the "majority of writing can be done

by Monsanto." Id. at 6. Monsanto's legal department considered this plan "Appealing" and "best if use big names." Id. at 11. The ghostwritten article became Williams (2016) and was published nine months after Mr. Johnson filed this lawsuit. In the article, Monsanto falsely claims "that neither any Monsanto Company employees nor any attorneys reviewed any of the expert panel manuscripts prior to submission to the journal." Heydens Tr. at 129:1-130:25. In fact, evidence demonstrates that Monsanto wrote portions of it and had final say on the editing of the paper. Id. at 129:1-130:25, 161:3-166:16. Monsanto's deep involvement in the paper is documented in P-Exhs. 363, 366, 368, 369, 371, 373, 394.

D. Known Risks and Failure to Test the Formulated Product Support Punitive Damages:

Despite Dr. Parry's concerns about the genotoxicity and synergistic effect of surfactants. Defendant admits that it has never conducted a long-term carcinogenicity test with GBH. Tr. at 3850:8-21. As noted by Donna Farmer in 2009 in an internal communication "you cannot say that Roundup does not cause cancer … we have not done carcinogenicity studies with 'Roundup.'" P-Exh. 305. Even though Dr. Heydens admitted that the "surfactant played a role" in the George (2010) tumor promotion study, no carcinogenicity studies have ever been conducted on surfactants. 3614:11-14 (Sawyer testimony). P-Exh. 366 at 3. There are known safer alternatives to the surfactants Monsanto sold to Mr. Johnson. Trns. at 3626:15-3627:17. Monsanto employees acknowledge "there are non-hazardous formulations, so why sell a hazardous one?" P-exh. 383. The very fact that a known safer alternative was available that could have been provided to Mr. Johnson for use in the Benicia School yards, but it was not, even after his telephone calls to Monsanto, supports the Jury's finding of punitive damages.

There are known carcinogens in the formulated Roundup product which are not disclosed in the label. Dr. Sawyer testified that the formulated product also contains 1,4-Dioxane and ethylene dioxide "one of the most potent carcinogens known to man" and that the presence of surfactants, such as POEA, increase absorption of Roundup through human skin. Tr. at 3609:21-3610:5, 3633:23-3623:16. In 2002, Monsanto's Mark Martens created a power-point stating "Surfactants are biologically not 'inert', they can be toxic and this must be addressed" P-Exh. 209 at 27. Dr. Marten's stated that the "[t]his in-vivo genotoxicity finding was cause of concern[.]" P-Exh. 209 at 15; Marten Dep. at 176:13-16 ("So now these are your thoughts that the genotoxicity finding in vivo was of concern, correct? A Yes."). However, Monsanto has yet to address the potential carcinogenicity of surfactants.

Additionally, the Regulatory authorities cited by Monsanto do not evaluate the formulated glyphosate products; they just evaluate the genotoxicity and carcinogenicity of glyphosate in isolation only. The EPA evaluation acknowledges that "[a]s described in Section 7.0 of this document, glyphosate formulations are hypothesized to be more toxic than glyphosate alone. The agency is collaborating with NTP to systematically investigate the mechanism(s) of toxicity for glyphosate and glyphosate formulations. However the focus of this section is the genotoxic potential of glyphosate technical." D-Exh. 2481, p. 98. Dr. Benbrook confirmed that the regulatory authorities relied upon by Defendant "largely base their risk assessments on registrant-done studies and only on the pure active ingredient" Tr. at 3920:16-25. IARC, conversely, conducted a review of the formulated product. *Id.*

E. Monsanto's Ignoring and Combatting Independent Science Supports the Jury's Findings:

Monsanto had a "Product Safety Center" headed by Dr. Farmer. However, the stated priorities of the safety center were to "Secure the Base," "Defend and maintain the global glyphosate businesses" and "Create Future Growth: Pipeline, Regulatory Approval, Commercial Launch, and Market Expansion." P-Exh. 271, at 2. These goals are incompatible with human safety and preclude an honest and fair assessment of the findings of independent scientists regarding the genotoxicity and carcinogenicity of GBHs.

Evidence supports a finding that Dr. Farmer sent her employees to dissuade the authors of the McDuffie (2001) from publishing data about GBHs showing an increased risk of NHL. P-Exh. 309, 311, Donna Farmer congratulates John Acquavella and Dan Goldstein for being able to get the glyphosate results out of the abstract. P-Exh. 312 ("the fact that glyphosate is no longer mentioned in the abstract is a huge step forward – it removes it from being picked up by abstract searches!").

