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**IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL**

**In Re: Paraquat Litigation, May Term 2022
No. 559**

DONALD MABS

v.

SYNGENTA CROP PROTECTION, LLC, et al.

September Term 2022

No. 2511

Control No. 59-25011659

**SYNGENTA'S RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL
AUTHORITY**

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Control No.: 25011659

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July 22, 2025

BY ELECTRONIC FILING

The Honorable Joshua Roberts
Philadelphia Court of Common Pleas
538 City Hall
Philadelphia, PA 19107

**Re: *In re: Paraquat Litigation*, May Term 2022, No. 559
Mabs (Case No. 220902511)**

Dear Judge Roberts:

Defendant Syngenta Crop Protection, LLC¹ (“Syngenta”), writes in response to Plaintiffs’ Notice of Supplemental Authority in Further Support of Their Opposition to Defendants’ Motions for Summary Judgment RE: *Nemeth*,² *Lutz*, and *Mabs*. In particular, Plaintiffs address the recent decision in *Monsanto Co. v. Behar*, No. 3D24-0569, 2025 WL 1646538 (Fla. Dist. Ct. App. June 11, 2025). But *Behar*’s holding does not, as Plaintiffs argue, suggest that Florida has a higher standard with respect to punitive damages. Instead, *Behar* simply establishes that different courts have reached different conclusions on similar standards. Further, Pennsylvania and California have stricter standards with respect to the mental state necessary to establish punitive damages. And California and Pennsylvania rigorously police punitive damages. *Behar* supports Syngenta’s arguments with respect to punitive damages.

In *Behar*, the Florida Court of Appeals reversed an order granting a plaintiff’s motion to amend his complaint to add punitive damages. The plaintiff had claimed that Monsanto “engaged in a systematic effort to discredit the unfavorable science, create new science through ‘ghost-writing,’ and manipulate federal agencies through the use of disinformation.” *Id.* at *2. But the *Behar* court concluded that plaintiff had not satisfied the substantive standard for punitive damages, stating “the record does not show that glyphosate is carcinogenic, Monsanto knew it was, and Monsanto intentionally sold its product without a warning label anyway.” (citing Fla.

¹ Syngenta AG has been dismissed as a defendant in *Mabs* (Case No. 220902511), and only appears as a defendant in *Lutz* (Case No. 210801388).

² Although Plaintiffs filed the Notice of Supplemental Authority in Further Support of Their Opposition to Defendants’ Motions for Summary Judgment in the *Nemeth* (Case No. 210800644), that case has since settled. We address *Mabs* in this brief.

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Stat. § 768.72(2)(b)). *Id.* at *5. Noting that “[t]he EPA has continuously reevaluated glyphosate and approved it for use,” the Florida Court of Appeals held that the “[u]nsupported, salacious allegations, a scientific outlier, and isolated internal correspondence . . . fall short of supporting a claim for punitive damages.” *Id.* at *5-6. According to Plaintiffs, *Behar* demonstrates that “Florida is an outlier jurisdiction in the exceptionally high barrier it imposes in preventing juries from considering punitive damages.” Pl’s Not. of Suppl. Authority (*Mabs*, Case No. 220902511, Control No. 25011659) at 1. Plaintiffs are mistaken for three reasons.

First, both Pennsylvania and California require a *higher mental state* for punitive damages than Florida. Florida permits punitive damages when the defendant acts with “gross negligence,” Fla. Stat. § 768.72(2), but both Pennsylvania and California have held this mental state insufficient for punitive damages. *Slappo v. J’s Dev. Assocs., Inc.*, 791 A.2d 409, 417 (Pa. Super. Ct. 2002) (“Punitive damages may not be awarded for ordinary negligence or gross negligence.”) (citing *Hutchison v. Luddy*, 763 A.2d 826, 837 (Pa. Super. Ct. 2000); *Doe v. Bridges to Recovery, LLC*, 2:20-cv-00348-SVW, 2021 WL 1321652, at *11 (C.D. Cal. Mar. 8, 2021) (“[G]ross negligence is not sufficient to justify an award of punitive damages.” (quoting *Ebaugh v. Rabkin*, 22 Cal. App. 3d 891, 894 (1972))).

Second, by overstating the difference between the jurisdictions, Plaintiffs fail to acknowledge that Pennsylvania and California in fact carefully police punitive damages. Pennsylvania courts have noted the “*extremely high standard* for the pleading of punitive damages” in the state. *Gibbs v. Ernst*, 9 Pa. D. & C.4th 458, 463 (Pa. Com. Pl. 1991) (emphasis added); *Botey v. Green*, 3:12-cv-01520, 2016 WL 6395900, at *4 (M.D. Pa. Oct. 27, 2016) (affirming the “exceedingly high standard for the award of punitive damages”) (citation omitted). And California’s “clear and convincing” standard for punitive damages requires a “high probability” the alleged conduct occurred is “so clear as to leave no substantial doubt” and “sufficiently strong to command the unhesitating assent of *every reasonable mind*.” *Broadman v. Comm’n on Jud. Performance*, 959 P.2d 715, 720 (Cal. 1998), *as modified* (Sept. 2, 1998) (emphasis added). Unsurprisingly, California courts characterized this as entailing a “high standard for punitive damages.” *Russell v. Tinsley*, C95-0143-LEW, 1996 WL 341159, at *4 (N.D. Cal. May 30, 1996), *aff’d*, 131 F.3d 148 (9th Cir. 1997).

Third, Plaintiffs’ invocation of *Caranci v. Monsanto Co.*, 2025 PA Super 101 (May 8, 2025) does not support their argument about the differences between Florida, Pennsylvania, and California law. Plaintiffs cannot identify any relevant differences between *Caranci* and *Behar*. Plaintiffs emphasize *Caranci*’s language that “simply because Monsanto introduced evidence at trial that it complied with industry standards and scientific consensus does not preclude the jury from awarding punitive damages and does not require the trial court to enter JNOV” to argue that under *Caranci* (and not *Behar*) state of the art is not dispositive. But this distinction says nothing about *Behar* or the differences between the jurisdictions. *Behar* did not turn on whether the state of the art was dispositive, even if that would suffice under Florida law. Rather, *Behar* held that

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the record as a whole “does not show that glyphosate is carcinogenic, Monsanto knew it was, and Monsanto intentionally sold its product without a warning label anyway.” *Id.* at *5. Because that is true here, *Behar* supports Syngenta.

Plaintiffs quote *Behar*’s language that “Florida’s statutory requirements for punitive damages against a corporation differs from California. California’s requisite showing is much lower.” 2025 WL 1646538, at *5 n.3. But that footnoted language concerns the level of employee whose conduct is imputed to the company for purposes of punitive damages—not the relevant question here—whether the *substantive* standards the Florida and California standards are similar. And certainly, nothing in this *Behar* footnote was material to *Behar*’s analysis. The footnote merely rejected an attempt “to simply point to the prior punitive damages award in California.” *Id.* The *Behar* analysis turned on whether the plaintiff had satisfied the substantive standard for punitive damages. In all events, *Behar* says nothing about Pennsylvania law.³

Setting aside any similarities or dissimilarities in Florida, Pennsylvania, and California, *not a single court* has permitted a trial on punitive damages against Syngenta. *Williford v. Syngenta Crop Prot., LLC*, No. 21-CA-006219 (Fla. Cir. Ct. May 23, 2023) found, after extensive briefing and oral argument, that Syngenta’s conduct was not of “a gross and flagrant character ... showing reckless disregard of human life” and thus denied the plaintiff’s request to seek punitive damages. *See* Ex. 1 (05/23/23 *Williford* Hr’g. Tr., No. 21-CA-006219) at 165:8-10. As in *Williford*, this record shows only that Syngenta “continu[ed] to investigate” the issues surrounding paraquat’s safety and that “[w]hen Syngenta did its research, it did not yield information that ... would meet th[e] very high standard” for punitive damages. *Id.* at 165:2-10. This Court should follow *Williford* and hold that the Plaintiffs have failed to meet the burden for punitive damages.

Respectfully submitted,

Dated: July 22, 2025

By: /s/ Tracey McDevitt Hagan

Tracey McDevitt Hagan

*Counsel for Defendant Syngenta Crop
Protection, LLC*

³ *Behar* does not support punitive damages as against Chevron. Because Chevron was not a party in *Williford* at the time the court determined the plaintiff was not entitled to punitive damages, Chevron relied on no Florida authority in requesting summary judgment on punitive damages.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 22, 2025

By: /s/ Tracey McDevitt Hagan

Tracey McDevitt Hagan
PA ID No. 78353

*Counsel for Defendant Syngenta Crop
Protection, LLC*

Case ID: 220900429
Control No.: 25011659

CERTIFICATE OF SERVICE

I, Tracey McDevitt Hagan, certify that on July 22, 2025, I caused a true and correct copy of this filing to be served upon Plaintiffs' counsel of record along with all Syngenta's counsel of record via the Court's e-filing system, which satisfies the requirements of Pennsylvania's Rules of Civil Procedure.

By: /s/ Tracey McDevitt Hagan
Tracey McDevitt Hagan
PA ID No. 78353

*Counsel for Defendant Syngenta Crop
Protection, LLC*

EXHIBIT 1

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY
CIRCUIT CIVIL DIVISION

ALLEN WILLIFORD and Case No.: 21-CA-006219
LYNDA WILLIFORD, Division: E
Plaintiffs,
v.
SYNGENTA CROP PROTECTION,
LLC and COUNCIL-OXFORD, INC.,
Defendants.

HEARING

HELD BEFORE THE HONORABLE ANNE-LEIGH GAYLORD MOE

DATE: May 23, 2023
TIME: 1:41 p.m. to 5:10 p.m.
PLACE: George Edgecomb Courthouse
800 East Twiggs Street
Courtroom 508
Tampa, FL 33602
REPORTED BY: ANN S. BEILSTEIN, RPR
Notary Public
State of Florida at Large

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1 is equivalent to an intentional violation.

2 So I've considered that standard which just
3 can't be met on the facts where you receive
4 information and then you act on that information by
5 continuing to investigate and the investigation
6 does not yield information. When Syngenta did its
7 research, it did not yield information that
8 Syngenta -- that it would meet this very high
9 standard of being a gross and flagrant character of
10 evidence showing reckless disregard of human life.

11 So ultimately, what I have to do is look at
12 what did Syngenta know, when did they know it, and
13 ultimately, what did they do with the information
14 that they had.

15 I also have to look at the fact that we're
16 just talking about punitive damages in this
17 setting. This is not a question of whether or not
18 Syngenta has any liability to the Willifords. I'm
19 not deciding that issue. I'm just deciding if we
20 get to, in essence, kind of the escalator, you
21 know, is whatever the conduct -- if there's
22 actionable conduct on the part of Syngenta, is it
23 the kind that you get on the escalator for, for
24 damages?

25 And the motion is denied. I'm sorry. The

Unpublished Cases

2016 WL 6395900

Only the Westlaw citation is currently available.
United States District Court, M.D. Pennsylvania.

Jonathan BOTEY, Plaintiff,
v.
Robert GREEN, et al., Defendants.

3:12-CV-01520

I
Filed 10/27/2016

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MEMORANDUM OPINION

Robert D. Mariani, United States District Court Judge

*1 Presently before the Court is a Report and Recommendation (“R&R”) (Doc. 125) by Magistrate Judge Carlson, in which he recommends denying Defendants' Motion for Partial Summary Judgment (Doc. 103) in the above-captioned action. Defendants have filed Objections to which Plaintiff has responded. (*See* Defs.' Objections, Docs. 126, 127; Pl.'s Opp. to Defs.' Objections, Doc. 128; *see also*, Defs.' Reply, Doc. 129). For the reasons that follow, upon *de novo* review of the R&R, the Court will adopt the pending R&R.

On August 6, 2012, this action was removed from the Court of Common Pleas of Lackawanna County. Plaintiff Jonathan Botey's Amended Complaint alleges Negligence against Robert Green, Conwell Corporation, and FFE Transportation Services, Inc. (Counts I, II, III), as well requesting punitive damages against each of the Defendants (Counts IV, V, VI). (Doc. 1).

On September 9, 2015, Defendants filed a Motion for Partial Summary Judgment requesting that the Court dismiss the punitive damage claims against Green, FFE, and Conwell as well as Plaintiff's claims for negligent qualification, hiring, supervision, monitoring, training and entrustment against FFE and Conwell contained in Counts II and III. (Doc. 103).

Defendants object to the Magistrate Judge's findings on several grounds and request that this Court reverse the Magistrate Judge's recommended denial of Defendants' motion or, in the alternative, reverse the Magistrate Judge's recommended denial of Defendant Green and Conwell's motion for partial summary judgment. (Doc. 126, ¶ 8). Specifically, Defendants argue that (1) Plaintiff failed to meet the heavy burden set forth to defeat a motion for summary judgment with respect to punitive damages and that FFE's training records are insufficient to create an issue of fact and to defeat a motion for summary judgment; and (2) that the Magistrate Judge erred by “impliedly” finding that FFE's training records apply to each of the three defendants. (*See generally*, Docs. 127, 129).

Defendants argue that “Plaintiff's evidence carries the implication that *any* negative commentary, or violation, during *driver training* may: 1) later raise a genuine issue of fact; 2) permit an inference against a trucking company that it had a subjective awareness of the dangers posed by its drivers; and 3) later subject it to a punitive damages claim. Plaintiff essentially argues that

trucking companies must have perfect drivers at all times, even during training, to prevent a claim for punitive damages.” (Doc. 127, at 11) (*italics in original*). While the Court declines to comment on Defendants' interpretation of Plaintiff's argument, it disagrees with Defendants' ultimate conclusion. This is not a case where Plaintiff has merely pointed to one or two violations. Rather, as the R&R makes clear, FFE's training records indicate that:

[O]n December 30, 2010, the driving instructor noted 40 deficiencies in Green's performance; on January 7, 2011, 42 deficiencies were noted; on January 13, 2011, 32 deficiencies were observed; on January 21, 2011, 42 deficiencies were noted; and on January 28, 2011, 7 deficiencies—including a citation for running a stop sign—were documented in these training records. (Doc. 108-11, 108-13.) The nature of these deficiencies is also troubling. These the *[sic]* training records: (1) documented an episode in which Green ran a stop sign and received a citation; and (2) also repeatedly identified deficiencies by Green in terms of situational awareness when making left turns, precisely the maneuver that was executed by Green on the day of the accident. In fact, some 57 deficiencies relating to left hand turns were documented by Green's instructors between December 31, 2010, and the end of January, 2011. The narratives that accompany these training records also would permit an inference that FFE had a subjective awareness of the dangers posed by Green's erratic test driving performance. According to the training records, the driving instructor “had to constantly stay on [Green] to check mirrors and cancel turn signal;” cited Green for “not doing traffic checks;” stated that “at times [it was] extremely difficult to instruct [Green to] follow[] simple directions;” and warned that Green “has way too many excuses” while the instructor observed that he was “trying desperately to get [Green] to understand good driving habits.” (Doc. 108-11).

*2 (Doc. 125, at 16-17).

Defendants do not dispute the above-cited evidence, instead arguing that Green passed the training program, upon completion of the program “began driving and did well”, a statement the Court assumes is based on Defendants' assertion that Green “had not been in one accident since the time he had been authorized to drive solo”, and that “Plaintiff and the U.S. Magistrate Judge do not explain how several accidents and the failure to follow safety guidelines by a truck driver do not amount to more than gross negligence under *Calhoun*¹” (Doc. 127, at 9). Defendants further state that prior to hiring Green, “FFE reviewed Green's application, conducted a Motor Vehicle Record check and did not note any accidents or incidents. FFE investigated Green's prior record with Star Transport, another company he drove commercial vehicles for and the response provided from that company was that his performance was ‘Satisfactory.’ FFE also performed an investigation into non-DOT positions, criminal background check and even sent Green to a refresher course where he received 130 hours of additional training.” (*Id.* at 10) (internal citations omitted).

¹ Defendants argue that this Court's prior decision in *Calhoun v. Van Loon*, 2014 WL 3428876 (M.D. Pa. 2014), wherein it granted summary judgment to Defendants on Plaintiffs' claims of punitive damages, is applicable to the present action. However, *Calhoun* is distinguishable. In *Calhoun*, Defendant Van Loon, while backing his tractor-trailer into a parking place in a parking lot, collided with Plaintiff's parked tractor trailer at low speed, causing injuries to the plaintiff. Although Van Loon had been in a previous accident wherein he backed into another car, the company provided him additional training as a result. The present case is inapposite, where Green had numerous training deficiencies noted on his record, his trainer, although passing him in the program, expressed serious concerns about Green's driving to the company, and Green's noted driving deficiencies were relevant to his ability to safely drive long distances on highways, not simply issues with parking a truck at low speed, where the danger to the public is arguably much lower and less likely to result in catastrophic injuries or death.

Defendants' assertions are insufficient to establish the lack of a factual dispute. Rather, despite Defendants' list of reasons that their conduct cannot be found to be outrageous or recklessly indifferent, the deposition of Tommy Dodd in particular, raises issues of fact as to Defendants' state of mind and motives for allowing Green to drive alone and whether they purposefully overlooked the risk of harm that Green may have posed to the public. Although Tommy Dodd, Green's trainer, testified that he would not have “passed” Green in February, 2011 if he did not feel that Green was ready to drive (Dep. Of Dodd, Doc. 108-10, at 109) and that Dodd had failed more people than he “signed off for upgrade” (*id.* at 23), Dodd also testified as follows:

*3 Q. After five weeks of—after five weeks of evaluating this particular individual, you went in and had a meeting with the training department, right?

A. Yes, sir.

Q. No week during this process—at no time did you ever pass him during this process in those five weeks, right?

A. Yes, sir.

Q. Okay. Did you recommend that they fire him?

A. I didn't recommend that they fire him. I recommended that—that he was—he was unsafe.

Q. Okay.

A. And that, you know, it—the conversation basically went down as I explained to them what happened. I had turned in the evaluation forms. And—and I—and, you know, I told them, I said, “These are—these are my concerns.” And—

Q. What were your concerns, Tom?

A. The not—not following instruction, not paying attention to signs, you know, and, of course, that—; that one major one where—where he could have potentially hurt somebody.

Q. Okay. So you expressed to FFE your concerns that this driver was not safe.

A. Yeah.

Q. Okay. Certainly someone who is driving a truck that is not safe can injure someone with that truck, right?

A. Yes, sir.

Q. Is that something is that something that was—well, let me put it to you this way: Did FFE understand your concerns regarding the safety of this driver when you left that meeting?

....

A. I don't—I can't—I can't say what they were—what they were thinking. I don't know what they were thinking. All I know is—is what I had—all I know is what I had told them and then what they had told me.

Q. Right. Well, what did you just say; all you know is what they told you?

A. I mean, you know, I can't say what they were thinking when I presented all of the—all of the facts to them.

Q. Right. Did they tell you anything other than keep working with him?

A. Basically, you know, give him another chance, you know, if—if we put him with another trainer, he'll have to start all over again. And, you know, they were—at that time, you know, they were looking for a—a good success rate.

Q. So you feel like they wanted him to do well because they needed, drivers?

A. Yes.

Q. Okay. Was there a driver shortage at that time at FFE?

A. There's always a driver shortage.

Q. That wasn't my question, though.

A. Yes, you could say that.

Q. My question was—okay. Was there pressure on you to make sure that the drivers in your training course were graduating so that FFE had drivers to drive their trucks?

A. At times, yes, I did—I did feel—I did feel that pressure.

Q. Did you feel that pressure with Mr. Green?

A. Yes, when they when they encouraged me to keep working with him.

Q. Okay. One second, Mr. Dodd. Tommy, you keep saying that he—the only alternative was to put him with another driver and they'd have to start all over again, but is that something that you thought that he should do, start his training again?

