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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ALAMEDA**

15 COORDINATION PROCEEDING
16 SPECIAL TITLE (Rule 3.550)

JCCP NO. 4953

17 ROUNDUP PRODUCTS CASES

Case No. RG17862702

18 THIS DOCUMENT RELATES TO:

ASSIGNED FOR ALL PURPOSES TO
JUDGE WINIFRED SMITH
DEPARTMENT 21

19 *Alva Pilliod, et al. v. Monsanto Company,*
20 Case No. RG17862702

**DEFENDANT'S NOTICE OF MOTION AND
MOTION TO EXCLUDE TESTIMONY OF DR.
WILLIAM SAWYER; MEMORANDUM OF
POINTS AND AUTHORITIES**

Hearing Date: March 7, 2019

Time: 10:00 a.m.

Department: 21

Reservation No: R-2048307

25 PARTY: Defendant MONSANTO COMPANY

26 RESPONDING PARTY: Plaintiff ALBERTA PILLIOD

27 SET NO.: ONE

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TO EACH PARTY AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on March 7, 2019, at 10:00 a.m., or as soon thereafter as counsel may be heard, in Department 21 of the above-entitled court, located at 1221 Oak Street, Oakland, California, Defendant Monsanto Company hereby moves this Court pursuant to *Sargon Enterprises, Inc. v. University of Southern California*, 55 Cal. 4th 747 (2012), and California Evidence Code §§ 720(a), 801, 802, and 803 for an order excluding the opinions of Dr. William Sawyer. This Motion is made on the grounds that all of Dr. Sawyer’s opinions are inadmissible under California law governing expert testimony.

This Motion is based upon this Notice, the Memorandum of Points and Authorities, the accompanying Declaration of Eugene Brown, and supporting exhibits and evidence (filed and served herewith), as well as all pleadings and papers on file in this action and upon such other matters as may be presented by Defendant in further briefing and at the time of the hearing.

DATED: February 12, 2019

Respectfully submitted,

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs’ exposure expert Dr. William R. Sawyer fails to offer any admissible opinions in
4 support of Plaintiffs’ claim that exposure to Roundup, a glyphosate-based herbicide (GBH)
5 manufactured by Defendant Monsanto Company, caused them to develop non-Hodgkin’s
6 Lymphoma (NHL). Dr. Sawyer purports to offer opinions on both general causation (*i.e.*, whether
7 Roundup is capable of causing NHL in humans) and specific causation (*i.e.*, whether Roundup
8 caused these Plaintiffs’ NHL). Both opinions are inadmissible and should be excluded under the
9 Evidence Code and *Sargon Enterprises, Inc. v. University of Southern California*, 55 Cal. 4th 747
10 (2012).

11 First, Dr. Sawyer’s “general causation” opinion does not follow any valid or recognizable
12 methodology. Indeed, his report in this case contains virtually no discussion of the types of
13 evidence that are used to evaluate causation: epidemiological, animal, or mechanistic. Instead, the
14 “general causation” section of his report is little more than a discussion of the ingredients and
15 properties of Roundup, which cannot support a conclusion that Roundup can cause NHL. Second,
16 and likewise, Dr. Sawyer has not followed any valid methodology in reaching his so-called
17 specific causation opinion. He concluded that Roundup was a potential cause of Plaintiffs’ NHL
18 based purely on extrapolations from epidemiology studies, notwithstanding his lack of training in
19 epidemiology and his consistent admission that he has not actually analyzed any of the
20 epidemiology studies from which he plucks data points. In fact, he repeatedly *defers* to others on
21 any analysis, interpretation, and meaning of the epidemiology studies on which he purports to rely.
22 And he has not even attempted to consider other possible causes of Plaintiffs’ NHL. By his own
23 admission, Dr. Sawyer has neither ruled in nor ruled out any potential cause other than Plaintiffs’
24 exposure to Roundup. As a result, his conclusion that Roundup was a “significant factor
25 contributing to” Plaintiffs’ NHL is nothing more than his say-so. He should not be allowed to
26 present these opinions to the jury.

1 **BACKGROUND**

2 Plaintiffs have offered Dr. Sawyer, a toxicologist by training, as an expert witness. He has
3 submitted a 117-page report for this case setting forth opinions on what he characterizes as
4 “general causation” and “specific causation.” Brown Decl. Ex. 1, 1/14/2019 Sawyer *Pilliod* Rpt.
5 (“Sawyer Rpt.”) 117. The report ultimately concludes “to reasonable toxicological certainty that
6 on the basis of exposure, dose and duration, Mr. and Mrs. Pilliod’s documented exposure to
7 Roundup over a period of more than 25 years was a significant factor contributing to their
8 development and subsequent diagnosis of non-Hodgkins [sic] lymphoma.” *Id.*; *see also* Brown
9 Decl. Ex. 2, Tr. of 2/6/19 Sawyer Dep. (“Sawyer Dep. Tr.”) 76:19–24 (same).