In 2003, the National Cancer Instute Study (NCI) from DeRoos is published showing a statistically significant doubling of the risk of NHL for Glyphosate. Monsanto states that the findings "may add more fuel to the fire for Hardell, et al." P. Exh. 314. Hardell also found an increased risk of NHL with glyphosate. Monsanto states "It looks like NHL and other lymphopoetic cancers continue to be the main epidemiology issues both for glyphosate alachlor." Id. In 2008, the Eriksson study was published showing a statistically significant doubling of the risk of NHL for glyphosate users. Donna Farmer states "[w]e have been aware of this paper for awhile and knew it would only be a matter of time

before the activists pick it up" and wanted to know "how do we combat this?" Id. P-Exh. 513. There was no discussion about warning its customers of these findings.

In February 2015, a month before IARC actually makes a decision on glyphosate, Monsanto drafts a plan to "orchestrate outcry over IARC decision." P-Exh. 292 at 5. Monsanto developed the plan to "orchestrate outcry" because they assumed that data would support either a 2b (possible human carcinogen) or a 2A (probably human carcinogen). Id. at 1. By attacking IARC, Monsanto was trying to protect glyphosate's FTO (freedom to operate). Id. at page 5. The "outcry" was intended to reach both "IARC panelists" and "Regulators." Id. As part of the IARC response, Dr. Goldstein ghostwrote editorials for "independent" doctors to dispute the IARC findings. Goldstein Dep. at136:13-137:2.

F. Monsanto's Failure to Warn Mr. Johnson Supports the Jury's Findings:

In October 2014, after Monsanto learned that IARC was going to evaluate the carcinogenicity, William Heydens stated that Monsanto had "vulnerabilities" in all the areas considered by IARC, "namely epi, exposure, genotox and mode of action." P-Exh. 294. On November 11, 2014, Mr. Johnson calls Monsanto "…just trying to find out if it [cancer] could all be related to such a large exposure to Ranger Pro since he stated his skin was always perfect until this happened. He is looking for answers." P-Exh. 332. This message was forwarded to Dr. Goldstein, but no one from Monsanto called Mr. Johnson back to tell him that there were studies associating GBHs with NHL. Dr. Goldstein testified that he has known for years that epidemiology studies show an increased risk of NHL with glyphosate. Goldstein Dep. at 40:14-41:12. Dr. Goldstein stated that reports of the genotoxicity of glyphosate, a mechanism that can contribute to cancer, were old news to him in 2007. 96:04-9924. Dr. Goldstein testified that at the time of Mr. Johnson's first call he "expected" IARC to classify glyphosate as a possible or probable human carcinogen. *Id.* at 42:19-44:01.

On March 27, 2015, Mr. Johnson calls Monsanto's hotline again informing the company that "he has recently been diagnosed with cutaneous T cell lymphoma. He has concerns about continuing to use Roundup as part of his job and questions if Roundup could be a source of his cancer… The caller's level of fear is rising over his continued use of Ranger Pro." P-Exh. 334 at 5. Mr. Johnson is told by the operator that his NHL is not an "expected response from the product." No one from Monsanto calls him back. No one from Monsanto advised Mr. Johnson of the POEA-free safer alternatives to the RangerPro

he was spraying. Instead, Dr. Goldstein testified that he would have recommended that Mr. Johnson keep using the hazardous RangerPro. Goldstein Dep. at 56:07-57:11.

There is evidence that Mr. Johnson's NHL was worsened by his continued use of RangerPro after he failed to receive a call back from Monsanto. GBHs have been shown to cause oxidative stress which can operate to promote tumors. 1990:10-1992. Oxidative Stress causes NHL in humans. 2820:4-2823:7. GBHs have been shown to promote skin tumors in mice. July 12 Tr. at 1857:22-1860:13.

Dr. Nabhan testified "If they're being exposed to an agent that may be causing the cancer, you would tell them not to be exposed to this particular agent because it could make the cancer worse..." 2812:21-24. Dr. Ofodile concurs stating for "me and my patient's health, it's not worth the risk." 3156:3-4. Dr. Nabhan explained that he would have told Mr. Johnson to "immediately stop" spraying glyphosate if he was in Dr. Goldstein's shoes. 2868:19-2689:25. In September 2015 (ten months after Mr. Johnson called Dr. Goldstein, and six months after IARC), Mr. Johnson's cancer transformed from a manageable cancer to a fatal cancer. 2882:4-2884:15.