A. Personally and this is just my personal opinion: They—they should have let him go with that citation. That's my personal –

Q. So you think they should have dismissed him?

A. Yes, that's my personal opinion.

(*Id.* at 78-81). Dodd's testimony, in conjunction with the numerous deficiencies noted in the training records which occurred only months prior to the accident at issue in this case, are sufficient to create a factual dispute with respect to FFE's state of mind, motives for allowing Green to drive alone, and knowledge of the risks he posed when driving.

*4 Magistrate Judge Carlson recognized the “exceedingly high standard for the award of punitive damages” (Doc. 125, at 11) and no party disputes the law set forth by the Magistrate Judge with respect to the standard governing the award of punitive damages in Pennsylvania. Additionally, while finding that material disputes of fact exist such that summary judgment must be denied, Magistrate Judge Carlson carefully emphasized, and this Court reiterates, that the Court is “not opin[ing] [] whether Botey can ultimately meet these exacting standards at trial.” (Doc. 125, at 15). As the Magistrate Judge properly noted, the evidence submitted by the parties, when viewed in a light most favorable to the plaintiff, “may permit an inference that the defendants were aware of a significant risk to safety posed by Green's driving, and failed to act in the face of this known risk. Recognizing that the evidence may permit such an inference, which in turn would support a claim for punitive damages, our course of action in this case is clear.” (Doc. 125, at 17).

Defendants' second basis for why this Court should not adopt Magistrate Judge Carlson's R&R in its entirety argues that the Magistrate Judge Impliedly found that Plaintiff's evidence applies to all three defendants' and that “it is arguable how the evidence gives FFE an appreciation of the risk of harm, but is non-existent against Green and Conwell.” (Doc. 127, at 11-12).

In Defendants' Motion for Partial Summary Judgment, they briefly argued that Conwell LLC, which does business as FFE, employed Green, and that Plaintiff improperly named Conwell Corporation, not Conwell LLC, as a defendant in the Amended Complaint. (Doc. 105, at 6). Defendant further argued that Conwell Corporation's “only relationship to this matter is the ownership of the tractor-trailer Green was driving and as there has been no evidence presented that the vehicle was in anyway malfunctioning, in disrepair or was a cause of this accident, Conwell Corporation should be dismissed from this action, in its entirety.” (Doc. 105, at 6 n.6). Defendants raise this issue again in their Objections to the R&R, pointing out that the Magistrate Judge does not address this point. (Doc. 127, at 13). In response, Plaintiff cites to one document, entitled “Conwell Corporation Experienced Driver Information” for the proposition that “documents produced in discovery regarding Defendant Green's hire by FFE Defendants bear the corporate name, Conwell Corporation” and therefore “at a minimum, this creates a genuine issue of material fact on the issue precluding summary judgment.” (Doc. 108, at 1 n.1; Doc. 128, at 1 n.1, 11-12) (citing Doc. 108-6). Nonetheless, Defendants' argument fails because they have provided no evidence to support their self-serving statement that

Conwell Corporation's involvement in this action is limited to its supplying the truck at issue, is a separate entity from Conwell, LLC, and was not involved in Green's hiring or training. As such, Defendants have failed to carry their initial burden on summary judgment and their request that Conwell Corporation be dismissed in its entirety must be denied as genuine disputes of material facts exists as to the relationship, if any, between Conwell, LLC and Conwell Corporation, whether Conwell Corporation was also Plaintiff's employer, and the extent, if any, of its involvement in, and knowledge of, the events leading up to the accident at issue.

Because of the above genuine dispute of fact, the Court also cannot determine the extent to which FFE's training records were available to Conwell Corporation and what control Conwell Corporation had over FFE's decisions with respect to its drivers, and therefore cannot determine Conwell Corporation's subjective awareness of the risk of harm to which Botey was exposed and whether it acted or failed to act in conscious disregard of that risk.

The Magistrate Judge also properly applied the evidence contained in the FFE training records in determining that a genuine dispute of material fact existed with respect to the punitive damage claim against Green. Defendant Green was aware of his numerous deficiencies during training, such as failing to pay attention to signs, including a stop sign (Doc. 108-11), not doing traffic checks (*id.*), and at times being "extremely difficult to instruct[,] following simple directions[,] too many excuses" (*id.*). Therefore, a reasonable fact-finder may find that the record evidence found in FFE's training records sufficiently supports a conclusion that Green was subjectively aware of the risk of his actions and that he acted or failed to act in conscious disregard of that risk.

***5** For the aforementioned reasons, the Court will adopt Magistrate Judge Carlson's R&R (Doc. 125) in its entirety. A separate order follows.

All Citations

Not Reported in Fed. Supp., 2016 WL 6395900

2025 WL 1340970

Superior Court of Pennsylvania.

Ernest CARANCI and Carmela Caranci

v.

MONSANTO COMPANY, Bayer AG, S&H Hardward and
Supply Company, Penn Hardward, Inc., Penn Hardware Two, Inc.

Appeal of: Monsanto Company

No. 993 EDA 2024

|

Argued March 27, 2025

|

Filed May 8, 2025

|

Reargument Denied July 15, 2025

Synopsis

Background: Consumer who used glyphosate-containing pesticide for years brought, along with his wife, products-liability action against pesticide's manufacturer, asserting claims of negligence, strict liability, defective design, and strict liability failure to warn, which claims stemmed from allegation that consumer's use of the pesticide caused him to develop non-Hodgkin's lymphoma. The Court of Common Pleas, Philadelphia County, No. 210602213, [James C. Crumlish, III, J.](#), entered a jury verdict that found in plaintiffs' favor on their negligence claim, found that, with respect to the failure-to-warn claim, pesticide was defective since it lacked proper warnings and instructions for safe use, and awarded plaintiffs compensatory and punitive damages. Manufacturer appealed following denial of its post-trial motions that included one for judgment notwithstanding the verdict (JNOV) or a new trial.

Holdings: The Superior Court, No. 993 EDA 2024, [Dubow, J.](#), held that:

based on an objective consideration, court staff member's alleged ex parte communication to jury about the number of jurors needed to reach a verdict and the length of time the court would require the jurors to deliberate before declaring a mistrial did not unduly influence jurors and thus could not be a basis for a new trial;

trial court did not abuse its discretion when it determined that manufacturer failed to establish foundation for its alternative theory of causation, i.e., that it was consumer's exposure to benzene that caused the non-Hodgkin's lymphoma;

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) did not expressly preempt failure-to-warn claim;

evidence was sufficient to prove that pesticide did cause consumer's non-Hodgkin's lymphoma;

evidence that manufacturer complied with industry standards and scientific consensus did not preclude an award of punitive damages against it;

statement that manufacturer was in the business of making money, to which plaintiffs asked manufacturer's fact witness to agree, did not improperly invite the jury to award punitive damages; and

issue of amount of non-economic compensatory damages was for jury to decide.

Affirmed.

Procedural Posture(s): On Appeal; Judgment; Motion for New Trial; Motion for Judgment Notwithstanding the Verdict (JNOV); Motion to Exclude Evidence or Testimony; Motion for Remittitur.

Appeal from the Judgment Entered March 11, 2024, In the Court of Common Pleas of Philadelphia County, Civil Division, at No(s): 210602213, [James C. Crumlish](#), J.

Attorneys and Law Firms

[John J. Hare](#), Philadelphia, for appellant.

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BEFORE: [LAZARUS](#), P.J., [PANELLA](#), P.J.E., and [DUBOW](#), J.

Opinion

OPINION BY [DUBOW](#), J.:

*1 Appellant, Monsanto Company (“Monsanto”), appeals from the \$177,285,102.74 judgment entered in the Philadelphia County Court of Common Pleas on March 11, 2024, following a jury verdict in favor of Appellees, Ernest Caranci (“Mr. Caranci”) and Carmela Caranci (collectively, “Appellees”), in this products liability action. Monsanto challenges the trial court’s denial of its motions for a new trial or judgment notwithstanding the verdict based on Monsanto’s allegations of improper communications between court staff and jurors, erroneous evidentiary rulings, and federal preemption, and claims that the jury’s damages award was excessive. After careful review, we affirm.

The relevant facts and procedural history are as follows. In June 2021, Appellees sued Monsanto alleging that Mr. Caranci’s years’-long use of Monsanto’s product Roundup and its ingredient glyphosate caused him to develop [non-Hodgkin’s lymphoma](#) (“NHL”). Appellees’ complaint alleged claims of, *inter alia*, Negligence, Strict Liability Defective Design and Strict Liability Failure to Warn.

The parties filed certain pre-trial motions and made certain objections at trial which dispositions are germane to this appeal, including the trial court’s rejection of Monsanto’s assertion that Appellees’ Failure to Warn claim was preempted by the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), [7 U.S.C. § 136](#), *et seq.*, and denial of Monsanto’s request to exclude evidence and argument relating to the Ninth Circuit Court of Appeals’ decision in [Natural Resources Defense Council v. U.S. Environmental Protection Agency](#), 38 F.4th 34 (9th Cir. 2022) (“*NRDC*”).

The parties proceeded to a jury trial after which, on October 27, 2023, the jury found in Appellees’ favor on their negligence claim. With respect to Appellees’ Failure to Warn claim, the jury found that Roundup was defective because it lacked proper warnings and instructions for safe use.¹ The jury awarded Appellees \$25 million in compensatory damages and \$150 million in punitive damages after finding that Monsanto’s conduct was malicious, wanton, willful, or oppressive, or showed reckless indifference to others.

¹ The jury found in Monsanto’s favor on the “consumer expectations” aspect of strict liability.

After the jury had rendered its verdict and announced its damages award, Monsanto contacted the individual members of the jury, one of whom (“Juror 9”) agreed to have a recorded conversation with Monsanto’s counsel. During the recorded conversation,

Juror 9 alleged that, as the jury was deliberating, the foreperson contacted a member of the court staff for clarification as to whether “ten yes votes or ten no votes were required” to end deliberations.” While the jury waited for the court staff member to consult with the judge, it continued to deliberate. Juror 9 further alleged that, eventually the court staff member told the jury it needed “to reach ten ‘no’ votes or ten ‘yes’ votes” and that “if [it] didn’t come to ten for one side today, [it] would be called back on Monday and that if [it] didn’t reach ten votes either way on Monday, [it] would have to return on Tuesday and if [it] still had not reached ten votes on Tuesday that the judge would call a mistrial on Wednesday.” Upon hearing this, Juror 9 alleged that one juror threatened not to return. The votes then shifted, and the jury returned a verdict that afternoon. Subsequent to his recorded conversation with Monsanto’s counsel, Juror 9 prepared a notarized written statement recounting these alleged communications and his perception of the jury deliberations after the communications and provided the statement to the court.

*2 Monsanto then filed a motion for recusal, a post-trial motion for JNOV or a new trial, or an evidentiary hearing concerning the alleged conversation between the jury and the court staff member, and other post-trial motions for JNOV or a new trial. The court denied each of these motions, the prothonotary entered judgment against Monsanto, and this appeal followed.

Monsanto raises the following six issues on appeal:

1. Is a new trial or an evidentiary hearing required based on a juror’s sworn statement describing improper and prejudicial *ex parte* communications with the jury during its deliberations?
2. Is a new trial required because the trial court made erroneous and prejudicial evidentiary rulings based on double standards and other improper grounds, resulting in a one-sided trial?
3. Is JNOV required because [Mr. Caranci’s] claims are preempted?
4. Is JNOV required because [Appellees] failed to introduce sufficient evidence of specific causation?
5. Is JNOV, a new trial, or remittitur required because the punitive damages award was unwarranted, manifestly excessive, and improperly cumulative?
6. Is JNOV, a new trial, or remittitur required because the compensatory damages award was manifestly excessive and punitive?

Monsanto’s Brief at 6.

In each of Monsanto’s issues, it challenges the trial court’s denial of its post-trial motions for JNOV or a new trial. We review the denial of a request for JNOV for an error of law that controlled the outcome of the case or an abuse of discretion. *Hutchinson v. Penske Truck Leasing Co.*, 876 A.2d 978, 984 (Pa. Super. 2005). In this context, an “[a]buse of discretion occurs if the trial court renders a judgment that is manifestly unreasonable, arbitrary or capricious; that fails to apply the law; or that is motivated by partiality, prejudice, bias or ill will.” *Id.*

When reviewing the denial of a request for JNOV, the appellate court examines the evidence in the light most favorable to the verdict winner. *Thomas Jefferson Univ. v. Wapner*, 903 A.2d 565, 569 (Pa. Super. 2006) (citation omitted). Thus, “the grant of [JNOV] should only be entered in a clear case[.]” *Id.* (citation omitted).

There are two bases upon which a movant is entitled to JNOV: “one, the movant is entitled to judgment as a matter of law, and/or two, the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant.” *Rohm and Haas Co. v. Continental Cas. Co.*, 566 Pa. 464, 781 A.2d 1172, 1176 (2001) (citation omitted). When an appellant challenges a jury’s verdict on this latter basis, we will grant relief only “when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice.” *Sears, Roebuck & Co. v. 69th St. Retail Mall, L.P.*, 126 A.3d 959, 967 (Pa. Super. 2015) (citation omitted).

Similarly, “[o]ur standard of review when faced with an appeal from the trial court’s denial of a motion for a new trial is whether the trial court clearly and palpably committed an error of law that controlled the outcome of the case or constituted an abuse of discretion.” *Blumer v. Ford Motor Co.*, 20 A.3d 1222, 1226 (Pa. Super. 2011) (citation omitted). “In examining the evidence in the light most favorable to the verdict winner, to reverse the trial court, we must conclude that the verdict would change if another trial were granted.” *Id.* (citation omitted).

*3

In its first issue, Monsanto contends that the trial court erred in failing to hold an evidentiary hearing or grant its motion for a new trial because of the alleged improper communication between the jury and a court staff member during the jury’s deliberations.

When an *ex parte* communication between the court and the jury takes place, a party is entitled to a new trial if the communication unduly influences the jury’s deliberations. *Commonwealth v. Bradley*, 501 Pa. 25, 459 A.2d 733, 734 (1983) (reviewing civil cases and providing a universal standard to address *ex parte* communications between juries and courts). In *Carter v. U.S. Steel Corp.*, 529 Pa. 409, 604 A.2d 1010 (1992), our Supreme Court provided the following guidance to determine whether the external communication “unduly influenced” the jury. The Court held:

In determining the reasonable likelihood of prejudice, the trial judge should consider 1) whether the extraneous influence relates to a central issue in the case or merely involves a collateral issue; 2) whether the extraneous influence provided the jury with information they did not have before them at trial; and 3) whether the extraneous influence was emotional or inflammatory in nature.

Id. at 1016-17.

The Court further explained that the standard for assessing prejudicial effect is an objective one:

Once the existence of a potentially prejudicial extraneous influence has been established by competent testimony, the trial judge must assess the prejudicial effect of such influence. Because a trial judge is precluded from considering evidence concerning the subjective impact of an extraneous influence on any juror, **it has been widely recognized that the test for determining the prejudicial effect of an extraneous influence is an objective one.** In order to determine whether an extraneous influence is prejudicial, a trial judge must determine how an objective, typical juror would be affected by such an influence.

Id. at 1016 (emphasis added).

At the outset, we note that because the trial court did not hold a hearing to determine whether the *ex parte* communication described by Juror 9 occurred, we assume for the sake of argument that the court staff member told the jury that it needed ten votes for a verdict and would have to return until it reached a verdict.

Relying on *Briskin v. Lerro Elec. Corp.*, 404 Pa. Super. 227, 590 A.2d 362 (1991)—a Superior Court decision issued **before** our Supreme Court decided *Carter, supra*—Monsanto claims the trial court erred in not granting a new trial because there is a reasonable likelihood, that under an objective standard, the *ex parte* communication prejudiced Monsanto, Juror 9’s testimony

would be admissible to prove prejudice, and the trial court's reasons for disregarding prejudice were erroneous. Monsanto's Brief at 26-37.

We start by rejecting Monsanto's argument that we should consider Juror 9's perception of the jury deliberations. The Supreme Court in *Carter* emphasized that “the rule in Pennsylvania, as well as in a majority of jurisdictions, is that a juror is incompetent to testify as to what occurred during deliberations.” *Carter*, 604 A.2d at 1013 (citing *Pittsburgh National Bank v. Mutual Life Ins. Co.*, — Pa. —, 425 A.2d 383, 385 (1981)). This rule is often referred to as the “no impeachment rule.” *Id.* However, in order to accommodate the competing policies in this area, courts have recognized a narrow exception, which permits “post-trial testimony of extraneous influences which might have [prejudiced] the jury during deliberations.” *Pittsburgh National Bank*, 425 A.2d at 386 (citation omitted). Under this exception, **a juror may testify only as to the existence of the outside influence, but not as to the effect this outside influence may have had on deliberations.** *Id.* Under no circumstances may jurors testify regarding their subjective reasoning processes.²

² To permit a party unhappy with a verdict to hold a hearing about jury deliberations would require the return of every juror and subject the jurors to direct and cross-examination, a process that would unfairly burden jurors who have already given much time to participate in the trial. We trust that the courts can apply the relevant legal authority and determine objectively whether an outside communication unduly prejudiced the jurors.

*4 Thus, our analysis of Monsanto's claim is limited to an objective consideration of whether the court staff member's statement about the number of jurors needed to reach a verdict and the length of time the court would require the jurors to deliberate before declaring a mistrial unduly influenced the jurors. Applying the test set forth in *Carter* to determine whether the communication unduly influenced the jurors, we find that this communication did not do so. The statement pertained to court procedure and did not address any substantive issues. Furthermore, using an objective standard, we find that the statement regarding the court procedure was not emotional and could not inflame the jury. We, therefore, conclude that, even if the court staff member made the statement, it did not unduly influence the jurors. Monsanto's claim, thus, fails to garner relief.

In its second issue, Monsanto claims that certain of the trial court's evidentiary rulings resulted in a “one-sided” trial. Monsanto's Brief at 37-53.

Questions of admissibility lie within the trial court's sound discretion, and we will not disturb the court's decision absent a clear abuse of discretion. *Parr v. Ford Motor Co.*, 109 A.3d 682, 690 (Pa. Super. 2014) (citation omitted). “[A]n abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.” *Keystone Dedicated Logistics, LLC v. JGB Enters., Inc.*, 77 A.3d 1, 11 (Pa. Super. 2013) (citation omitted).

Monsanto raises four distinct claims of error arising from the trial court's evidentiary rulings.³ We address those claims *seriatim*.

³ In addition to the arguments set forth by Monsanto and discussed *infra*, Monsanto also supports its various claims that the trial court erred in its evidentiary rulings by highlighting evidentiary rulings made in other Roundup cases by a different Philadelphia County judge subsequent to the trial in this case. That judge's rulings do not persuade us that the instant trial court—making decisions in the context of this case, with the specific evidence and testimony before it—abused its discretion in its rulings.

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First, Monsanto contends that the trial court abused its discretion in preventing it from relying on the result of studies completed by foreign organizations that concluded that glyphosate was not carcinogenic while permitting Appellees to build their case

around a “hazard assessment” of glyphosate prepared by the International Agency for Research on Cancer (“IARC”), an organization under the umbrella of the World Health Organization and based in France. Monsanto’s Brief at 38-43.

In support of this claim, Monsanto cites to places in the record where the trial court precluded its **fact** witness, Dr. William Reeves, from testifying about the limitations of the hazard assessment issued by IARC. *Id.* at 40-42. Monsanto concludes that because Appellees relied on the IARC report to support its claim for punitive damages, Monsanto was “entitled to respond by showing [that] scientists worldwide dismissed IARC’s view.” *Id.* at 40. Monsanto further complains that the trial court erred because it permitted extensive testimony about the one foreign organization that agreed with Appellees’ position that glyphosate causes **cancer** but precluded testimony regarding the foreign organizations that found it to be non-carcinogenic, thus, creating a “blatant double standard.” *Id.* at 41. Monsanto contends that the trial court created an additional “double standard” when it prevented Dr. Reeves from testifying about the manner in which the EPA reacted to IARC because “EPA is not here,” yet the court “never applied the same principle to IARC’s views, which was also ‘not here.’ ” *Id.* at 42 (citing N.T., 10/13/23 PM Session, at 80).⁴ Monsanto concludes that the court’s rulings precluded Dr. Reeves from “challenging a core pillar of [Appellees’] theory” and “substantially diminish[ed] its ability to present its case.” *Id.* at 43.

⁴ Even if the trial court erred in its evidentiary rulings regarding the EPA’s conclusions about glyphosate, the error was harmless because Dr. Reeves testified that the EPA viewed glyphosate as either non-carcinogenic or not likely to be carcinogenic. Monsanto’s Brief at 42 (citing N.T., 10/13/23 PM Session, at 91). This testimony implicitly conveyed EPA’s disagreement with and rejection of IARC’s finding that glyphosate is a carcinogen.

*⁵ Following our review of the notes of testimony, in particular the instances in which Monsanto alleges the court precluded Dr. Reeves from testifying about the inaccuracies of the IARC hazard assessment, we find no abuse of discretion in the court’s ruling. The notes of testimony reflect vigorous discussion between the court and Monsanto’s counsel regarding the nature of Dr. Reeves’s testimony—that is whether Dr. Reeves was appearing as a fact or an expert witness—and Monsanto’s counsel agreeing that Dr. Reeves was appearing as a fact witness. *See, e.g.* N.T. 10/13/23 AM Session, at 88, 102, 114.

The rulings that Monsanto challenges are those in which Monsanto attempted to elicit expert testimony from Dr. Reeves, including opinions regarding the consequences or effects of research conducted by international regulatory organizations. Because Dr. Reeves was not qualified as an expert witness and did not prepare an expert report on the consequences or effects of the international regulatory organizations, the trial court properly precluded him from testifying in the capacity of an expert. This claim, thus, warrants no relief.

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Next, Monsanto claims that the court erred in admitting prejudicial testimony and improperly instructing the jury regarding the ruling of the Ninth Circuit Court of Appeals in *NRDC, supra*.⁵ Monsanto’s Brief at 43-48.

⁵ Monsanto was an intervenor in the case filed by the NRDC.

NRDC was an administrative appeal in which the Natural Resources Defense Counsel (“NRDC”) challenged the EPA’s 2020 Interim Registration Review Decision that concluded that “for the most part,” glyphosate does not cause **cancer**. *NRDC*, 38 F.4th at 39. Following its review of the EPA’s analysis and conclusions, the Ninth Circuit found, *inter alia*, that, “EPA’s errors in assessing human-health risk are serious.” *Id.* at 52. In particular, the Court found that the EPA did not adequately consider whether glyphosate causes **cancer**, and the “EPA’s choice of a hazard descriptor [i.e., that glyphosate “for the most part” does not cause **cancer**] is not supported by substantial evidence.” *Id.* at 51. The Ninth Circuit, thus, vacated the human-health portion of the Interim Registration Review Decision and remanded the matter to EPA for further consideration. *Id.* at 52.

Monsanto contends that the *NRDC* holding regarding the EPA Interim Registration Review Decision pertaining to the link between glyphosate and **cancer** is irrelevant to the instant case. In particular, Monsanto argues that shortly after the Ninth Circuit

decided the case, the EPA reaffirmed its views that glyphosate does not cause [cancer](#). *Monsanto's Br.*, at 43-44. Monsanto further claims that, even if the Ninth Circuit decision were relevant, its prejudicial impact outweighs its probative value because “[l]ay jurors cannot be expected to understand nuanced issues of administrative law.” *Id.* at 44. Monsanto asserts that the trial court, nevertheless, permitted Appellees to selectively read parts of the decision to the jury and imply that Monsanto had “executed a legally binding document admitting to [Appellees’] characterization of” the decision.⁶ *Id.* at 45 (internal quotation marks omitted).

⁶ The “legally binding document” refers to a stipulation signed by Monsanto lawyers acknowledging that the EPA’s 2020 Interim Registration Review Decision was vacated. *See* N.T., 10/13/23 PM Session, at 124, 126. During his recross-examination, Dr. Reeves denied having seen the stipulation. *Id.* at 126.

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Monsanto further asserts that the trial court inaccurately stated in open court that “Monsanto is a defendant in a case and there was a ruling, as I understand the testimony, that vacated the registration of the [Roundup], right[?].” Monsanto’s Brief at 45 (citing N.T. 10/16/23 AM Session, at 88). Monsanto concludes that the trial court compounded its error by not providing a curative instruction about the inaccuracy until two weeks later when the court charged the jury.

*⁶ Our review of the record reveals that the trial court permitted Appellees to read portions of the Ninth Circuit’s decision when conducting its recross-examination of Dr. Reeves. *See* N.T., 10/16/23 AM Session, at 56-59. On direct, Dr. Reeves had testified about the EPA’s Interim Registration Review Decision. Dr. Reeves characterized the Interim Registration Review Decision as a “well-written document” and testified that it gave Monsanto “more confidence in the safety profile of glyphosate.” N.T. 10/13/23 PM Session, at 122, 123. Once Monsanto elicited testimony from Dr. Reeves establishing that Monsanto relied on EPA’s determination that glyphosate “for the most part” was non-carcinogenic, the court determined that it would not “ignore all of [Dr. Reeves’s] previous testimony about his knowledge of the EPA and the significance of the EPA” and, because the jury had “heard testimony on direct and on cross about the wide range of knowledge and the reliance of Monsanto on the regulatory process of the EPA,” it would permit Appellees to examine Dr. Reeves regarding the subsequent history of that determination. N.T., 10/16/23 AM Session, at 15.

The trial court further explained that Appellees were permitted to cross-examine Dr. Reeves about the [NRDC](#) decision because “Monsanto has put all this in play with respect to the efficacy, the procedural substance, all of that Ninth Circuit decision.” *Id.* at 16.

We agree with the trial court. Since Dr. Reeves testified that Monsanto relied on the EPA’s 2020 Interim Registration Review Decision’s determination that glyphosate was “for the most part” non-carcinogenic, the trial court did not abuse its discretion permitting Appellees to recross-examine him about the [NRDC](#) decision.

With respect to Monsanto’s claim that the trial court’s curative instruction regarding the court’s interpretation of the [NRDC](#) holding was, in essence, too little, too late, our review of the notes of testimony indicates that Monsanto did not place a contemporaneous, specific objection to the court’s inaccurate statement about the holding of the [NRDC](#) decision on the record. In fact, Monsanto continued to question Dr. Reeves about the decision.

The following occurred during Monsanto’s re-direct examination of Dr. Reeves:

Monsanto: Who actually withdrew the 2020 interim registration review?

Appellees: Objection.

Court: Are we disputing what the Ninth Circuit opinion said or directed? OR had a finding? Are you asking this witness to give a legal opinion?

Monsanto: No, I am not. I am not. I am asking with the - - I'm asking what his understanding as a Monsanto employee is of what the EPA did.

Appellees: Objection.

Court: Do you have a witness from the EPA or a witness who is going to testify on this subject?

Monsanto: Your honor, this goes directly to his work as a Monsanto employee working in regulatory science and what Monsanto did after that opinion came down.

Court: All right. Just so I understand. Monsanto is a defendant in a case and there was a ruling, as I understood the testimony, that vacated the registration of a product, right?

Monsanto: Absolutely not, Your Honor. Absolutely not. It was - - absolutely not.... It did not vacate the registration of the product.

Court: All right. So you're telling me what this - - you're telling me what the Ninth Circuit opinion said then, right?

Monsanto: It says that. It actually does say that in black and white, Your Honor.

Court: That sounds like a yes to me.

Monsanto: Absolutely.

Court: This witness is not going to testify as to his understanding of the Ninth Circuit because he already testified that he didn't read it and didn't know about it.

NT., 10/16/23 AM Session, at 87-89. Monsanto's attorney then proceeded to question Dr. Reeves about his understanding of the **NRDC** decision.

It is axiomatic that to “preserve an issue for appellate review, a litigant must place a timely, specific objection on the record. Issues that are not preserved by specific objection in the lower court are waived.” *Jones v. Ott*, 648 Pa. 76, 191 A.3d 782, 787 (2018). In its Brief, Monsanto explained that, “immediately following [the court's] mistake, Monsanto **tried to correct** the court's mistaken view[.]” Monsanto's Brief at 45 n.13 (emphasis added). Monsanto's attempt to “correct the court's mistaken view,” did not, however, operate as an objection to the court's statement sufficient to preserve this allegation of error for our review. Because Monsanto failed to place a timely, specific objection to the trial court's statement about the holding of the **NRDC** decision on the record, Monsanto has waived any claim of error about the timing of a curative instruction. *Jones*, 191 A.3d at 787.

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Next, Monsanto claims that the trial court abused its discretion in permitting Appellees to introduce inappropriate “propensity” evidence in violation of Pa.R.E. 404(b). Monsanto's Brief at 48-50. Monsanto asserts that the court should have precluded Appellees from introducing evidence that Monsanto produced—and removed from the market around the same time it introduced Roundup—the chemicals Agent Orange, PCBs, and DDT because it was irrelevant and “suggest[s] a propensity to disregard safety.” *Id.* at 49.

Pa.R.E. 404(b)(1) prohibits admission of evidence of “other ... wrong[s] or act[s]” to show a propensity to act in accordance with a certain trait. Pa.R.E. 404(b)(1). “This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” *Id.* at 404(b)(2).

Our review of the record, including Monsanto's motion in *limine* and the notes of testimony reveals, that Monsanto did not object to the admission of this evidence on [Rule 404\(b\)](#) grounds. Rather, Monsanto invoked Rules 401 and 403 as grounds for exclusions of this evidence. Monsanto's failure to preserve this specific objection results in its waiver. [Jones](#), 191 A.3d at 787.

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Last, Monsanto contends that the trial court abused its discretion in determining that Monsanto failed to establish a foundation for its alternative theory of causation, *i.e.*, that it was Mr. Caranci's exposure to benzene ⁷ that caused Mr. Caranci's NHL. Monsanto concludes that this ruling precluded it from developing its theory through Appellees' causation expert witness. Monsanto's Brief at 50-52.

⁷ IARC has labelled benzene a known carcinogen.

By way of background, Dr. Timur Durrani, Appellees' expert medical toxicologist, testified that, in calculating Mr. Caranci's exposure to Roundup, he used a methodology that involved multiplying the number of instances that Mr. Caranci used Roundup per year by the hours per instance by the number of years over which he used it. N.T., 10/18/23 AM Session, at 100. On cross-examination, Monsanto asked Dr. Durrani to employ the same methodology to calculate Mr. Caranci's hypothetical exposure to benzene over his 10-year career, assuming that he worked five to six days per year, as a painter.

Monsanto did not present its own expert to establish this theory; rather, it attempted to use Appellees' expert to establish that it was Mr. Caranci's exposure to benzene that caused Mr. Caranci's [cancer](#). In support, Monsanto prepared a slide illustrating Mr. Caranci's hypothetical exposures to benzene, and using Dr. Durrani's Roundup-exposure methodology, Monsanto's attorneys calculated Mr. Caranci's total hypothetical benzene exposures.

Appellees objected on the grounds that neither party had presented evidence of the number of hours, days, or weeks that Mr. Caranci spent painting with paint containing benzene. *Id.* at 102-103. The trial court, however, overruled the objection stating: "I understand. This is a hypothetical that the jury may consider[,] but also may disregard. So just ask your question, please. You're making an assumption, please put it to the witness." *Id.* at 104. When Monsanto's counsel asked Dr. Durrani to calculate, using his glyphosate exposure methodology, how many benzene exposure events Mr. Caranci had had, Dr. Durrani refused to speculate, explaining, essentially, that it is not appropriate to use the same methodology to gauge benzene exposures and glyphosate exposures. *Id.* at 104-106. Because Dr. Durrani would not speculate about Mr. Caranci's hypothetical exposure to benzene, the trial court did not abuse its discretion in ruling that Monsanto had failed to lay a foundation that would permit an expert opinion that it was benzene that caused Mr. Caranci's NHL.

*8 Additionally, Monsanto's counsel admitted that he had no expert testimony to support the theory that using the glyphosate exposure methodology was the same methodology used to determine benzene exposure. Rather, it was, simply, Monsanto's attorneys' argument that it was appropriate to do so. *Id.* at 105. Ultimately, the trial court disallowed this line of questioning because the benzene exposure calculation was "merely the calculation from counsel," and this was misleading or prejudicial and Monsanto's attorney had not established the proper foundation for it. *Id.* at 106-107.

Following our review, we conclude that the trial court did not abuse its discretion in its ruling. Monsanto failed to provide any evidence to support its position that an expert toxicologist would use or had used the same methodology to calculate the effect of benzene exposures as it would glyphosate exposures or that benzene and glyphosate carry the same risk of [cancer](#). Furthermore, there was nothing in the record to support Monsanto's attorneys' speculation as to the number of instances of exposure in his time as a painter. Without such a foundation, the trial court properly sustained Monsanto's questioning of Dr. Durrani. Monsanto is, thus, not entitled to relief on this claim.

In Monsanto's third issue, it contends that the doctrine of federal preemption bars Appellees' Failure to Warn claim. In support, Monsanto relies on the recent decision of the Third Circuit Court of Appeals in *Schaffner v. Monsanto Corp.*, 113 F.4th 364 (3rd Cir. 2024), in which that Court, interpreting Pennsylvania law, found that a Pennsylvania duty to warn claim "imposes requirements that are different from those imposed under FIFRA, and [the plaintiff's claim] is therefore preempted by FIFRA." Monsanto's Brief at 53-54 (quoting *Schaffner*, 113 F.4th at 371). Monsanto contends that, based on the *Schaffner* decision alone, "JNOV is required on all of [Appellees'] claims." We reject this contention.

As a prefatory matter, we note that we are "not bound by decisions of the federal Courts of Appeals [although] we may, and at times, do look to them for guidance." *Miller v. Southeastern Pennsylvania Transp. Auth.*, 628 Pa. 78, 103 A.3d 1225, 1231 (2014) (citation omitted).

Federal preemption is a question of law; our standard of review is, thus, *de novo*, and our scope of review plenary. *Dooner v. DiDonato*, 601 Pa. 209, 971 A.2d 1187, 1193 (2009). By way of background, this Court has explained the doctrine of federal preemption as follows:

The doctrine of federal preemption is founded on the Supremacy Clause. Federal laws are the supreme law of the land; thus, any "state law that conflicts with the federal law is without effect."

A state law is preempted when: (1) Congress expresses a clear intent to preempt state law; (2) when there is outright or actual conflict between the federal and state law; (3) when compliance with the federal and state law is effectively impossible; (4) where there is an implicit federal barrier to state regulation; (5) where Congress has occupied the entire field of regulation; [or] (6) where state law "stands as an obstacle" to the objectives of Congress. The key question is whether Congress intended to preempt state law. Congressional intent may be express or implied:

Congress' intent may be explicitly stated in the statute's language or implicitly contained in its structure and purpose[.] In the absence of an express congressional command, state law is preempted if that law actually conflicts with federal law or if federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it.

*9 Absent express preemption, courts are not to infer preemption lightly, particularly in areas traditionally of core concern to the states such as tort law. This is because the preemption doctrine presumes that police powers historically left to the states are not supplanted by federal law.

Coffey v. Minwax Co. Inc., 764 A.2d 616, 619 (Pa. Super. 2000) (quoting *Romah v. Hygienic Sanitation Company*, 705 A.2d 841 (Pa. Super. 1998) (internal quotation marks and ellipses omitted)).

FIFRA contains an express preemption provision at Section 136v(b), which provides that a "[s]tate shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under" FIFRA. 7 U.S.C. § 136v(b). In other words, FIFRA will preempt a state law requirement—including a common-law cause of action—that is not fully consistent with FIFRA's requirements and imposes a duty greater than that imposed by FIFRA. *Carson v. Monsanto Company*, 92 F.4th 980, 990-91 (11th Cir. 2024) (citing *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 447, 125 S.Ct. 1788, 161 L.Ed.2d 687 (2005)). A state law requirement is not fully consistent with FIFRA's requirements when the state law requirement is: (1) for labeling or packaging; and (2) in addition to or different from what FIFRA requires. 7 U.S.C. § 136v(b); *Carson*, 92 F.4th at 989-91 (citing *Bates*, 544 U.S. at 444, 446-47, 125 S.Ct. 1788).

We start with a discussion of the elements of a Pennsylvania failure to warn claim. A claim for strict liability failure to warn under Pennsylvania law requires a plaintiff to prove, *inter alia*, that a product "lacks adequate warnings or instructions necessary for safe use of the product." *Zitney v. Wyeth LLC*, 243 A.3d 241, 245 (Pa. Super. 2020) (citation omitted). In other words, Pennsylvania imposes a requirement on manufacturers to provide adequate warnings on its products that are necessary for the

consumer's safe use of the product. The issue before us, therefore, is whether FIFRA imposes a similar requirement, *i.e.*, that manufacturers of pesticides provide adequate warnings on their pesticide containers.

Turning to FIFRA's labeling requirements, we start with Section 136a(c)(5)(B) that provides that the Administrator shall register a pesticide if the Administrator determines that the pesticide's **"labeling ... compl[ies] with the requirements of this subchapter."** 7 U.S.C. § 136a(c)(5)(B) (emphasis added). Among the requirements that FIFRA imposes on a manufacturer of pesticides is that it not distribute or sell "any pesticide which is adulterated or misbranded." *Id.* at § 136j(a)(1)(E). A pesticide is "misbranded" if its label is inadequate, *i.e.*, if it "does not contain a warning or caution statement [that] may be necessary and if complied with ... is adequate to protect health and the environment." *Id.* at § 136(q)(1)(G). In other words, FIFRA imposes a requirement on manufacturers of pesticides that they include adequate warnings on its containers of pesticides to protect health and the environment. Otherwise, the product is "misbranded," and the manufacturer is prohibited from selling it.

Since a Pennsylvania failure to warn claim imposes a requirement on manufacturers of pesticides to provide a label that warns of health risks and FIFRA requires manufacturers of pesticides to include on their labels a "warning or caution statement [that is] adequate to protect health and the environment," the requirements are similar and the Pennsylvania failure to warn claim does not impose any requirement that is in addition to the requirements imposed by FIFRA. Thus, FIFRA does not preempt a Pennsylvania failure to warn claim.

***10** This holding is consistent with numerous other courts throughout the United States that have concluded that FIFRA does not preempt their states' failure to warn claims. In *Hardeman v. Monsanto Company*, 997 F.3d 941, 995 (9th Cir. 2021), the Ninth Circuit Court of Appeals, determined that California's failure to warn cause of action did not impose any additional requirements to FIFRA's labeling provisions. That Court rejected Monsanto's argument that the EPA's approval of a pesticide label demonstrated that the label is appropriate. The Court first noted that FIFRA only provides that "registration of a pesticide shall be *prima facie* evidence that the pesticide, its labeling and packaging comply with the registration provision of [FIFRA]." *Id.* at 956 (internal quotation marks omitted) (quoting 2 U.S.C. 136a(f)(2)). Thus, approval of the label is not determinative that the label is *per se* adequate.

The Court further noted that to hold otherwise would render the provisions regarding misbranding and mandatory reporting of unreasonable adverse effects superfluous:

And looking at FIFRA holistically, this makes sense—if mere EPA approval of a label were determinative of FIFRA compliance, then FIFRA's misbranding provision and regulations imposing a duty to report additional factual information regarding unreasonable adverse effects would serve no purpose. So even though EPA approved Roundup's label, a judge or jury could disagree and find that same label violates FIFRA. **And because EPA's labeling determinations are not dispositive of FIFRA compliance, they similarly are not conclusive as to which common law requirements are in addition to or different from the requirements imposed by FIFRA.**

Id. (internal citations and quotation marks omitted; emphasis added).