G. Regulatory Authorities Failed to Follow Guidelines in Assessing Glyphosate:

It is undisputed that the EPA failed to follow its own carcinogenicity guidelines in assessing glyphosate. Trns. 2010:4-25; 2071:21-24; 4607:23-4608:13, 4610:1-4, 4620:25- 4611:11 4613:1-3; 4629:15-20, 4631:23-4632:4. On April 28, 2015, prior to reviewing the IARC monograph, Jess Rowland, head of the Office of Pesticide Programs Cancer Assessment Review Committee told Monsanto's regulatory lead, Dan Jenkins, that "We have enough to sustain our conclusions. Don't need gene tox or epi …I am the chair of the CARC and my folks are running this process for glyphosate in reg review. I have called a CARC meeting in June" P-Exh. 404 at 2 Mr. Rowland further stated that with respect to an ongoing review of glyphosate by the the Agency for Toxic Substances and Disease Registry (ATSDR), "If I can kill this [review] I should get a medal." Id. Monsanto also used its political connections to influence the findings of the EPA by getting "some key Democrats on the hill to start calling jim [jones, Assistant Administrator]" which "shoots across his bow generally that he's being watched." P-Exh. 184 at 8. In addition to lobbying the EPA, Monsanto hides essential information from the EPA. For example, as a policy Monsanto does not submit reports of its own employees developing NHL after handling glyphosate. Exh. 326. Monsanto admitted it did not submit the Parry reports to the

EPA. Trns. at 1587:15 - 1588:2; Martens Dep. at 151:6-22.

Dr. Portier also testified extensively that the European agencies failed to follow their guidelines, and was joined in that opinion by 93 other scientists in a published article. 2015:11-2019:25. The jury heard from Dr. Portier that the European agencies made the identical errors that the EPA and that Monsanto actually wrote the first draft of the European agencies' assessments. 2012:5-2014:23.

H. The Evidence Supports a Finding that Defendant Acted With Conscious Disregard of the Safety of Mr. Johnson

The evidence highlighted above is only part of the evidence presented by Plaintiff. It is sufficient to support a finding that Monsanto was intentionally marketing a defective product knowing that it might cause injury and death. Monsanto admits that it is selling a hazardous product when it knows that there are non-hazardous formulations. Monsanto has been repeatedly made aware of evidence demonstrating a potential danger of GBHs, but has refused to warn customers of these dangers. Even where a customer, such as Mr. Johnson, calls directly with the specific danger potentially caused by GBHs, Monsanto refuses to provide him with the necessary information to make an informed decision about the product

V. MONSANTO'S DESPICABLE CONDUCT WAS PERFORMED BY MANAGING AGENTS:

An employee need not be high ranking to be considered a managing agent. "[P]rincipal liability for punitive damages does not depend on employees' managerial level, but on the extent to which they exercise substantial discretionary authority over decisions that ultimately determine corporate policy." *Major v. W. Home Ins. Co*. (2009)169 Cal. App. 4th 1197, 1221, as modified on denial of reh'g (Jan. 30, 2009) (claims adjuster for contractor of Defendant considered managing agent). "If there exists a triable issue of fact regarding whether a corporate employee is a managing agent under the *White* test, that factual question must be determined by the trier of fact and not the court[.]" *Davis*, 220 Cal.App.4th at 366. There is no requirement that the evidence establish that a particular committee or officer of the corporation acted on a particular date with 'malice.' Corporate defendant cannot shield itself from liability through layers of management committees and the sheer size of the management structure. *Romo v. Ford Motor Co.* (2002) 99 Cal 1115, 122 Cal.2d 139 *overruled in part on other grounds*.

The relevant question under the managing agent inquiry is whether, the corporate employees had significant discretion with respect to the actions that affected the Plaintiff. *Major* 169 Cal. App. 4th

1197, 1221. (When employees dispose of insureds' claims with little if any supervision, they possess sufficient discretion for the law to impute their actions concerning those claims to the corporation.")

Here, the evidence demonstrates, that with respect to all of the acts constituting malice claimed by the Plaintiff, the following employees acted with significant discretion in the four key issues relevant to punitive damages, 1) communications with the public meant to conceal the risk of GBHs; 2) Ghostwriting studies and failing to test formulations; and 3) Failure to warn Mr. Johnson through the label and through the hotline listed on the label; and 4) Undue influence over the EPA.