Similarly, in *Carson*, 92 F.4th at 992, the Eleventh Circuit concluded that FIFRA did not preempt Georgia's failure to warn claim. The Court found that "FIFRA's labeling requirements that bear on our preemption analysis are its (1) prohibition on misbranding; (2) required registration of pesticides and their labels, and (3) ongoing reporting requirements." *Id.* at 990-91. The Court highlighted the provision of FIFRA that defines "misbranding" as a label that "does not contain a warning or caution statement which is necessary and if complied with ... is adequate to protect health and the environment." *Id.* at 991-92 (citation omitted).

The Court compared these provisions to a Georgia failure to warn claim. The Court found that “under Georgia common law, a pesticide manufacturer breaches its duty to warn if it fails to provide an adequate warning of the product’s potential risks.” *Id.* at 992 (citation omitted). The Court then concluded that “here, the practical effect is the same: both FIFRA and Georgia common law require pesticide manufacturers to warn users of potential risks to health and safety.” *Id.*

Most recently, a Missouri appellate court rejected Monsanto’s argument that FIFRA preempted a Missouri failure to warn claim. That Court held that “the practical effect of both FIFRA’s prohibition on misbranding under [Section 136\(q\)\(1\)\(G\)](#) and a strict liability failure to warn claim in Missouri are the same: both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product, regardless of the manufacturer’s knowledge or intent.” *Durnell v. Monsanto Company*, 707 S.W.3d 828, 833 (Mo. App. E.D. 2025).

Monsanto, however, asks us to accept the reasoning of the *Schaffner* Court and hold that FIFRA preempts a Pennsylvania failure to warn claim. The *Schaffner* Court found that, because the EPA through its pre-approval regulation process, approved Roundup’s label without a cancer warning, Monsanto could not add a cancer warning without further EPA approval. 113 F.4th at 399. The Court, therefore, concluded that since the Pennsylvania failure to warn claim, which involves the failure to add a cancer warning, imposes a requirement on Monsanto that FIFRA does not impose, FIFRA preempts Pennsylvania law. *Id.*

*11 We find the *Schaffner* Court’s reasoning and conclusion unpersuasive because it relies on only one section of FIFRA and does not consider all the requirements that FIFRA imposes on manufacturers of pesticides regarding adequate labels. The *Schaffner* Court fails to consider the misbranding provisions of FIFRA that prohibit a manufacturer or distributor of a pesticide from distributing or selling “any pesticide [that] is ... misbranded,” which includes selling a pesticide that does not contain an adequate health warning. 7 U.S.C. § 136j(a)(1)(E).

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. *See Hardeman*, 997 F.3d at 957 (observing that “FIFRA expressly states that EPA’s decision to approve a label during the registration process raises only a rebuttable presumption that the pesticide and its label comply with FIFRA.” (citation omitted)). It does not provide that approval by the EPA is dispositive that the manufacturer has complied with FIFRA and, in particular, with the provisions that prohibit selling a pesticide with an inadequate health warning. Additionally, the approval of the label is not a final blessing that the label adequately warns of risks; FIFRA still requires a manufacturer of a pesticide to provide to the EPA unreasonable adverse effects of the pesticide. 7 U.S.C. § 136d(a)(2).

We might have found *Schaffner* persuasive if FIFRA did not impose any additional obligations on a manufacturer of a pesticide beyond the EPA’s approval of the label. However, FIFRA imposes additional requirements on manufacturers; in particular, it requires them not to sell pesticides without adequate health warnings. It is this requirement in FIFRA that is similar to the requirement of Pennsylvania’s failure to warn law and, thus, precludes FIFRA from preempting a Pennsylvania failure to warn claim. We, therefore, conclude that FIFRA does not preempt a Pennsylvania failure to warn claim.⁸

⁸ Monsanto also baldly asserts in its brief that “*Schaffner* confirms that *Romah v. Hygienic Sanitation Co.*, 705 A.2d 841 (Pa. Super. 1997) *aff’d* [558 Pa. 378] 737 A.2d 249 (1999), was rightly decided and remains good law.” Monsanto’s Brief at 53 n.15. We disagree that *Romah* remains good law. In *Romah*, this Court found that FIFRA preempted plaintiffs’ state law claim that a pesticide manufacturer was negligent in distributing a toxic chemical, which is essentially a claim that the warnings on the pesticide were not sufficient to protect the public from injury. The *Romah* Court explained its reasoning as follows: if this “claim was permitted to go to the jury and the jury concluded that the warnings were inadequate, then such a verdict would have the effect of imposing a new labeling requirement ... an outcome [] expressly preempted by [] FIFRA.” *Romah*, 705 A.2d at 852. Subsequently, however, in *Bates, supra*, the United States Supreme Court, in considering whether FIFRA permits failure to warn claims disagreed with this reasoning. 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. The proper inquiry calls for an examination of the elements of the common-law duty at issue, not for speculation as to whether a jury verdict will prompt a manufacturer to change its label.” *Bates*, 544 U.S. at 432, 125 S.Ct. 1788. The Court was clear that “[a] jury verdict that might induce pesticide manufacturers to change labels should not be viewed as a requirement.” *Id.* We, thus, decline to find either the *Schaffner* Court’s or Monsanto’s reliance on *Romah* persuasive.

*12 In its fourth issue, Monsanto challenges the sufficiency of Appellees’ evidence proving Roundup caused Mr. Caranci’s cancer. Monsanto’s Brief at 55-58. Monsanto claims that, rather than testify how much Roundup Mr. Caranci actually inhaled or absorbed, Appellees’ causation expert, Dr. Durrani, merely “extrapolated from the alleged ‘positive association’ between glyphosate and cancer to conclude that, because [Mr. Caranci] used Roundup for a number of years, it was the specific cause of his cancer.” *Id.* at 56-57. Monsanto assails the expert’s “conclusory guesswork based on alleged ‘use’ ” as “unrelated to any actual absorption or alleged effect of glyphosate.” *Id.* at 57. Monsanto also claims that Dr. Durrani’s testimony regarding Mr. Caranci’s Roundup exposure was impermissible “any exposure” opinion. *Id.* at 55-56. For these reasons, Monsanto contends Appellees’ evidence was “deficient” and required entry of JNOV. *Id.* at 58. We disagree.

The notes of testimony indicate that Dr. Durrani did not conclude that Mr. Caranci suffers from NHL based solely on the “alleged positive association between glyphosate and cancer.” Rather, Dr. Durrani provided extensive testimony explaining how he developed his conclusion regarding causation. Dr. Durrani explained, generally, the process by which exposure to chemicals can damage cellular DNA through oxidative stress, and damaged cells become cancerous. He also discussed specific studies that concluded that glyphosate caused oxidative stress. Then, Dr. Durrani testified that Roundup was a substantial factor in causing Mr. Caranci’s cancer based on his calculation that Mr. Caranci had a history of “high exposure” to glyphosate. N.T., 10/17/23 PM Session, at 45.

Dr. Durrani also explained that he developed a differential diagnosis to determine the cause of Mr. Caranci’s NHL.⁹ Dr. Durrani concluded Roundup caused Mr. Caranci’s NHL only after considering that cause as one of many possible causes and, by process of elimination, ruling out the unlikely or impossible causes. These other possible causes, or preexisting conditions known for making people more susceptible to NHL, considered by Dr. Durrani included: infections, viruses, autoimmune diseases, radiation exposure, family history, personal medical history, occupational hazards, and exposures to carcinogens. Following his review, Dr. Durrani determined to a reasonable degree of medical and scientific certainty that Mr. Caranci’s exposure to Roundup caused his NHL. *Id.* at 53. This evidence, which the jury was free to credit, was sufficient to support the jury’s conclusion that Roundup caused Mr. Caranci’s NHL.

⁹ Dr. Durrani testified that a differential diagnosis is “something we use in medicine when we are trying to get an understanding, trying to provide a diagnosis or a cause of a disease.” N.T., 10/17/23 PM Session, at 47. Doctors use differential diagnoses to “understand all the possib[le] causes for someone’s symptoms] and then [] rank them” to determine which is the most likely cause. *Id.*

Moreover, with respect to Monsanto’s allegation that Dr. Durrani’s testimony constituted impermissible “any exposure” opinion testimony, we are not persuaded by Monsanto’s misplaced reliance on *Betz v. Pneumo Abex*, 615 Pa. 504, 44 A.3d 27 (2012). Our Supreme Court in *Betz* considered the trial court’s entry of summary judgment in favor of the defendants after the trial court precluded on *Frye* grounds the plaintiff’s expert from testifying that because “any” and “every” exposure to asbestos can cause cancer, the defendant’s product necessarily caused the plaintiff’s cancer. *Id.* at 30, 39-41. The Betz court affirmed the trial court’s decision, reasoning that the trial court properly determined that the expert’s methodology for determining causation was novel and not generally accepted. *Id.* at 58. *Betz* is not a case addressing the sufficiency of the evidence and, thus, does not support Monsanto’s assertion that Dr. Durrani’s opinion was insufficient to support the verdict in Appellees’ favor. This claim, thus, fails.

In its fifth issue, Monsanto avers that it is entitled to JNOV or a new trial because the punitive damages awarded to Appellees are unwarranted, excessive, and cumulative. Monsanto's Brief at 58-73.

Pennsylvania juries “enjoy[] discretion in the fixing of punitive damages.” *Bert Co. v. Turk* [— Pa. —], 298 A.3d 44, 61 (Pa. 2023). That discretion is, however, subject to the limitations of the Fourteenth Amendment's Due Process Clause, which imposes limits on punitive awards based on “[e]lementary notions of fairness ... dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also to the severity of the penalty that may be imposed.” *Id.* at 48 n.2 (internal quotation marks and citation omitted).

*13 In *Bert Co.*, our Supreme Court recently explained punitive damages as follows:

Punitive damages have long been a part of traditional state tort law. The common-law method for assessing punitive damages has been recognized in every state and federal court for over two hundred years - since before enactment of the Fourteenth Amendment in 1868. They have been described as “quasi-criminal,” and could be described as “private fines” intended to punish the defendant and to deter future wrongdoing. A jury's [or trial court's (in the case of a non-jury trial)] assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation. Punitive damages are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.

Id. at 58-59 (citations, some quotation marks, original brackets, and parentheses omitted).

We review an award of punitive damages for an abuse of discretion. *Grossi v. Travelers Personal Ins. Co.*, 79 A.3d 1141, 1157 (Pa. Super. 2013). “Under Pennsylvania law the size of a punitive damages award must be reasonably related to the State's interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion.” *Hollock v. Erie Ins. Exch.*, 842 A.2d 409, 419 (Pa. Super. 2004) (citation and original quotation marks omitted); *see also Grossi*, 79 A.3d at 1157.

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his[, or her,] reckless indifference to the rights of others. In assessing punitive damages, the trier[-]of[-]fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause[,] and the wealth of the defendant.

Bert Co., 298 A.3d at 61-62, (quoting *Restatement (Second) of Torts* § 908(2)). *See also Hollock*, 842 A.2d at 419 (citing cases addressing *Section 908(2)*); *Grossi*, 79 A.3d at 1157 (same). “Punitive damages awards must be tailored to each defendant.” *Bert Co.*, 298 A.3d at 71.

Monsanto raises numerous sub-claims challenging the punitive damages award. First, Monsanto claims punitive damages were improper because Roundup is approved for use by the EPA and the evidence demonstrated that Monsanto acted in accordance with scientific consensus and, therefore, lacked the “evil motive or reckless indifference to the rights of others” necessary to award punitive damages. *Id.* at 59-62 (quoting *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742, 747-48 (1984)). Monsanto also contends that the punitive damages award was the result of improper evidence that inflamed the jury. Monsanto's Brief at 63-65.

Monsanto has not cited to any controlling precedent to support its argument that implies that a fact-finder as a matter of law may not impose punitive damages when the defendant acted in accordance with scientific consensus, and we have found none. In fact,

this Court has held that “compliance with industry and governmental safety standards **does not**, standing alone, automatically insulate a defendant from punitive damages. *Daniel v. Wyeth Pharmaceuticals, Inc.*, 15 A.3d 909, 932 (Pa. Super. 2011) (emphasis added) (quoting *Phillips v. Cricket Lighters*, 584 Pa. 179, 883 A.2d 439, 447 (2005)). Simply because Monsanto introduced evidence at trial that it complied with industry standards and scientific consensus does not preclude the jury from awarding punitive damages and does not require the trial court to enter JNOV.

***14** Additionally, we note that Monsanto is, in essence, arguing that because it introduced evidence of its compliance, the jury, when considering whether to impose punitive damages, should have found its evidence of compliance dispositive and disregarded any evidence Appellees presented. This argument challenges the weight that the jury placed on the evidence of compliance. We cannot and will not reweigh the evidence.

*

Next, in support of its claim that the amount of punitive damages awarded was grossly and unconstitutionally excessive, Monsanto asserts that its conduct was not reprehensible because no evidence suggested that Monsanto demonstrated reckless disregard for the health or safety of others, knew that Roundup, in fact, caused **cancer**, took advantage of Appellees, or acted with malice. *Id.* at 67-68. Monsanto also notes that the 6:1 ratio of punitive to compensatory damages is “beyond the outermost limit of the due process guarantee.” *Id.* at 68. Monsanto next claims that, because Appellees withdrew their request for economic damages, the \$25 million compensatory damages award for non-economic damages alone “undeniably contained a punitive component.” *Id.* at 68-69. Characterizing the compensatory damages award as “already excessive and substantial,” Monsanto argues that **any** multiple of that amount violates due process.” *Id.* at 69 (emphasis in original). Monsanto also asserts that Appellees “improperly invited the jury to award punitive damages based on Monsanto's wealth” by stating that “Monsanto is in the business of making money.” *Id.* at 69-70 (citing N.T., 10/10/23 PM Session, at 23).

Monsanto's claim that its conduct was not reprehensible for the reasons it lists is, in essence, a challenge to the weight the jury gave to the evidence presented at trial. The jury heard other evidence about Monsanto's conduct and placed more weight on that evidence. Thus, we decline to reweigh the evidence and do not agree that the jury abused its discretion in awarding \$125 million in punitive damages on that basis.

In addition, Monsanto's suggestion—that the \$25 million the jury awarded for non-economic compensatory damages must necessarily include a punitive component—is mere conjecture and not grounds for relief. We are likewise unpersuaded by Monsanto's claim that a punitive damages award in an amount six times the compensatory damages award is inherently violative of due process. In fact, the United States Supreme Court has “consistently rejected the notion that the constitutional line is marked by a simple mathematical formula.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) (citation omitted). The *State Farm* Court further noted that “single-digit multipliers” like the one in the instant case, “are more likely to comport with due process” than multiple-digit multipliers. *Id.* at 410, 123 S.Ct. 1513.

Monsanto's final argument within this sub-claim—that Appellees’ improperly invited the jury to award excessive punitive damages by stating that “Monsanto is in the business of making money”—also fails to provide grounds for relief given that it is simply a statement of fact to which Monsanto did not object when Dr. Reeves was asked to, and did, agree to it. *See* N.T., 10/10/23 PM Session, at 23-24.

*

Monsanto next contends that the punitive damages award was unconstitutionally cumulative based on Monsanto having already paid more than \$100 million in punitive damages to plaintiffs in other cases. *Id.* at 72. Because the \$150 million punitive damage award in this case more than doubles the punitive damages paid as punishment for the same conduct, and thousands of Roundup cases remain pending, Monsanto claims the award in this case raises “serious due process” concerns. *Id.*

As with Monsanto's prior claims, this claim likewise fails as Monsanto has not cited to any authority requiring, as a matter of law, that the trial court remit the punitive damages award simply because juries in other cases awarded other plaintiffs punitive damages against Monsanto. The trial court neither abused its discretion nor erred as a matter of law in declining to mold the verdict here.

***15** In sum, our review confirms that, in light of the totality of the record developed at trial, the jury properly exercised its discretion in awarding Appellees \$125 million in punitive damages and the trial court did not abuse its discretion or err as a matter of law in denying Monsanto's motion for a new trial or JNOV based on the amount of punitive damages awarded.

In its final issue, Monsanto claims that the trial court abused its discretion in denying its motion for a new trial, JNOV, or a substantial remittitur because the non-economic compensatory damages awarded were manifestly excessive and punitive. Monsanto's Brief at 74-77. We are guided by the following principles:

The grant or refusal of a new trial due to the excessiveness of the verdict is within the discretion of the trial court. This Court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice.... Similarly, our standard of review from the denial of a remittitur is circumspect and judicial reduction of a jury award is appropriate only when the award is plainly excessive and exorbitant. The question is whether the award of damages falls within the uncertain limits of fair and reasonable compensation or whether the verdict so shocks the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption. Furthermore, the decision to grant or deny remittitur is within the sole discretion of the trial court, and proper appellate review dictates this Court reverse such an Order only if the trial court abused its discretion or committed an error of law in evaluating a party's request for remittitur.

Tong-Summerford v. Abington Mem'l Hosp., 190 A.3d 631, 650-51 (Pa. Super. 2018) (citation omitted).

We begin with the premise that large verdicts are not necessarily excessive and that each case is unique and dependent on its own particular circumstances. *Gillingham v. Consol Energy, Inc.*, 51 A.3d 841, 857 (Pa. Super. 2012). “In awarding damages for past or future non-economic loss, a jury may consider, *inter alia*, the age of the plaintiff, the severity of his or her injuries, whether the injuries are temporary or permanent, the duration and nature of medical treatment, the duration and extent of physical pain and mental anguish on the part of the plaintiff, and the plaintiff's physical condition before the injuries.” *Id.* at 857-58 (citation omitted). “Thus, noneconomic loss must be measured by experience rather than any mathematical formula.” *Brown v. End Zone, Inc.*, 259 A.3d 473, 486 (Pa. Super. 2021) (citation omitted). “For this reason, **the law entrusts jurors, as the impartial acting voice of the community, to quantify noneconomic loss and compensation.**” *Id.* (citation omitted; emphasis added).

With respect to compensatory damages, “this Court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice.” *Id.* (citation omitted). A court may consider: “(1) the severity of the injury; (2) whether the Plaintiff's injury is manifested by objective physical evidence or whether it is only revealed by the subjective testimony of the Plaintiff [:]; (3) whether the injury will affect the Plaintiff permanently; (4) whether the Plaintiff can continue with his or her employment; (5) the size of the Plaintiff's out-of-pocket expenses; and (6) the amount Plaintiff demanded in the original complaint.” *Id.* at 486-87 (citation omitted).

***16** With the above six-factor analysis in mind, Monsanto argues that the non-economic damages awarded were excessive because Appellees introduced no “objective physical evidence,” and Mr. Caranci achieved remission and successfully treated recurrences of NHL, sold his business in 2010 at age 70 and introduced no evidence of lost earnings capacity, and introduced no

evidence of medical bills or out-of-pocket expenses. Monsanto's Brief at 75. For these reasons, and because this compensatory damages award was many times greater than "other" large products liability verdicts involving serious illnesses in Pennsylvania and other compensatory damages awards against Monsanto in other jurisdictions, Monsanto claims it is entitled to relief. *Id.* at 76.

Following our review, we conclude that the trial court properly exercised its discretion in denying Monsanto's challenge to the amount of compensatory damages awarded to Appellees. Here, Appellees provided a sufficient evidentiary basis for the jury to conclude that Mr. Caranci suffered, and continued to suffer, disfigurement, pain and suffering, embarrassment, humiliation, and the loss of the ability to enjoy life's pleasures—all non-economic losses recognized under Pennsylvania law. *See Gillingham*, 51 A.3d at 866 (listing non-economic losses compensable under Pennsylvania law).

Mr. Caranci testified extensively about the physical and emotional toll NHL has had on him. In particular, Mr. Caranci testified that he first became sick in 2005 and that his [cancer](#) subsequently returned four times, each time with worse symptoms than the time before. N.T., 10/19/23 AM Session, at 76-77, 83, 85. He underwent chemotherapy that was very painful and caused fatigue and nausea. *Id.* at 84. Mr. Caranci testified that his mouth is "dry all the time" and his lips are swollen and dry. *Id.* at 85. To Mr. Caranci, food has no taste and "everything smells like medicine." *Id.* at 88. Mr. Caranci is frail, has difficulty walking, and "can't stand the pain" he experiences in his daily life. *Id.* at 85. The jury also saw that Mr. Caranci has disfiguring lumps all over his body, including on his chin, arms, and groin. *Id.* at 82. He is embarrassed because he "look[s] like a monster." *Id.* He experiences "no happiness, "no joy," does not sleep, and feels defeated by the repeated return of his [cancer](#). *Id.* at 84. Mr. Caranci testified that selling the business that he had run for 30 years in 2010 because he was not well enough to run it "[broke] his heart." *Id.* at 80.

In light of the record created by Appellees, we conclude that the jury—acting as the impartial voice of the community—fairly and adequately valued Mr. Caranci's non-economic suffering. The award here is not "plainly and excessively exorbitant" and it does not "so shock[] the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption." *Tong-Summerford*, 190 A.3d at 650. Accordingly, we find that the trial court did not err or abuse its discretion in denying Monsanto relief from the compensatory damages award.

In conclusion, we find that none of the issues raised by Monsanto entitles it to relief. We, therefore, affirm the entry of judgment in Appellees favor.

Judgment affirmed.

All Citations

--- A.3d ----, 2025 WL 1340970, 2025 PA Super 101

2021 WL 1321652

Only the Westlaw citation is currently available.
United States District Court, C.D. California.

Kris DOE and Nate Doe

v.

BRIDGES TO RECOVERY, LLC, et al.

Case No. 2:20-cv-00348-SVW

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Filed 03/08/2021

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Proceedings: ORDER REGARDING MOTIONS FOR SUMMARY JUDGMENT.

The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

I. Introduction

*1 Pseudonymous Plaintiffs Kris Doe and Nate Doe (collectively "Plaintiffs") filed a complaint in this lawsuit on January 13, 2020, against multiple defendants: (1) Les Katz (the alleged perpetrator); (2) Bridges to Recovery, LLC ("BTR") and Constellation Behavioral Health, LLC ("Constellation") (collectively "Corporate Defendants"); (3) supervisory employees at BTR, including Qemal Shaholli and Trevor Small (collectively "Employee Defendants"); and (4) former BTR employee Dr. Eric Strang. Plaintiffs filed their First Amended Complaint ("FAC") on February 27, 2020 and their Second Amended Complaint ("SAC") on September 9, 2020.

Before the Court are summary judgment motions filed by Plaintiffs, Corporate Defendants, and Dr Strang.

II. Factual and Procedural Background

The parties are intimately familiar with the facts of this case, which the Court recited in its prior orders, *see* Dkts. 133, 149, and need not repeat here.

On September 22, 2020, this Court granted summary judgment in favor of the Employee Defendants on a number of claims. *See* Dkt. 149. In doing so, the Court made two findings that are relevant for the purposes of this order: (1) a reasonable juror could find that the Employee Defendants should have known that the individual with whom Kris Doe had a sexual interaction on April 15, 2019 was a BTR employee; and (2) no reasonable juror could find that the Employee Defendants actually knew that the individual with whom Kris Doe had a sexual interaction on April 15, 2019, or at any time thereafter, was a BTR employee. *See id.* at 5–10.

On November 20, 2020, the Corporate Defendants filed a motion for summary judgment regarding nearly all of Plaintiffs' claims. Dkt. 175.

On November 30, 2020, Dr. Strang filed a motion for summary judgment regarding Plaintiffs' claims for negligent misrepresentation and punitive damages. Dkt. 181.

On December 14, 2020, Kris Doe filed a motion for summary judgment regarding her breach of contract claim and the issue of whether Corporate Defendants can be held vicariously liable for Katz's conduct. Dkt. 197.

III. Legal Standard

Summary judgment should be granted where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(a\)](#). The moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ... [the factual record that] demonstrate the absence of a genuine issue of material fact.” [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323 (1986). Once the moving party satisfies its initial burden, the non-moving party must demonstrate with admissible evidence that genuine issues of material fact exist. [Matsushita Elec. Indus. Co. v. Zenith Radio Corp.](#), 475 U.S. 574, 586 (1986) (“When the moving party has carried its burden under [Rule 56](#) ... its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.”).

A material fact for purposes of summary judgment is one that “might affect the outcome of the suit” under applicable law. [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* Although a court must draw all inferences in the non-movant's favor, *id.* at 255, when the non-moving party's version of the facts is “blatantly contradicted by the record, so that no reasonable jury could believe it, [the] court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment,” [Scott v. Harris](#), 550 U.S. 372, 380 (2007).

IV. Kris Doe's Motion for Summary Judgment

*2 Kris Doe moves for summary judgment on two issues. First, Kris Doe argues that, as a matter of law, Katz acted within the scope of his employment when he engaged in sexual acts with Kris Doe. Dkt. 197 at 9–13. Second, Kris Doe argues that summary judgment is warranted on her breach of contract claim against the Corporate Defendants. *Id.* at 14–17.

The Court will address each argument in turn.

A. Summary Judgment is Not Warranted on the Scope of Employment Issue Because the Undisputed Facts Lead to Conflicting Inferences.

Kris Doe argues that no reasonable juror could find Katz acted outside the scope of his employment when he engaged in sexual acts with Kris Doe. *See* Dkt. 197 at 9–13. Corporate Defendants disagree, arguing that it is “legally impossible for a reasonable juror to find that Mr. Katz's conduct was within the course and scope of his employment.” Dkt. 211 at 3.

The Court finds that both parties are incorrect. Under the facts of this case, the scope of employment issue should be decided by the jury.

An employer is vicariously liable for the torts of its employees committed within the scope of the employment. [Perez v. Van Groningen & Sons, Inc.](#), 41 Cal.3d 962, 967 (Cal. 1986). “Ordinarily, the determination whether an employee has acted within the scope of employment presents a question of fact; it becomes a question of law, however, when ‘the facts are undisputed and no conflicting inferences are possible.’ ” [Mary M. v. City of Los Angeles](#), 54 Cal.3d 202, 213 (Cal. 1991).

California does not follow the traditional rule that an employee's actions are within the scope of employment only if motivated by a desire to serve the employer's interests. See *Lisa M. v. Henry Mayo Newhall Mem'l Hosp.*, 12 Cal.4th 291, 297 (Cal. 1995). Rather, an employee's intentional torts may fall within the scope of his or her employment even though the employer has not authorized the employee to commit intentional torts. See *Mary M.*, 54 Cal.3d at 209.

Nevertheless, an intentional tort does not fall within the scope of employment merely because the tortfeasor's employment was necessary for the tort to occur—*i.e.*, “but for” causation is insufficient to establish vicarious liability. See *Lisa M.*, 12 Cal.4th at 299–300. Rather, “respondeat superior liability requires the risk of the tort to have been engendered by, ‘typical of or broadly incidental to,’ or, viewed from a somewhat different perspective, ‘a generally foreseeable consequence of,’ [the employer's] enterprise.” *Id.* at 300.

Corporate Defendants argue that it is “legally impossible for a reasonable juror to find that Mr. Katz's conduct was within the course and scope of his employment.” Dkt. 211 at 3. They further state that *Lisa M.* controls here and requires this Court to find that, as a matter of law, Corporate Defendants cannot be held vicariously liable for Katz's conduct. See *id.* at 4.

Contrary to Corporate Defendants' argument, the California Supreme Court's reasoning in *Lisa M.* compels the conclusion that a reasonable juror could find Katz acted within the scope of his employment. In *Lisa M.*, a medical technician conducting a routine ultrasound falsely told a pregnant patient that he would need to conduct intrusive screening in order to determine the sex of the patient's baby. 12 Cal.4th at 295. The technician then molested the patient. *Id.* The patient sued the hospital that employed the technician, arguing that the hospital was vicariously liable for the technician's conduct. *Id.* at 297.

*3 The California Supreme Court held that the hospital was not vicariously liable for the technician's conduct. In doing so, the court explained that a sexual tort is only within the scope of employment if “its motivating emotions were fairly attributable to work-related events or conditions,” *id.* at 301, or, alternatively, if the tort is foreseeable “in the context of the particular enterprise”—*i.e.*, the sexual tort “is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business,” *id.* at 302 (quoting *Rodgers v. Kemper Constr. Co.*, 50 Cal.App.3d 608, 619 (Cal. Ct. App. 1975)).

The court found that the ultrasound technician's conduct did not meet either standard. First, the technician's task “provided no occasion for a work-related dispute or any other *work-related emotional involvement with the patient.*” *Id.* at 301 (emphasis added). Elaborating on this point, the court explained that “[t]he flaw in plaintiff's case for [the employer's] respondeat superior liability is not so much that [the ultrasound technician's] actions were personally motivated, but that those personal motivations *were not generated by or an outgrowth of workplace responsibilities, conditions or events.*” *Id.* at 301–02 (emphasis added).

Second, the court found that the technician's conduct was not generally foreseeable in the context of the employer's particular enterprise. The court explained that the foreseeability inquiry “is not one of statistical frequency, but of a relationship between the nature of the work involved and the type of tort committed.” *Id.* at 302. The Court found that the technician's conduct was not foreseeable because

there is no evidence of *emotional involvement, either mutual or unilateral, arising from the medical relationship.* [The ultrasound procedure] was not of a type that would be expected to, or actually did, give rise to intense emotions on either side. We deal here not with a physician or therapist who becomes sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship.

Id. at 302–03 (emphasis added).

The above emphasized portions of the California Supreme Court's *Lisa M.* opinion lead to one inescapable conclusion: a reasonable juror could find Katz acted within the scope of his employment when he engaged in sexual acts with Kris Doe. First, Katz's job responsibilities included one-on-one care, during which Katz would supervise Kris Doe and remain in her presence for a prolonged shift, typically hours at a time. *See, e.g.*, BTR_008814 (Katz describing his one-on-one shift); BTR_008834 (describing one-on-one shifts that lasted approximately four hours). One-on-one companions have four primary responsibilities: ensuring the client's safety; following the clinically prescribed treatment plan for the client; teaching the necessary daily living skills; and assessing progress and additional areas of support. *See* BTR_002439.

Staff who worked one-on-one shifts with Kris Doe were specifically instructed to “appreciate the high level of rumination and hopelessness that causes [Kris Doe] to self-harm” and to “help contain the impulses but also to help her move her attention off of the ruminations.” BTR_008935. Senior staff at BTR told one-on-one companions that if Kris Doe “seems distant, it is most likely that she is preoccupied with obsessive thought, not trying to avoid interactions—just the opposite—*she needs interactions with you.*” *Id.* (emphasis added). Companions were instructed to “engage with [Kris Doe]—play cards, play a game, do a puzzle, talk with her.” *Id.*

*4 In other words, a reasonable juror could find one-on-one companions were not merely passive caretakers but, rather, active companions encouraged to develop a relationship (albeit a professional one) with Kris Doe.

Second, the BTR Staff Training Manual (hereinafter “Manual”) contemplates that the relationship between a one-on-one companion and a patient may include boundary issues and, specifically, issues related to sex. The Manual notes that many of BTR's clients “struggle with poor boundaries.” BTR_008585. “They may be sexually promiscuous and confuse sex with love. They may get too close too fast, become obsessive, or be driven to be in a sexual relationship before they are truly ready. They may also take on the feelings of others as their own and in so doing, they become easily overwhelmed.” BTR_008585–86. Accordingly, the Manual instructs staff to set boundaries and “be ready to have those boundaries tested. Plan on it, expect it, but remember to follow through with the boundary you established.” BTR_008587. The Manual expressly addresses sexual contact as follows: “This obviously is a boundary violation. There is zero tolerance for sexual or physical contact with a client. You should keep in mind that this also includes provocative conversations of an erotic nature.” BTR_008588.

Circumstantial evidence suggests that Kris Doe exhibited the very boundary issues the Manual contemplates. After Kris Doe left BTR, she continued to correspond with Katz via text message. In these messages, she told Katz how much she loved him and how badly she wanted to be together with him. *See, e.g.*, KATZ000225; KATZ000267; KATZ000306; KATZ000310; KATZ000485. Just days after visiting Katz in October, however, Kris Doe told a friend that her husband was not going to trust her for years to come and that “[l]ooking back[,] Les wasn't worth it at all.” Redacted_000022.

Given these facts, a reasonable juror could find that Kris Doe was exhibiting the exact boundary issues contemplated by the Manual: a client who “get[s] too close too fast, become[s] obsessive, or [is] driven to be in a sexual relationship before they are truly ready.” BTR_008585–86.

Ultimately, in light of the above facts, a reasonable juror could find that Katz's sexual conduct was within the scope of his employment because it was an “outgrowth” of “work-related emotional involvement” with Kris Doe. *Lisa M.*, 12 Cal.4th at 301–02. And a reasonable juror could also find that Katz's sexual conduct was within the scope of his employment because it was generally foreseeable in the context of the Corporate Defendants' enterprise. In particular, a reasonable juror could find that Katz's duties as a one-on-one companion “would be expected to, or actually did, give rise to intense emotions on either side,” or that Katz “bec[ame] sexually involved with a patient as a result of mishandling [his] feelings.” *Id.* at 303.

This conclusion is bolstered by *Roe v. California Dep't of Developmental Servs.*, a case that is instructive despite having been decided at the pleading stage. 2017 WL 2311303 (N.D. Cal. May 26, 2017). In *Roe*, a woman with developmental disabilities and mental illnesses was sexually abused by a psychiatric technician who worked with the victim on a one-to-one basis. *Id.*

at *2–*3. The woman sued the facility that employed the technician, and the facility filed a motion to dismiss, arguing that it could not be vicariously liable for the technician's conduct. *Id.* at *4.

*5 The court in *Roe* rejected the facility's argument. In doing so, the court distinguished the case before it from *Lisa M.*, noting that the relationship between the woman in *Roe* and the psychiatric technician—who repeatedly worked with the woman on a one-to-one basis—was “distinct from the one-time relationship [in *Lisa M.*] of an ultrasound technician and an expectant mother.” *Id.* The court further explained that, because psychiatric technicians at the facility “worked with patients over the course of an extended period of time, it is reasonably foreseeable that their relationship could develop far beyond the relationship of the technician and his victim in *Lisa M.*” *Id.* Finally, the court found it relevant that—like the alleged assaults here—the assault in *Roe* took place in a “a residential mental health facility ... [which] is not only a workplace, but the patient's home as well.” *Id.*

Accordingly, the Court rejects Corporate Defendants' argument that it is impossible for a reasonable juror to find that Katz acted within the scope of his employment.¹

¹ In support of this argument, Corporate Defendants also suggest that Katz could not have acted within the scope of his employment because this Court already found that Corporate Defendants lacked actual knowledge of Katz's conduct. Dkt. 211 at 3. The Court rejects this argument. Corporate Defendants offer no authority to support the premise that an employee's conduct only falls within the scope of their employment if the employer had actual knowledge of the conduct, and *Lisa M.* implicitly rejects that rule. *See* 12 Cal.4th at 296–97 (“[A]n employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts.”).

However, this is not to say—as Kris Doe suggests, *see* Dkt. 197 at 9–13—that, as a matter of law, Katz acted within the scope of his employment. Indeed, “courts have rarely held an employee's sexual assault or sexual harassment of a third party falls within the scope of employment.” *Daza v. Los Angeles Cmty. Coll. Dist.*, 247 Cal.App.4th 260, 268 (Cal. Ct. App. 2016) (collecting cases). Courts often find that an employee's sexual assault is the result of “only propinquity and lust” and is therefore not within the scope of employment. *Lisa M.*, 12 Cal.4th at 301.

Indeed, although many of the cases where courts find a sexual assault falls outside the scope of employment lack the prolonged and work-related emotional involvement that is arguably present here, *see, e.g., Z.V. v. County of Riverside*, 238 Cal.App.4th 889, 891 (Cal. Ct. App. 2015) (social worker's sexual assault of minor not within scope of employment where social worker and minor's only interactions occurred on day of assault), there are instances where courts decline to impose vicarious liability in circumstances similar to those presented here.

For example, in *John Y. v. Chaparral Treatment Ctr., Inc.*, the plaintiff was sexually assaulted while he lived at a group residential facility for emotionally troubled youth. 101 Cal.App.4th 565, 569 (Cal. Ct. App. 2002). The facility employed the perpetrator as a residential counselor. *Id.* at 570. In that role, the perpetrator was “in charge of ensuring that the residents got dressed, maintained proper hygiene, did their homework, ate properly, took their medications, followed the rules and behaved themselves. Residential counselors implemented clinical orders as needed and were encouraged to develop a therapeutic relationship with the residents.” *Id.* The perpetrator sexually assaulted the plaintiff on at least three occasions over a period of approximately six months. *Id.* at 571–73. Despite these facts, the California Court of Appeal found that “the abuse of [the perpetrator's] authority to indulge in personal sexual wrongdoing is too attenuated to permit a trier of fact to view his sexual assaults as within the risks allocable to his employer.” *Id.* at 576. Accordingly, in circumstances similar to those presented here, some courts decline to allow the jury to decide the scope of employment issue.

*6 However, two elements of *John Y.* lead this Court to conclude that the case—albeit relevant to the inquiry—does not control here. First, even the *John Y.* Court acknowledged that “[i]t is not a simple task to determine whether [the perpetrator's] personal motivations were generated by, or were an outgrowth of, his workplace responsibilities, conditions or events.” *Id.* In doing so, the court discussed expert evidence indicating that there was a “a very strong transference relationship”² between the plaintiff

and the perpetrator. *Id.* Indeed, the John Y. Court noted that “the circumstances of this case render the determination a much closer call than other situations with which the courts have grappled.” *Id.*

- 2 “Transference occurs when a child develops affection for and begins confiding in the members of the therapeutic team.” *John Y.*, 101 Cal.App.4th at 576.

Second, the Court is not persuaded by the *John Y.* Court's reasoning because that court seemingly ignored a critical element of the legal standard. As noted above, whether an employee acted within the scope of employment is only a question of law if “the facts are undisputed and no conflicting inferences are possible.” *Mary M.*, 54 Cal.3d at 213. However, the *John Y.* Court found it appropriate to decide the scope of employment issue as a matter of law simply because the facts were not in dispute. See 101 Cal.App.4th at 574 (“While the determination whether an employee's acts are within the course and scope of employment is usually a question of fact, where, as here, the facts are not in dispute, the issue becomes a question of law.”). Nowhere in *John Y.* did the court mention the possibility of conflicting inferences. The Court will not speculate as to whether conflicting inferences could have been drawn in *John Y.* Rather, it suffices to say that the *John Y.* Court's failure to discuss conflicting inferences renders the opinion less persuasive here.

Ultimately, having considered much of California's case law on this issue, the Court finds that the scope of employment issue should be left to the jury. The facts in this case lend themselves to two conflicting inferences, both of which are reasonable: (1) Katz acted within the scope of his employment because his sexual interactions with Kris Doe were an “outgrowth” of “work-related emotional involvement,” see *Lisa M.*, 12 Cal.4th at 301–02, or they were generally foreseeable in the context of the Corporate Defendants' particular enterprise, see *id.* at 303; and (2) Katz did not act within the scope of his employment because his sexual interactions with Kris Doe were the result of “only propinquity and lust,” *id.* at 301. Given these conflicting inferences, the issue is best left to the jury. See *id.* at 299 (citing *Mary M.*, 54 Cal.3d at 213).