A. Communications with the Public:

Dr. Farmer testified[9] that she has been working at Monsanto for 25 years and has "been one of the spokesperson[s] for the safety of Roundup when it comes to the toxicology." Farmer Tr. 14:11-13; 15:5-7. She explained, "based on that in-depth knowledge for over those many, yes, I was asked to be -- help defend glyphosate." *Id.* at 19:3-8. And, as described in admitted exhibit 536, her job was to "[d]efend and maintain the global glyphosate businesses[.]" Exh. 536. Steven Gould, the Monsanto employee responsible for providing safety information to the Benicia School District, states that he relies on Donna Farmer for this information. Gould Tr. at 23:04-15.

B. Failure to test and Ghostwriting Articles:

Dr. Heydens is Dr. Farmer's boss. Farmer Tr. at 152:16-19. Dr. Heydens testified that he is the "product safety assessment strategy lead" Heydens Tr. at 289:23-290:9. Dr. Heydens is also lead of Monsanto's "product safety center" where he oversaw "the group of scientists … responsible for demonstrating the safety of Monsanto's biotechnology portfolio." *Id.* at 301:13-18. Importantly it was Dr. Heyden's responsibility to "devise the overall testing strategy and sets of studies that we would do to support the safety of that product." *Id.*. at 290:7-9.

C. Communications through the Label and Poison Control Hotline relied upon by Plaintiff:

Dr. Goldstein was responsible for the "material safety data sheets" and "management of Monsanto's relationship with the Missouri Region Poison Control." 296:13-23. These were the two main interfaces that Plaintiff relied on in finding information out about GBHs. Tr. at 3230:14-16; P-Exh. 334 at 5. Dr. Goldstein testified that he is Monsanto's Director of Medical Toxicology, and that

[9] All testimony cited was played to the jury.

"in terms of, you know, line responsibility for human toxicology issues, that has resided with me for most of the last 19 years." Goldstein Tr. at 297:7-16; 298:15-24.

D. Inappropriate Relationship with EPA Employees:

Daniel Jenkins was Monsanto's U.S. Agency Lead in Regulatory Affairs, and represented Monsanto before various federal agencies. Jenkins Tr. at 36:6-10. He was responsible for interfacing with regulatory agencies regarding glyphosate data and making strategic decisions about how interact with the EPA and other regulators. *Id.*

The internal documents demonstrate that these witnesses and the other employees identified in the documents were granted significant discretion in dictating what studies were conducted with GBHs and in dictating what information would be shared with the public and regulators. Defendant has offered no contrary evidence to suggest these employees were acting outside their scope of employment, or that these employees were acting contrary to the direction of Monsanto executives.

VI. DEFENDANT'S MOTION FOR JNOV ON EACH CAUSE OF ACTION IS DENIED.

Defendant makes various other arguments as to why JNOV should be granted on specific causes of action. These arguments are without merit. For Plaintiff's design defect claims, Plaintiff has satisfied the foundational requirements outlined in *Saller v. Crown Cork & Seal Co.*, (2010) 187 Cal. App. 4th 1220. For Plaintiff's strict liability failure to warn claim, there is substantial evidence that the potential risks of GBHs were known or knowable at the time Plaintiff started spraying in 2012.[10] With respect to Plaintiff's negligent failure-to-warn claim, Mr. Johnson testified that he would not have used RangerPro® if he had been adequately warned about the risk of NHL. Tr. at 3235:2-5.

VII. CONCLUSION

Giving the Plaintiff, as the prevailing party, every reasonable inference as we must; it cannot be said that there was no reliable evidence to support the jury's unanimous verdict in favor of Mr. Johnson. Accordingly the Defendant's motion for JNOV is denied.

Dated: October ___, 2018

_____
Suzanne R. Bolanos
Judge of the Superior Court

[10] Plaintiff's experts applied the Bradford-Hill criteria using data that was available for years before Mr. Johnson developed NHL. Tr. at 2614: 17-21, 2617:21-25; 1897;1965:9-11; 1981:14-22

PROOF OF SERVICE

I, Curtis G. Hoke, declare as follows:

I am a citizen of the United States and am employed in Orange County, Virginia. I am over the age of eighteen years and not a party to the within action. My business address is 108 Railroad Avenue, Orange, Virginia 22960. On October 12, 2018, I served the following documents by the method indicated below:

[PROPOSED] ORDER DENYING MONSANTO'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

☑ **By Electronically Serving** the document(s) described above via LexisNexis File & Serve by 7:00 p.m. Pacific Standard Time on all parties appearing on the LexisNexis File & Serve service list.

SEE ATTACHED SERVICE LIST

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

Executed on this October 12, 2018 at Orange, Virginia.

Curtis G. Hoke,
Declarant