Accordingly, summary judgment is not warranted on the scope of employment issue.³

- 3 Although the Court finds that a jury can hold Corporate Defendants liable under a vicarious liability theory, the Court rejects Plaintiffs' argument regarding ratification. “The theory of ratification is generally applied where an employer fails to investigate or respond to charges that an employee committed an intentional tort, such as assault or battery.” *Baptist v. Robinson*, 143 Cal.App.4th 151, 169–170 (Cal. Ct. App. 2006). The implication of this rule is clear: the employer's knowledge of the “charges” is required to hold the employer liable under a ratification theory. See *Bate v. Marsteller*, 175 Cal.App.2d 573, 582 (Cal. Ct. App. 1959) (“Ratification is essentially a matter of assent. Consequently, a principal is not bound by ratification unless he acts with knowledge of all the material facts involved ... This knowledge is equally necessary whether the ratification be express or implied.”). As noted above, this Court already found that no reasonable juror could find that the Employee Defendants actually knew that the individual with whom Kris Doe had a sexual interaction on April 15, 2019, or at any time thereafter, was a BTR employee. Dkt. 149 at 5–10. Accordingly, no reasonable juror could find that Corporate Defendants ratified Katz's conduct. See *Marsteller*, 175 Cal.App.2d at 582.

B. Summary Judgment is Not Warranted on Kris Doe's Breach of Contract Claim.

*7 Kris Doe moves for summary judgment on her breach of contract claim. Dkt. 197 at 14–16. Corporate Defendants oppose Kris Doe's motion, Dkt. 211 at 4–7, and also filed their own motion for summary judgment on Kris Doe's breach of contract claim, Dkt. 175 at 9–13.

“A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach.” *CDF Firefighters v. Maldonado*, 158 Cal.App.4th 1226, 1239 (Cal. Ct. App. 2008).

Kris Doe's briefing is incredibly difficult to follow and fails to demonstrate how she is entitled to judgment as a matter of law on each of these elements. Throughout both her motion for summary judgment, see Dkt. 197 at 14–16, and her opposition

to Corporate Defendants' motion for summary judgment, *see* Dkt. 183 at 10–12, Kris Doe alleges that Corporate Defendants breached a contract with Kris Doe by taking certain actions. However, Kris Doe's briefing does not adequately explain or establish critical components of the inquiry, including—but not limited to—which specific contract was breached, which specific contractual term was breached, what facts establish the existence of the contract, and what facts establish that Corporate Defendants took the alleged actions.

For example, Kris Doe alleges that Corporate Defendants breached a contract when they “fail[ed] to provide her with a pain management specialist as agreed to by BTR in writing,” and when they failed to conduct adequate drug testing on Kris Doe. *See* Dkt. 197 at 14; Dkt. 183 at 10. Yet, Kris Doe does not explain which specific contracts and contractual terms were breached when Corporate Defendants took these actions. Nor does Kris Doe identify specific facts that establish Corporate Defendants actually took these actions.

Rather, Kris Doe string cites to a number of allegedly undisputed facts. Indeed, throughout her arguments regarding the breach of contract claim, Kris Doe cites to approximately one hundred allegedly undisputed facts. *See* Dkt. 197 at 14–16; Dkt. 183 at 10–12. Yet, each of these allegedly undisputed facts cite to additional documents and evidence (some of which is missing from the exhibits), and most of these allegedly undisputed facts are, in fact, disputed.

Where a party opposes summary judgment, it is not the Court's duty “to scour the record in search of a genuine issue of triable fact. [Courts] rely on the nonmoving party to identify with reasonable particularity the evidence that precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (citations omitted). That particularity requirement is equally applicable to a party that moves for summary judgment, and Kris Doe has failed to satisfy that requirement here.

Accordingly, summary judgment is not warranted on Kris Doe's breach of contract claim. Instead, the Court will order Kris Doe to file a renewed motion for summary judgment that complies with specific requirements, as detailed below.

V. Dr. Strang's Motion for Summary Judgment.

Dr. Strang moves for summary judgment on two claims. First, Dr. Strang argues that summary judgment is warranted in his favor on Plaintiffs' claim against him for negligent misrepresentation. Dkt. 181 at 12–22. Second, Dr. Strang argues that summary judgment is warranted in his favor on Plaintiffs' claims for punitive damages. *Id.* at 22–24.

*8 The Court will address each argument in turn.

A. Summary Judgment is Warranted in Dr. Strang's Favor on Plaintiff's Claim Against Him for Negligent Misrepresentation.

The elements of a negligent misrepresentation claim are as follows: (1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage. *Borman v. Brown*, 59 Cal.App.5th 1048, 273 (Cal. Ct. App. 2021) (quoting *Tindell v. Murphy*, 22 Cal.App.5th 1239, 1252 (Cal. Ct. App. 2018)).

Representations of opinion are ordinarily not actionable representations of fact. *Graham v. Bank of Am., N.A.*, 226 Cal.App.4th 594, 606–07 (2014). A representation is an opinion if it expresses only (a) the belief of the maker, without certainty, as to the existence of a fact; or (b) his judgment as to quality, value, or other matters of judgment. *Id.* (quoting *Witkin, Summary of Cal. Law Torts*, § 774, p. 1123 (10th ed. 2005)).

Plaintiffs argue that the “gravamen” of their negligent misrepresentation claim against Dr. Strang is Dr. Strang's “representations regarding his and BTR's ability to adequately treat Plaintiff Kris Doe ... [Dr. Strang] represented to Plaintiffs that BTR was a suitable facility to deal with Plaintiff Kris Doe's issues related to substance abuse.” Dkt. 182 at 14. In support of their argument, Plaintiffs cite to a dozen allegedly “undisputed” facts.

The Court reviewed the underlying evidence for each of these allegedly undisputed facts. Dkt. 182-1 at 30–35. That evidence includes deposition testimony and declarations. *See id.*

None of the evidence relied on by Plaintiffs is sufficient to survive summary judgment. Indeed, much of the evidence (1) does not include a statement made by Dr. Strang; (2) does not include a statement by Dr. Strang regarding opioid use; or (3) identifies a statement by Dr. Strang in which he affirmatively expresses that Kris Doe's opioid addiction would *not* be prioritized at BTR:

- Mance Depo. at 73:11-74:7: When asked by Craig Mance whether—after Kris Doe returned from Las Encinas—Dr. Strang would be “addressing the opioid situation,” Dr. Strang said “No. That is not the priority.” No reasonable juror could find that this statement constitutes a misrepresentation of past or existing fact.
- Mance Depo. at 79:13-81:10: The only statement by Dr. Strang in this excerpt is that Dr. Strang “encouraged another month[s]” stay at BTR, which Craig Mance agreed to despite knowing Kris Doe remained on an opioid prescription. No reasonable juror could find that this statement constitutes a misrepresentation of past or existing fact.
- Mance Depo. at 86:2-9: This excerpt includes no statements by Dr. Strang. Rather, it is merely Craig Mance's testimony in which he speculates about what Dr. Strang would have said had Kris Doe wanted to further extend her time at BTR.
- Mance Depo. at 134:17-135:5: This excerpt includes no statements by Dr. Strang. Rather, it is merely Craig Mance stating that the first time he spoke to Dr. Strang was April 2, 2019.
- Mance Depo. at 137:18-138:12: This excerpt includes no statements by Dr. Strang. Rather, it is merely Craig Mance describing what *he* said during a conversation with Dr. Strang, Kris Doe, and others.
- Mance Depo. at 137:18-138:12: The only statements by Dr. Strang in this excerpt is Dr. Strang's assertions that extending Kris Doe's stay was “vital” and “would be effective.” This statement includes nothing about treating Kris Doe's opioid addiction and is arguably a statement of opinion: Dr. Strang is expressing his “judgment” regarding Kris Doe's treatment. *See Graham, 226 Cal.App.4th at 606–07*. Moreover, Plaintiffs offer no evidence that Dr. Strang lacked reasonable grounds for believing this statement was true. Accordingly, no reasonable juror could find that this statement constitutes a misrepresentation of past or existing fact.

*9 The other evidence identified by Plaintiffs suffers similar flaws. For example, Plaintiffs argue that the following statements support their claim for negligent misrepresentation:

- Mance Depo. at 135:11-137:3: In this excerpt, Craig Mance describes asking Dr. Strang if BTR is “the right place for her” to address the opioid issues and whether Kris Doe should be transferred to another Constellation facility for opioid issues. In response, Dr. Strang allegedly said “No, no, no. You don't want that. They will get her in and she will be up there for two or three months. So that is not the place for her. This is the right place for her.”
- Nate Doe Depo. at 42:3-44:18: In this excerpt, Nate Doe alleges that, when he expressed his concerns regarding Kris Doe's opioid use, Dr. Strang told him that it was “under control” and that the focus on opioids was “actually hurting her recovery.”
- Nate Doe Depo. at 45:16-47:7: In this excerpt, Nate Doe alleges that Dr. Strang told Craig Mance that “we can handle it” and “we've got this,” referring to Kris Doe's opioid issues.

No reasonable juror could find that these statements constitute a misrepresentation of past or existing fact for which Dr. Strang lacked reasonable grounds for believing they were true. First, the statements “this is the right place for her,” “we've got this,” and “it is under control” are more akin to opinions or judgments than representations of fact. *Cf. In re American Apparel, Inc. Shareholder Litigation, 855 F.Supp.2d 1043, 1072 (C.D. Cal. 2012)* (noting it is “difficult to find deception in statements that the company was ‘on track’ to ‘making significant progress in its remediation of deficiencies by year-end’ ”); *but see Gagne*

v. Bertran, 43 Cal.2d 481, 489 (Cal. 1954) (party's opinion may be treated as fact if party holds itself out as possessing expertise regarding subject matter).

Second, even if these statements constituted facts, no reasonable juror could find that Dr. Strang lacked reasonable grounds for believing they were true. It is undisputed that Dr. Strang is a psychologist, not a physician who prescribes medication. Dkt. 182-1 at 2. Accordingly, when Kris Doe's family expressed concerns about Kris Doe's opioid use, Dr. Strang “defer[red] to Dr. Harris,” the physician who managed Kris Doe's medications at BTR. Strang Depo. at 57:11-20; *see also id.* at 56:15-23 (“My understanding is that [Kris Doe was not weaned off opioids because] that was what was medically indicated. That's not my area of specialty. This is what I defer to Dr. Harris regarding. And that procedures were being followed to manage the pain that I assume that she was taking the Oxycodone for.”).

*10 Dr. Strang further testified that whenever he told Dr. Harris about the family's concerns regarding Kris Doe's opioid use, Dr. Harris “reassured [Dr. Strang] that the dose she was at was not an impairing dose, it's not an abuse dose. It was the dose that was indicated for the pain that it was being prescribed for.” *Id.* at 57:11-20; *see also id.* at 54:5-9 (explaining that when Dr. Strang raised the family's opioids concerns with Dr. Harris, her general response was “[t]hat it is being managed at a level that is appropriate. That she is not being medicated in any way that would be problematic.”).

Dr. Harris testified similarly. Specifically, Dr. Harris testified that Dr. Strang advised her that Kris Doe's family was concerned about opioid issues. *See* Harris Depo. at 153:22-154:1; *see also id.* at 154:13-17 (“Dr. Strang had been in communication with the family and he mentioned [the family's opioid concerns] in clinical meetings.”). Dr. Harris also testified that she had “no concerns” regarding the dose of opioids prescribed for Kris Doe in early April, *see id.* at 118:10-14, and that she never had a clinical concern that Kris Doe was taking more Oxycodone than prescribed, *see id.* at 155:23-156:5.

Under these circumstances, no reasonable juror could find that Dr. Strang lacked reasonable grounds for saying “we've got this,” believing Kris Doe's opioid usage was “under control,” or saying that BTR was “the right place” for Kris Doe in response to Craig Mance's concerns about opioid issues.

The only remaining evidence is a declaration submitted by Nate Doe in support of a prior brief. Dkt. 87-3. Most of the paragraphs cited by Plaintiffs do not support their case, as they either lack an affirmative statement by Dr. Strang, *see id.* at ¶¶ 29, 36–37, or they involve an omission by Dr. Strang, *see id.* at ¶¶ 23–24, 36–37, which cannot form the basis for a negligent misrepresentation claim under California law. *See Lopez v. Nissan N. Am., Inc.*, 201 Cal.App.4th 572, 596 (Cal. Ct. App. 2011) (“A negligent misrepresentation claim ‘requires a positive assertion,’ not merely an omission.”).⁴

⁴ For the same reason, the Court rejects Plaintiff's arguments that Dr. Strang committed negligent misrepresentation when he allegedly “did not disclose” certain information to Plaintiffs. *See* Dkt. 182 at 15–16.

The only two paragraphs that seemingly support Plaintiff's argument are paragraphs thirteen and fourteen, in which Nate Doe states that “[i]n or around March 2109 [*sic*]”—while Kris Doe's family was deciding whether to send Kris to BTR—Dr. Strang told Nate Doe and Kris Doe's parents that BTR was “well equipped to deal with *both* mental health and substance dependency/abuse issues.” Dkt. 87-3 at ¶ 13 (emphasis in original). Nate Doe further states that during “telephone conversations in March 2019,” Dr. Strang said that BTR “could wean [Kris Doe] off oxycodone.” *Id.* at ¶ 14.

For Plaintiff's purposes, there are three problems with this evidence. First, the alleged statements by Dr. Strang more akin to opinions or judgments than representations of fact. *See Graham*, 226 Cal.App.4th at 606–07. Second, both Nate Doe and Craig Mance testified—contrary to Nate Doe's declaration—that they never spoke to Dr. Strang in March 2019. *See* Nate Doe Depo. at 75:6-76:10 (Nate Doe testifying he did not do any of the “talking to Dr. Strang ... before everybody committed to going to Bridges”); *see also* Mance Depo. at 134:17-135:5 (Mance explaining that first time he talked to Dr. Strang was April 2, 2019).

Third—and most fundamentally—these two alleged statements by Dr. Strang in a self-serving declaration constitute the only remaining evidence in support of Plaintiffs' negligent misrepresentation claim. However, the Supreme Court has explained that, on summary judgment, “the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. *The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient*” *Liberty Lobby*, 477 U.S. at 252 (emphasis added). Here, Plaintiffs are left with a mere “scintilla of evidence” in support of their position.

***11** Under these circumstances, no reasonable juror could find that Dr. Strang misrepresented a past or existing material fact without reasonable ground for believing it to be true. Accordingly, summary judgment is warranted in favor of Dr. Strang on Plaintiffs' claim against him for negligent misrepresentation.

B. Summary Judgment is Warranted in Dr. Strang's Favor on Plaintiffs' Claim Against Him for Punitive Damages.

Dr. Strang argues that, in asserting a claim against him for negligence, Plaintiffs should be barred from claiming punitive damages. Dkt. 181 at 22–23. The Court agrees.

“Exemplary or punitive damages are not recoverable as matter of right. Their allowance rests entirely in the discretion of the jury, and they may be awarded only where there is some evidence of fraud, malice, express or implied, or oppression.” *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal.App.4th 1004, 1052 (Cal. Ct. App. 2009) (quoting *Clark v. McClurg*, 215 Cal. 279, 282 (Cal. 1932)). “The malice required implies an act conceived in the spirit of mischief or with criminal indifference toward the obligations owed to others ... mere spite or ill-will is not sufficient and mere negligence, even gross negligence, is not sufficient to justify an award of punitive damages.” *Ebaugh v. Rabkin*, 22 Cal.3d 891, 894 (Cal. 1972). One court surveying cases in which courts awarded punitive damages concluded that, in each case, it was “reasonably and *obviously* inferable that defendant *must* have known of the danger and its extent and decided to disregard it.” *Woolstrum v. Mailloux*, 141 Cal.App.3d Supp. 1, 6, (App. Dep't Super. Ct. 1983).

“[O]ppression, fraud, or malice must be proven by ‘clear and convincing’ evidence.” *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton*, 96 Cal.App.4th 1017, 1049 (Cal. Ct. App. 2002). Summary judgment on the issue of punitive damages is proper where no reasonable juror could find the plaintiff's evidence constitutes clear and convincing proof of malice, fraud, or oppression. See *Spinks*, 171 Cal.App.4th at 1053.

Here, the Court concludes that no reasonable juror could find Plaintiffs' evidence constitutes clear and convincing proof that Dr. Strang acted with malice, fraud, or oppression. Plaintiffs cite to four allegedly undisputed facts in support of their argument that Dr. Strang's conduct was “outrageous because it showed a callous disregard for the health and safety of Plaintiff Kris Doe and ultimately resulting in trauma and suffering [*sic*] during a time period when she was especially vulnerable.” Dkt. 182 at 23.

However, the evidence in support of these alleged facts is largely similar to that discussed by this Court when it found that, while a reasonable juror could find that Dr. Strang and the Employee Defendants *should* have known that Kris Doe had a sexual interaction with Katz, no reasonable juror could find that they *actually* knew. See Dkt. 149. In other words, while the evidence Plaintiffs rely on may support a finding of negligence,⁵ no reasonable juror could find that the evidence constitutes “clear and convincing” proof that Dr. Strang acted “in the spirit of mischief or with criminal indifference toward the obligations owed to others,” *Ebaugh*, 22 Cal.3d at 894, or that it is “*obviously* inferable that [Dr. Strang] *must* have known of [Katz's] danger and its extent and decided to disregard it,” *Woolstrum*, 141 Cal.App.3d Supp. at 6.

⁵ Indeed, Plaintiffs tacitly acknowledge this when stating one of their undisputed “facts,” which is actually a conclusion of law. Specifically, they describe Dr. Strang's failure to intervene and prevent Katz's conduct as a “negligent failure.” Dkt. 182-1 at 44. However, “mere negligence, even gross negligence, is not sufficient to justify an award of punitive damages.” *Ebaugh*, 22 Cal.3d at 894.

*12 Under these circumstances, no reasonable juror could find that Dr. Strang's conduct warrants punitive damages. Accordingly, summary judgment is warranted in Dr. Strang's favor on Plaintiffs' claim for punitive damages.

VI. Corporate Defendants' Motion for Summary Judgment.

Corporate Defendants move for summary judgment on the following claims in the Second Amended Complaint: (1) sexual battery; (2) civil assault; (3) civil battery; (4) intentional infliction of emotional distress ("IIED"); (5) violations of the Unruh Act and Cal. Civ. Cod. § 51.9; (6) violations of the Bane Act; (7) negligent supervision; (8) breach of contract; (9) violations of the UCL; and (10) punitive damages for negligence and negligent misrepresentation. *See generally* Dkt. 175.

Because Corporate Defendants' motion as to the first six claims identified above is resolved on the same grounds, the Court will address those six claims together and will then address the remaining claims in turn.

A. Summary Judgment is Not Warranted on Plaintiffs' Claims for Sexual Battery, Civil Assault, Civil Battery, IIED, and Violations of the Unruh Act, Cal. Civ. Cod. § 51.9, and the Bane Act.

Corporate Defendants move for summary judgment on the following claims asserted by Plaintiff: (1) sexual battery; (2) civil assault; (3) civil battery; (4) intentional infliction of emotional distress ("IIED"); (5) violations of the Unruh Act and Cal. Civ. Cod. § 51.9; and (6) violations of the Bane Act. *See generally* Dkt. 175.

In doing so, Corporate Defendants argue that direct liability cannot be imposed for any of these six claims because each claim requires evidence of intent and, here, no such evidence exists. *See generally id.* Corporate Defendants also argue that aider and abettor liability cannot be imposed for any of these six claims because aider and abettor liability requires actual knowledge of Katz's conduct, and this Court already found that no reasonable juror could find that Employee Defendants (and, in turn, Corporate Defendants) had actual knowledge of Katz's conduct. *See generally id.*; *see also* Dkt. 149.

Even if Corporate Defendants are correct, their motion nevertheless fails because Corporate Defendants can be vicariously liable for the intentional torts and the statutory violations that comprise the six claims at issue. *See Perez v. Van Groningen & Sons, Inc.*, 41 Cal.3d 962, 969 (Cal. 1986) ("[A]n employer can be liable for his employee's unauthorized intentional torts committed within the scope of employment despite lack of benefit to the employer."); *Chew v. Hybl*, 1997 WL 33644581, at *15 (N.D. Cal. Dec. 9, 1997) (imposing vicarious liability for Unruh Act violations); *Christine A. v. Superior Court*, 2010 WL 765764, at *5 n.3 (Cal. Ct. App. Mar. 8, 2010) ("To the extent that [the parties] argue[] that section 51.9 preempts traditional precepts of vicarious liability and respondeat superior as a matter of law, we reject those contentions."); *Whitworth v. City of Sonoma*, 2004 WL 2106606, at *7 (Cal. Ct. App. Sept. 22, 2004) (imposing vicarious liability for Bane Act violations).

The sexual interactions between Katz and Kris Doe form the core of the six claims at issue. And, as explained above, a reasonable juror could find that Katz acted within the scope of his employment when he engaged in those sexual interactions. *See supra* at 3–10. Corporate Defendants can therefore be held vicariously liable for the six claims at issue, even if Corporate Defendants are correct that they cannot be held directly liable or liable under an aider and abettor theory.

*13 Accordingly, summary judgment is not warranted on those six claims.

B. Summary Judgment is Not Warranted on Kris Doe's Claim for Negligent Supervision.

Corporate Defendants move for summary judgment on Kris Doe's claim for negligent supervision. Dkt. 175-1 at 15. Plaintiffs argue that they cannot be found liable for negligent supervision because that claim requires "prior *actual* knowledge of the actor's propensity to do the bad act," and this Court already found that no reasonable juror could find that Employee Defendants (and, in turn, Corporate Defendants) had actual knowledge of Katz's conduct. *Id.*

Corporate Defendants are incorrect. Actual knowledge is not required; rather, Kris Doe can establish a claim for negligent supervision by establishing that Corporate Defendants *should* have known about Katz's conduct. See *C.A. v. William S. Hart Union High Sch. Dist.*, 53 Cal.4th 861, 875 (Cal. 2012) (“Plaintiff alleges the District's administrators and employees knew *or should have known* of Hubbell's dangerous propensities, but nevertheless hired, retained and failed to properly supervise her. These allegations, if proven, could make the District liable”) (emphasis added); see also *D.Z.*, 35 Cal.App.5th at 230 (“[T]o support her negligent supervision claim, appellant had to prove both that Shelburne posed a risk of harm to students and that the risk of harm was reasonably foreseeable, *i.e.*, that LAUSD knew *or should have known* of the risk.”) (emphasis added).

This Court already held that a reasonable juror could find that the Employee Defendants (and, in turn, the Corporate Defendants) should have known that Katz engaged in sexual interactions with Kris Doe on April 15, 2019. A reasonable juror could therefore find that, by failing to intervene and prevent future sexual advances by Katz, Corporate Defendants are liable for negligent supervision.

Accordingly, summary judgment is not warranted on Kris Doe's claim for negligent supervision.

C. Summary Judgment is Warranted on Kris Doe's Claim for Violations of the UCL.

Corporate Defendants move for summary judgment on Kris Doe's claim for violations of the UCL. Dkt. 175-1 at 17–18. Corporate Defendants argue that Kris Doe is not entitled to either of the remedies authorized by the UCL— *i.e.*, restitution or injunctive relief. See *id.*

Kris Doe does not meaningfully argue that she is entitled to injunctive relief.⁶ Rather, Kris Doe argues that she “paid more than \$277,000 directly to [Corporate] Defendants” and is therefore entitled to restitution. Dkt. 183 at 23–24.

⁶ In a single sentence, Kris Doe asserts that she is “entitled to both restitutionary and injunctive relief.” Dkt. 183 at 23. Yet, Kris Doe does not plead injunctive relief in the Second Amended Complaint. See generally Dkt. 137. Even if she had, she would lack standing for injunctive relief because she has failed to allege any facts that establish “a sufficient likelihood that [s] he will again be wronged in a similar way.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). In other words, to establish standing for injunctive relief, Kris Doe must establish that she will return to BTR. Kris Doe has failed to do so here.

*14 The Court agrees with Corporate Defendants. Although Kris Doe asserts in her brief that she “paid more than \$277,000 directly to [Corporate] Defendants,” see *id.*, no evidence supports that claim. Rather, Nate Doe stated in his declaration that “[Kris Doe's] parents made the payments to BTR.” Dkt. 87-3 at ¶ 17. Craig Mance also testified that he “paid [BTR] in connection with the treatment.” Mance Depo. at 153:10-14.

Kris Doe alternatively suggests that, because she is allegedly obligated to repay her father, she has a “diminished future” interest. Dkt. 183 at 24. Kris Doe's argument seemingly stems from Craig Mance's testimony that, if Kris Doe does not repay her father, then the amount paid to BTR will be taken out of Kris Doe's inheritance. Mance Depo. at 118:4-119:7.

However, restitution is only available to a plaintiff who has an ownership or vested interest in the money he or she seeks to recover. See *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 944 (Cal. 2003). And, here—even assuming that Kris Doe's inheritance was used to pay BTR—Kris Doe has no ownership or vested interest in those funds. One who is named as a beneficiary in another's will generally has a mere expectancy in receiving a future inheritance, not a “vested interest” as required to recover under the UCL. See *id.* Indeed, the fact that Kris Doe is obligated to repay her father simply confirms that no reasonable juror could find Kris Doe has a vested interest in any funds allegedly used from Kris Doe's inheritance.

Accordingly, because Kris Doe is not entitled to restitution or injunctive relief, summary judgment is warranted in Corporate Defendants' favor on Kris Doe's claim for violations of the UCL.

D. Summary Judgment is Warranted on Kris Doe's Claims for Punitive Damages.

Corporate Defendants move for summary judgment on Kris Doe's claim for punitive damages under her negligence and negligent misrepresentation causes of action. Dkt. 175-1 at 16–17.

To hold an employer liable for punitive damages based upon the acts of an employee, a plaintiff must show that the employer (1) had advance knowledge of the unfitness of the employee, and (2) employed him or her with a conscious disregard of the rights or safety of others, or authorized or ratified the wrongful conduct for which the damages are awarded, or was personally guilty of oppression, fraud, or malice. [Cal. Civ. Code § 3294\(b\)](#). The “advance knowledge” and the corresponding conduct in the second prong must be on the part of an “officer, director, or managing agent of the corporation.” *Id.*

Here, the claims for which Corporate Defendants seek to preclude punitive damages are the claims for negligence and negligent misrepresentation. Dkt. 175-1 at 16–17. Accordingly, to avoid summary judgment, Plaintiffs must identify evidence supporting a finding that “an officer, director, or managing agent of the corporation” had advance knowledge of the unfitness of the allegedly negligent employees.

Plaintiffs have failed to identify any such evidence. Plaintiffs do not identify which officer, director, or managing agent of Corporate Defendants had advance knowledge of the unfitness of the allegedly negligent employees. Nor do Plaintiffs identify evidence supporting a finding that such advance knowledge even existed.

Instead, Plaintiffs make the conclusory assertion that that “the nature of [their] allegations ... and the extreme and substantial harm suffered by Plaintiffs—including the sexual abuse and emotional trauma suffered by Kris Doe [and the] callous disregard for her health and safety—support an award of punitive damages against Defendants.” Dkt. 183 at 24. Plaintiffs then cite to approximately fifty allegedly undisputed facts. *Id.*

***15** Yet, these facts are largely either unsupported by the cited evidence or irrelevant to the two issues identified above: namely, which officer, managing agent, or director of Corporate Defendants (1) had advance knowledge of the unfitness of an employee accused of negligence; and (2) employed that employee with a conscious disregard of the rights or safety of others, or authorized or ratified the wrongful conduct for which the damages are awarded, or was personally guilty of oppression, fraud, or malice.

Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. [Celotex, 477 U.S. at 325](#). The burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial. *Id.* at 324. Plaintiffs have failed to meet that burden here.

Accordingly, summary judgment is warranted in Corporate Defendants' favor on Plaintiffs' claims for punitive damages under the negligence and negligent misrepresentation causes of action.

E. The Court Will Defer Ruling on Corporate Defendants' Motion for Summary Judgment on the Breach of Contract Claim.

Like Plaintiffs, Corporate Defendants moved for summary judgment on the breach of contract cause of action. Dkt. 175-1 at 9–13. Because Corporate Defendants do not bear the burden of proof at trial on this claim, they need only prove that there is an absence of evidence to support Plaintiffs' case. *See Celotex, 477 U.S. at 325*.

However, because Plaintiffs' briefing in support of their motion—and in opposition to Corporate Defendants' motion—is difficult to follow, the Court cannot adequately determine whether summary judgment is warranted at this time.

Instead, the Court will defer ruling on Corporate Defendants' motion. *See Fed. R. Civ. P. 56(e)(4)* (“If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact ... the court may ... issue any other

appropriate order.”). The Court will order Plaintiffs to file a renewed motion for summary judgment on this issue, and Corporate Defendants will be allowed to oppose that motion.

VII. Conclusion

For the foregoing reasons, the Court ORDERS as follows:

- Plaintiffs' motion for summary judgment, Dkt. 197, is DENIED in full.
- Dr. Strang's motion for summary judgment, Dkt. 181, is GRANTED in full.
- Corporate Defendants' motion for summary judgment, Dkt. 175, is GRANTED in part and DENIED in part. The motion is GRANTED with respect to the claims for violations of the UCL and punitive damages. The motion is DENIED with respect to all other claims.

Plaintiffs are ORDERED to file a renewed motion for summary judgment addressing only the breach of contract claim. The motion should comply with the following instructions:

- As noted above, a cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach.” [Maldonado, 158 Cal.App.4th at 1239](#).
- Plaintiffs' renewed motion should address each element separately. Clear headings and sub-headings should indicate which element is being addressed in a particular part of the brief.
- No separate statement of facts should be filed in support of Plaintiffs' motion. Instead, Plaintiffs should identify and apply all relevant facts in their argument for each element. If Plaintiffs believe a fact is genuinely undisputed, Plaintiffs should cite to specific evidence (*e.g.*, documents, declarations, testimony, etc.) that supports that position and, to the extent possible, include the verbatim language from that evidence in their brief. All evidence should be attached to the brief with a supporting declaration.
- When arguing the first element, Plaintiffs should separately address each document that they believe constitutes a contract. If Plaintiffs believe an oral contract was made, Plaintiffs should identify the specific terms of that contract and identify, with particularity, evidence that supports the existence of the oral contract. The existence of each alleged contract should be addressed under a separate heading or sub-heading.
- When arguing the third element, Plaintiffs should identify the specific conduct (or lack thereof) that constitutes a breach, and also which particular term of the contract was breached. Both should be supported with specific citations to evidence attached to the brief. Each alleged breach should be addressed under a separate heading or sub-heading.
- For the fourth element, Plaintiffs should cite to specific evidence establishing their damages.
- No statement of facts or procedural history is required. Additionally, Plaintiffs should avoid unsupported assertions of fact or conclusory assertions of law, neither of which are helpful to the Court. Instead, all factual assertions should be supported with specific citations to evidence supporting the assertion.

Corporate Defendants' opposition should also follow the above instructions. To the extent that Corporate Defendants do not dispute a particular argument made by Plaintiffs regarding their breach of contract claim, Corporate Defendants need not address that argument.

***16** Plaintiffs' renewed motion for summary judgment is due on March 22, 2021. Corporate Defendants' opposition is due on March 31, 2021. No reply shall be filed. The Court sets a hearing for Plaintiffs' renewed motion on April 5, 2021.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2021 WL 1321652

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2025 WL 1646538

Only the Westlaw citation is currently available.

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District Court of Appeal of Florida, Third District.

MONSANTO COMPANY, Appellant,

v.

Lawrence J. BEHAR, Appellee.

No. 3D24-0569

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Opinion Filed June 11, 2025

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, [Jose M. Rodriguez](#), Judge. Lower Tribunal
No. 20-8726-CA-01

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Before [LOGUE](#), C.J., and [LOBREE](#) and [GOODEN](#), JJ.

Opinion

[GOODEN](#), J.

*1 Appellant Monsanto Company appeals an order granting Appellee Lawrence J. Behar's motion to amend his complaint to
add punitive damages. Because Behar failed to satisfy the statutory requirements, we reverse.

I.

A.

Glyphosate, the active ingredient in Monsanto's Roundup weed killer, is a widely used herbicide. It is approved for use in over
160 countries. [Nat'l Ass'n of Wheat Growers v. Bonta](#), 85 F.4th 1263, 1268–69 (9th Cir. 2023).

In the United States, glyphosate is regulated by the Environmental Protection Agency under the Federal Insecticide, Fungicide,
and Rodenticide Act. See 7 U.S.C. § 136 et. seq. For an herbicide to be approved for commercial use under the Act, an applicant
must show that it will not cause unreasonable adverse effects on humans or the environment. 7 U.S.C. § 136(bb). As part of
that process, the EPA reviews the product for carcinogenicity and performs a risk assessment. *Id.* The EPA then reassesses the
approval at least once every fifteen years. 7 U.S.C. § 136a(g)(1)(A)(i), (iv).

The EPA further dictates the label of the product, which the manufacturer must use without modification. 7 U.S.C. § 136j(a)(1)(E). It controls any changes to the label. Thus, manufacturers cannot—without prior approval—add new warnings or precautionary statements to the product. It is unlawful to do so. *Id.*

In 1974, the EPA approved glyphosate. Since that time, the EPA has repeatedly examined glyphosate. For instance, in 1983, a study had raised concerns about potential carcinogenicity. After reviewing that data, the EPA initially classified glyphosate as a Group C carcinogen, meaning that it is possibly carcinogenic to humans. Thereafter, the EPA rigorously reevaluated glyphosate's effects on human health, considered numerous carcinogenicity studies in rats and mice, and found that none showed convincing evidence that glyphosate could be a carcinogen. Several years later, the EPA reclassified glyphosate as a Group E carcinogen, meaning there was “evidence of non-carcinogenicity in humans.”

But in 2015, the International Agency for Research of Cancer¹ performed a hazard assessment, which considered whether the agent can cause cancer under any possible circumstances, without considering actual risk from typical human exposure in typical human uses. It issued a monograph asserting that glyphosate is “probably carcinogenic to humans.” It noted “limited evidence in humans for the carcinogenicity of glyphosate” and “sufficient evidence in experimental animals for the carcinogenicity of glyphosate.” This monograph associated glyphosate with non-Hodgkin's lymphoma, “but chance, bias or confounding could not be ruled out with reasonable confidence.” Thereafter, Monsanto was flooded with lawsuits around the country.

¹ This organization is not a regulatory agency and is connected to the World Health Organization (“WHO”). Unlike the EPA, it did not perform risk assessments, which analyze cancer risks to humans at real-world exposure levels. “[T]he distinction between hazard and risk is significant. In this context, a hazard indicates that at some theoretical level of exposure, the chemical is capable of causing cancer. Risk, on the other hand, is the likelihood that cancer will occur at a real-world level of exposure.” *Nat'l Ass'n of Wheat Growers*, 85 F.4th at 1269. International Agency for Research of Cancer “stands essentially alone in its determination that glyphosate is probably carcinogenic to humans, while EPA, OEHHA, and regulators from around the world conclude that it is not.” *Id.* at 1278.

*2 In the years following the International Agency for Research of Cancer's monograph, numerous studies were conducted. In 2018, the Agricultural Health Study was released. This large cohort study was based on long-term epidemiological research and tested over 50,000 subjects. Based on the study results, the Journal of the National Cancer Institute published data demonstrating no apparent association between glyphosate and non-Hodgkin's lymphoma.

The EPA also reexamined glyphosate. The EPA reaffirmed that glyphosate is “not likely to be carcinogenic to humans.” It disagreed with the International Agency for Research of Cancer, attacked the methodology used in the monograph and the lack of public comment, and explained its scientists have performed an independent evaluation of all the data available—including the later-released data noted above. As a result, the EPA determined that a label warning stating that glyphosate poses a cancer risk would be “false and misleading” and that any such label would not meet the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act.

Again, in 2020, the EPA evaluated glyphosate and reaffirmed its findings—“EPA has thoroughly evaluated potential human health risk associated with exposure to glyphosate and determined that there are no risks to human health from the current registered uses of glyphosate and that glyphosate is not likely to be carcinogenic to humans.” Two years later, the EPA sent a letter to California's Office of Environmental Health Hazard Assessment, standing behind “its robust scientific evaluation of the carcinogenic potential of glyphosate.”

The EPA's findings are consistent with other regulatory authorities from around the world. For example, the European Union Chemicals Agency concluded that “based on the epidemiological data as well as the data from long-term studies in rats and mice, taking a weight of evidence approach, no classification for carcinogenicity is warranted.” Likewise, Health Canada concluded glyphosate “is not genotoxic and is unlikely to pose a human cancer risk.” Similarly, the agencies in Australia, Germany, New Zealand, and Japan have all rejected the contention that glyphosate causes cancer.

Nevertheless, in 2023, Monsanto ceased production of all glyphosatebased herbicides. It did so to “manage litigation risk” given the number of lawsuits filed and amounts of awards against it. This decision was “not because of any concern about potential carcinogenicity of the products.” The remaining inventory of glyphosate products were estimated to be sold by July 2024.

B.

Behar was diagnosed with [non-Hodgkin's lymphoma](#). Attributing his diagnosis to Roundup, Behar filed suit against Monsanto alleging five claims: strict products liability, negligence, breach of express warranties, fraudulent misrepresentation, and negligent misrepresentation. Behar contends that the Roundup label should have warned that glyphosate causes [cancer](#).

During litigation, Behar moved for leave to amend his complaint to assert a claim for punitive damages. He asserted that Monsanto “engaged in a systematic effort to discredit the unfavorable science, create new science through ‘ghost-writing,’ and manipulate federal agencies through the use of disinformation.” Among other facts and documents, Behar heavily relies upon:

- The International Agency for Research of Cancer's monograph.
- In the 1970s and 1990s, Monsanto hired two independent laboratories to perform testing. The labs were accused of falsifying records and results. Several lab executives were convicted of fraud.
- *3 • After the 1985 classification as a Group C carcinogen, internal Monsanto documents show various mid-level employees discussing the classification and how the company could address it. This includes scientists discussing various studies and some expressing concerns.
- After the 1985 classification, Monsanto hired Dr. Parry, a toxicologist specializing in genetic toxicology, as an expert. He advised that glyphosate may be genotoxic and further in vitro micronucleus testing is needed to confirm. Emails were included discussing Dr. Parry's results and suggesting “to provide him with additional information as well as asking him to critically evaluate the quality of all the data including the open literature.”
- Studies that Monsanto allegedly “ghost-wrote.”

Monsanto maintained that Behar did not meet his burden. Relying on numerous studies conducted by agencies worldwide, Monsanto explained that Behar's record evidence has been rejected by the EPA and other regulatory agencies. Further, Monsanto made clear it had nothing to do with the independent labs' actions and that it was a victim of fraud. Regarding Dr. Parry, Monsanto completed many of the studies that he suggested, and as a result, Dr. Parry eventually changed his mind on glyphosate's potential carcinogenicity. Lastly, the alleged “ghostwritten” articles acknowledge Monsanto's contributions.

Citing [section 768.73, Florida Statutes](#), Monsanto further contended that it could not be held liable for punitive damages based on conduct for which punitive damages have been awarded in another case. In the first three Roundup trials, juries in other jurisdictions awarded \$250 million, \$75 million, and \$2 billion in punitive damages against Monsanto for the very same conduct. See [Johnson v. Monsanto Co.](#), 52 Cal.App.5th 434, 266 Cal. Rptr. 3d 111, 120 (2020); [Hardeman v. Monsanto Co.](#), 997 F.3d 941, 954 (9th Cir. 2021); [Pilliod v. Monsanto Co.](#), 67 Cal.App.5th 591, 282 Cal. Rptr. 3d 679, 688 (2021).² Accordingly, it argued that any amendment would be futile.

² Likewise, juries have rejected the claims against Monsanto. See, e.g., [Kline v. Monsanto Co.](#), 2024 WL 1608102 (Pa. Com. Pl. Ct. Mar. 5, 2024); [Cody v. Monsanto Co.](#), No. 15CV-23-75 (Ark. Cir. Ct.); [Adams v. Monsanto Co.](#), 2023 WL 4289672 (Mo. Cir. Ct. May 23, 2023); [Evard v. Monsanto Co.](#), 2023 WL 8167796 (Ill. Cir. Ct. Sep. 10, 2023);

[Alesi v. Monsanto Co.](#), 2022 WL 17224403 (Mo Cir. Ct. Sep. 29, 2022); [Shelton v. Monsanto Co.](#), 2022 WL 2960512 (Mo Cir. Ct. Jun. 9, 2022).

The trial court heard argument from the parties. Behar pointed to the three trials as proof that this evidence meets the standard for punitive damages. Monsanto countered that Behar cherry-picked various materials and tried to piece them together to show malfeasance—ignoring the overwhelming scientific evidence on glyphosate. It insisted that Behar failed to meet his burden.

The trial court granted the motion, simply stating “I’m going to find that a reasonable showing for me to grant the motion for leave to amend.” No other reasoning or findings were given. This appeal followed.

II.

Since we are in the same position as the trial court to review the record evidence or proffer to support a party's claim for punitive damages, our review is de novo. [Grove Isle Ass'n, Inc. v. Lindzon](#), 350 So. 3d 826, 829 (Fla. 3d DCA 2022).

III.

*4 “Punitive damages are a form of extraordinary relief for acts and omissions so egregious as to jeopardize not only the particular plaintiff in the lawsuit, but the public as a whole, such that a punishment—not merely compensation—must be imposed to prevent similar conduct in the future.” [BDO Seidman, LLP v. Banco Espirito Santo Int'l.](#), 38 So. 3d 874, 876 (Fla. 3d DCA 2010). Accord [Owens-Corning Fiberglas Corp. v. Ballard](#), 749 So. 2d 483, 486 (Fla. 1999) (“Under Florida law, the purpose of punitive damages is not to further compensate the plaintiff, but to punish the defendant for its wrongful conduct and to deter similar misconduct by it and other actors in the future.”). Such damages are “reserved for only the most egregious cases.” [Friedler v. Faena Hotels & Residences, LLC](#), 390 So. 3d 186, 188 (Fla. 3d DCA 2024).

[Section 768.72, Florida Statutes](#), controls much of the punitive damage amendment process. Under this section, the trial court performs a gatekeeping function ensuring that the requisite statutory showing has been met. [JVA Eng'g Contractor, Inc. v. Doral 10, LLC](#), 402 So. 3d 1175, 1176 (Fla. 3d DCA 2025). “The gatekeeper role also extends to the trial court's determining whether the movant has satisfied the requirements of subsection 768.72(3).” [Id.](#) at 1177.

“The statutory framework presumes that punitive damages claims will be the exception in civil actions, not the rule.” [McLane Foodservice Inc. v. Wool](#), 400 So. 3d 757, 760 (Fla. 3d DCA 2024). “Plaintiffs have no right to punitive damages.” [Blundell v. R. J. Reynolds Tobacco Co.](#), 324 So. 3d 1014, 1016 (Fla. 1st DCA 2021). Indeed, the plaintiff's claim is “subject to the plenary authority of the legislature.” [Alamo Rent-A-Car, Inc. v. Mancusi](#), 632 So. 2d 1352, 1358 (Fla. 1994).

A plaintiff is not allowed to bring a claim for punitive damages “unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.” § 768.72(1), [Fla. Stat.](#) See also [Fla. R. Civ. P. 1.190\(f\)](#) (“A motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages.”). That record evidence or proffer must reasonably demonstrate that the defendant was guilty of either “intentional misconduct” or “gross negligence.” § 768.72(2), [Fla. Stat.](#) The former “means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.” § 768.72(2)(a), [Fla. Stat.](#) The latter “means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.” § 768.72(2)(b), [Fla. Stat.](#) See also [Valladares v. Bank of Am. Corp.](#), 197 So. 3d 1, 11 (Fla. 2016) (explaining this standard is “equivalent to the conduct involved in criminal manslaughter”).

Where a corporate entity is involved, an additional showing is required:

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

*5 (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

§ 768.72(3), Fla. Stat.³ See [Napleton's N. Palm Auto Park, Inc. v. Agosto](#), 364 So. 3d 1103, 1106 (Fla. 4th DCA 2023) (“Thus, to amend a complaint to add a claim for punitive damages against a corporate defendant, a plaintiff must show culpable conduct *at both* the employee level and the corporate level.”); [McLane Foodservice Inc.](#), 400 So. 3d at 762 (“To ground a punitive damages claim against an employer based on vicarious liability, a plaintiff must establish (1) that the employee's conduct satisfies the definition of intentional misconduct or gross negligence and, as relevant here, (2) that the employer, via its officers, directors, or managers ... knowingly condoned, ratified, or consented to such conduct.”) (internal citation omitted).

³ Notably, Florida's statutory requirements for punitive damages against a corporation differs from California. California's requisite showing is much lower—considering conduct from any employee with discretionary authority over decisions. Compare [White v. Ultramar, Inc.](#), 21 Cal.4th 563, 88 Cal.Rptr.2d 19, 981 P.2d 944, 951 (1999), with [Fla. Power & Light Co. v. Dominguez](#), 295 So. 3d 1202, 1205 (Fla. 2d DCA 2019) (explaining “a managing agent is an individual like a president or primary owner who holds a position with the corporation which might result in his acts being deemed the acts of the corporation”) (cleaned up). As a result, it was not enough for Behar to simply point to the prior punitive damages awards in California. Behar was required to meet the Florida requirements.

Upon our review of the record, we conclude that Behar failed to make a reasonable showing which would provide a reasonable basis for recovery of punitive damages. The allegations, proffer, and record evidence do not demonstrate intentional misconduct or gross negligence. While Monsanto was well-aware of the continued reevaluation of glyphosate since 1973, the record does not show that glyphosate is carcinogenic, Monsanto knew it was, and Monsanto intentionally sold its product without a warning label anyway. § 768.72(2)(a), Fla. Stat. The record similarly does not demonstrate that Monsanto's “conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.” § 768.72(2)(b), Fla. Stat.

Monsanto reasonably relied on decades of scientific evidence. The EPA has continuously reevaluated glyphosate and approved it for use. The EPA further dictates the label of the product and found that a [cancer](#) warning label would be false and misleading. See § 768.1256(1), Fla. Stat. (“In a product liability action brought against a manufacturer or seller for harm allegedly caused by a product, there is a rebuttable presumption that the product is not defective or unreasonably dangerous and the manufacturer or seller is not liable if, at the time the specific unit of the product was sold or delivered to the initial purchaser or user, the aspect of the product that allegedly caused the harm: (a) Complied with federal or state codes, statutes, rules, regulations, or standards relevant to the event causing the death or injury; (b) The codes, statutes, rules, regulations, or standards are designed to prevent the type of harm that allegedly occurred; and (c) Compliance with the codes, statutes, rules, regulations, or standards is required as a condition for selling or distributing the product.”). Unsupported, salacious allegations, a scientific outlier, and isolated internal correspondence by mid-level employees—quoted out-of-context—simply do not meet the statutory requirements. See § 768.72(2), (3), Fla. Stat.; [Dominguez](#), 295 So. 3d at 1205.

*6 Punitive damages are reserved for truly culpable and egregious behavior. The allegations and evidence presented fall short of supporting a claim for punitive damages. As a result, the trial court erred by allowing the amendment. Because of this ruling,

we do not reach Monsanto's second argument as to application of [section 768.73, Florida Statutes](#), in terms of futility of the amendment.

Reversed and remanded.

All Citations

--- So.3d ----, 2025 WL 1646538

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1996 WL 341159

Only the Westlaw citation is currently available.
United States District Court, N.D. California.

Sydney RUSSELL, Plaintiff,

v.

Carlos O. TINSLEY, Defendant.

No. C95-0143-LEW.

I

May 30, 1996.

MEMORANDUM OF DECISION AND ORDER GRANTING SUMMARY JUDGMENT

LAUGHLIN E. WATERS, District Judge.

***1** TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On January 12, 1995, the plaintiff filed this action *pro se* against his former attorney for defamation and for breach of fiduciary duty. The defendant now seeks summary adjudication on both causes of action of the plaintiff's complaint.

FACTS:

In January 1992, plaintiff Sydney Russell commenced a lawsuit in the Superior Court of California against his sister, claiming that he deserved half of their deceased mother's estate. Plaintiff retained defendant Carlos O. Tinsley to represent him in that action. In August of 1993, the defendant determined that the case was meritless, and attempted to withdraw as counsel. After failing to get the consent of his client, the defendant filed a motion to withdraw, which was granted on December 9, 1993.

The dispute between the plaintiff and his former attorney then began in earnest. On January 6, 1994, the plaintiff sent a letter to the Judge Lawrence Stevens, who was presiding over the state court action, complaining that the defendant's declaration in support of his motion to withdraw as counsel contained "several perjurious statements." The plaintiff wrote that he wished to "call the court's attention to Mr. Tinsley's lack of integrity, and the disregard [Mr. Tinsley] has for that court by making false claims to its representatives ... in order to obtain his objective." See Declaration of Carlos O. Tinsley, Exhibit E. Attached to this letter was an exhibit that responded to the defendant's declaration in detail, refuting the points that the plaintiff claimed were inaccurate.

Judge Stevens' clerk notified the defendant of the letter, who came by to pick up a copy. One week later, on January 13, 1994, the defendant responded by sending Judge Stevens a letter which led to the present defamation claim. This letter essentially described the deterioration of the attorney/client relationship from the defendant's point of view. The defendant claimed, *inter alia*, that his client had been impossible to work for; that he had unethically recorded private conversations in hopes of using them at trial; that he was "the worst witness" the defendant had ever seen; and that he had mental and/or emotional problems, exhibiting a "paranoid behavior and attitude" towards the opposing party. The defendant also explained that the plaintiff's state court case was meritless and this, along with the plaintiff's unstable personality, had led the defendant to seek withdrawal from the case. See Declaration of Carlos O. Tinsley, Exhibit F.

The plaintiff's state court case continued towards trial, and the plaintiff made no attempt to hire another attorney to represent him. He claims that he "spoke" with several attorneys during that period, but that they had convinced him that the letter written by the defendant, which was now part of the court file, would make it impossible for the plaintiff to retain another attorney. The

plaintiff continued *pro se* in the state court action, but subsequently failed to show up for the trial, and judgment was entered against him on March 2, 1994.

*2 Meanwhile, the defendant informed the plaintiff on January 20, 1994 that although the defendant had been working on the plaintiff's case under a contingency fee agreement, California law entitled the defendant to \$10,000 out of any settlement or judgment that arose out of the plaintiff's case, since that was the reasonable value of the services the defendant had provided up to the point at which he withdrew. The defendant stated that he was withholding \$1,688.35 the retainer that the plaintiff had paid to him,¹ and told the plaintiff that he would either keep the \$1,688.35 and relinquish all rights to a portion of the eventual settlement, or he would pay the \$1,688.35 and retain the right to recover the "reasonable value" of his services upon receipt of a settlement or judgment by the plaintiff. The defendant also retained binders that the plaintiff had supplied him with for the purposes of the state court litigation.

The plaintiff retained a new attorney to represent him against the defendant, and that attorney wrote a letter to the defendant on December 16, 1994.² This letter demanded the return of the balance of the retainer as well as the cost of the binders, and explained that the defendant had no right to any portion of a future settlement or judgment, and therefore his continued holding of the retainer was unethical. Upon receiving this letter, the defendant immediately paid the plaintiff the balance of the retainer, although he retained the binders and the interest he had earned from holding the retainer. The defendant claimed that he had misinterpreted a California Supreme Court case when he asserted the right to a future settlement or judgment, and now acknowledged that as a contingency fee lawyer he had no right to any fees once he had withdrawn from the case.³

On January 12, 1995, the plaintiff filed this action *pro se* against his former attorney for defamation and for breach of fiduciary duty. Soon after this suit was filed against him, the defendant paid to the plaintiff the interest that had accrued on the retainer while it was in his possession, as well as the cost of the binders that he had never returned.

ANALYSIS:

A. Summary Judgment Standard.

It is the burden of the party who moves for summary judgment to establish that there is "no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." [Fed. R. Civ. P. 56\(c\)](#); [British Airways Bd. v. Boeing Co.](#), 585 F.2d 946, 951 (9th Cir. 1978), *cert. denied*, 440 U.S. 981 (1979).

If the nonmoving party has the burden of proof at trial, as in the present case, then the moving party has no burden to negate the opponent's claim. [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323 (1986). In other words, the moving party does not have the burden to produce *any* evidence showing the absence of a genuine issue of material fact. *Id.* at 325. "Instead, ... the burden on the moving party may be discharged by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." *Id.*

*3 Once the moving party satisfies this initial burden, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings ... [T]he adverse party's response ... *must set forth specific facts* showing that there is a genuine issue for trial." [Fed. R. Civ. P. 56\(e\)](#) (emphasis added). A "genuine issue" of material fact exists only when the nonmoving party makes a sufficient showing to establish each essential element to that party's case, and on which that party would bear the burden of proof at trial. [Celotex](#), 477 U.S. at 322-23. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which a reasonable jury could reasonably find for plaintiff." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 252 (1986). The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. *Id.* at 248; [Griffeth v. Utah Power & Light Co.](#), 226 F.2d 661, 669 (9th Cir. 1955).

II. First cause of action: Defamation

Libel is defined in [California Civil Code § 47](#) as a “false and unprivileged publication by writing” The defendant claims in his summary judgment motion that the publication of the January 13, 1994 letter to Judge Stevens was protected by either an absolute or a qualified privilege under California law.

A. Absolute immunity--“relating to” a judicial proceeding

The defendant claims that the allegedly libellous letter that was sent to Judge Stevens is absolutely privileged under [§ 47 of the California Civil Code](#), which states that “A privileged publication or broadcast is one made: ... (b) in any ... (2) judicial proceeding, or (3) in any other official proceeding authorized by law”

In order to qualify for this privilege, a statement must be made (1) in a judicial proceeding; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) the statement must have some connection or logical relation to the action. See [Silberg v. Anderson](#), 50 Cal. 3d 205, 212 (1990). There is no question that the statements in the present case were made “in a judicial proceeding;” California courts have interpreted this requirement broadly to include any statement whose publication is “required or permitted by law in the course of a judicial proceeding ... even though the publication is made outside the courtroom and no function of the court or its officers is invoked.” [Albertson v. Raboff](#), 46 Cal. 2d 375 (1956). Even communications between counsel prior to the commencement of the lawsuit fall into this category. See [Lerette v. Dean Witter Organization, Inc.](#), 60 Cal. App. 3d 573, 577-78 (1976).

The plaintiff argues that the statements that the defendant made in the letter to Judge Stevens were not made “to achieve the objects of the litigation,” and had no “connection or logical relation to the action.” The California Supreme Court has held that these two requirements are essentially the same thing: “[t]he requirement that the communication be in furtherance of the objects of the litigation is, in essence, simply part of the requirement that the communication be logically connected with, or have some logical relation to, the action” [Silberg v. Anderson](#), 50 Cal. 3d 205, 220 (1990) in support. The *Silberg* Court went on to state that the “logical connection” requirement was a lenient one; generally, as long as the statement is reasonably relevant to the subject matter of the action, there is a logical connection. *Id.*

*4 By this definition, the letter sent by the defendant is protected by the litigation privilege. The defendant's letter to Judge Stevens was logically connected to the ongoing litigation between the plaintiff and his wife, especially since the defendant was responding to the plaintiff's objection to the defendant's motion to withdraw as attorney.

The plaintiff further argues that the litigation privilege could not apply because at the time of the writing of the letter, the defendant no longer represented the plaintiff in the litigation. However, the litigation privilege applies to anyone involved in the litigation, not just to the official attorneys of record. The defendant was still involved in the litigation at the time, since it is conceivable that Judge Stevens would have sanctioned the defendant in response to the plaintiff's strong language in the objection to the motion to withdraw. Therefore, the defendant's statements are protected by the litigation privilege and this Court GRANTS the motion for summary adjudication of the first cause of action in favor of the defendant.

Since the Court finds that the defendant's statements are protected by the litigation privilege, it does not reach the issue of whether or not qualified immunity applies to the defendant's statements.

III. Second cause of action: Breach of fiduciary duty

The plaintiff claims that the defendant breached his fiduciary duty to the plaintiff in two ways: (1) he failed to promptly return the balance of the plaintiff's retainer and his binders; and (2) he violated the confidentiality of the attorney-client privilege.⁴ Although the plaintiff could potentially demonstrate that the defendant has violated his fiduciary duty in these ways, he is unable to demonstrate any damages that he suffered as a result of the defendant's alleged misconduct. As noted above, the defendant has now refunded the balance of the retainer plus interest, as well as the full cost of the binders that he failed to return.

The plaintiff claims that he suffered damage when he hired an attorney to write a letter to the defendant in a successful attempt to get his retainer refunded. However, he cites no authority for recovery of attorney's fees in a case such as this, and absent any statutory or contractual provision, attorney's fees are not recoverable in California. See [California Code of Civil Procedure § 1021](#).

The plaintiff further claims that he deserves punitive damages in response to the defendant's conduct. However, California courts have set a high standard for punitive damages; the conduct must be intended to cause injury to the plaintiff or must be "despicable"--meaning "vile" or "contemptible." *College Hosp. Inc. v. Superior Court*, 8 Cal.4th 704, 725 (1994). The plaintiff has presented no evidence that the defendant intended to cause injury to the plaintiff, and his alleged conduct, though inappropriate, could not be said to be "despicable, vile, or contemptible. Thus, a punitive damages award would not be appropriate in this case.

*5 Finally, the plaintiff claims that he deserves compensation for the emotional distress that he suffered from the defendant's failure to return the balance of the retainer. However, under California law, if a plaintiff suffers no physical injury, emotional distress damages are only available (1) in cases of "outrageous conduct"--causing distress so severe that "no reasonable [[person] could be expected to endure it" (see [Restatement 2d, Torts, § 46](#), comment j); or (2) in cases where the financial injury of the plaintiff was "substantial" (see *Jarchow v. Transamerica Title Ins. Co.*, 48 Cal. App. 3d 917 (1975). As noted above, although the defendant's conduct as alleged in the present case was inappropriate, it could not be said to be "outrageous." Furthermore, the plaintiff was only temporarily deprived of approximately \$1,688 that was due to him--a deprivation which is not a "substantial" financial injury. Therefore, the plaintiff would be unable to recover damages for emotional distress, and can show no damages for the defendant's alleged breach of fiduciary duty.

Since the plaintiff cannot prove any recoverable damages for the defendant's alleged breach of his fiduciary duties, this Court GRANTS the defendant's motion for summary adjudication as to the second cause of action of the plaintiff's complaint.

CONCLUSION:

For the foregoing reasons, the defendant's summary judgment motion is granted. Judgment will be entered in favor of the defendant.

IT IS SO ORDERED.

- 1 The plaintiff had paid a \$2,500 retainer, and \$811.65 had been charged as costs and expenses.
- 2 The plaintiff's new attorney is no longer involved in the current case; there is no evidence that he did any more than write one letter to the defendant. The plaintiff is proceeding in this case *pro se*.
- 3 Of course, by this time the plaintiff's state court claim had been dismissed, so even under the defendant's original interpretation of California law, he would have no right to keep any of the plaintiff's retainer.
- 4 The plaintiff claims in his opposition that the defendant's allegedly defamatory letter to Judge Stevens breached the defendant's fiduciary duty towards the plaintiff by making it impossible for the plaintiff to retain new counsel, thus causing the plaintiff to lose his case. However, this allegation is not contained in the complaint, and even if it were, the plaintiff made no attempt to retain new counsel in his state court case, and thus failed to mitigate his damages.

All Citations

Not Reported in F.Supp., 1996 WL 341159