10 Most of Dr. Sawyer’s report relates to his purported “general causation” opinions. *See*
11 Brown Decl. Ex. 1, Sawyer Rpt. at 26–108. Notably, the report is largely devoid of any analysis
12 of the types of scientific evidence—*i.e.*, epidemiological, animal, and mechanistic studies—that
13 are used to evaluate whether an agent is capable of causing a particular outcome. *See In re:*
14 *Roundup Prods. Liab. Litig.*, No. 16-md-2741-VC, 2018 WL 3368534, at *7–17 (N.D. Cal. July
15 10, 2018) (discussing the three types of evidence). For example, epidemiology, which is the field
16 of public health that studies the incidence and etiology of disease in human populations, is “central
17 to the general causation inquiry, and where such evidence exists, it must be addressed.” *Id.* at 7.
18 Dr. Sawyer, however, has conceded repeatedly that he has not analyzed any epidemiology studies,
19 and instead is “deferring” to other experts on that subject. *See* Brown Decl. Ex. 1, Sawyer Rpt. at
20 117 (“I have deferred epidemiological causation opinions to other experts retained in the current
21 matter.”); Brown Decl. Ex. 2, Sawyer Dep. Tr. 40:10–22; 79:5–80:4; 162:22–163:2; 203:1–5;
22 207:2–6; 213:8–20; 231:25–232:8; 233:11–25; 260:9–261:13 (same). Moreover, Dr. Sawyer’s
23 report contains no discussion of animal studies, and only a brief summary of certain genotoxicity
24 studies (a type of mechanism study), with no explanation of how those studies—which evaluate
25 cells in petri dishes—show that real-world exposure to GBHs is capable of causing NHL. *See*
26 Brown Decl. Ex. 1, Sawyer Rpt. 110–12.

1 Instead, the general causation portion of Dr. Sawyer’s report discusses glyphosate’s
2 history; the ingredients in various Roundup formulations; the routes of potential exposure to
3 glyphosate; and various factors purportedly affecting dermal absorption. *See id.* at 26–108. In
4 other words, Dr. Sawyer’s “general causation” opinion is just a discussion of the properties of
5 Roundup, not an analysis of whether Roundup is generally capable of causing NHL in humans.
6 Dr. Sawyer admitted as much in his report, stating as follows: “[g]eneral causation in the present
7 matter includes evaluation of the various chemicals in Roundup and the mechanisms of exposure
8 which include dermal absorption, how Roundup penetrates the skin, the effects of product
9 formulations and adjuvants, co-carcinogens, [absorption, distribution, metabolism and excretion
10 (ADME)], latency period, etc.” *Id.* at 117.

11 The remainder of Dr. Sawyer’s report concerns his “specific causation” opinion, which he
12 claims to have reached by “determin[ing] whether the doses sustained by Mr. and Mrs. Pilliod are
13 similar to those sustained by applicators as documented in the generally-accepted, peer-reviewed
14 literature.” *Id.* Specifically, Dr. Sawyer describes Plaintiffs’ alleged use of Roundup, which he
15 determined from their deposition testimony and a telephone interview. *Id.* at 10–12. He purported
16 to calculate “exposure” by counting up the total number of days on which Plaintiffs used
17 Roundup, as well as their average glyphosate “dose” in milligrams per kilogram per day at only
18 one of the four properties at which they allegedly sprayed Roundup. *Id.* at 13–21. He then
19 compared the number of days Plaintiffs used Roundup to classifications made by three
20 epidemiological studies, *id.* at 22–25, even though he has conceded that he is offering no analysis
21 of any epidemiology studies, *see supra* at 2.

22 Importantly, Dr. Sawyer’s “specific causation” opinion does not attempt to account for
23 (much less rule out) other possible causes of Plaintiffs’ NHL. The only alternative cause that Dr.
24 Sawyer considered was Plaintiffs’ potential exposure to ██████████ near
25 their home. *See Brown Decl. Ex. 2, Sawyer Dep. Tr. 77:20–78:18.* He made no effort to consider
26 any other possible causes—such as ██████████—
27 testifying instead that he will “defer[.]” any analysis of other possible causes to Plaintiffs’ other
28 experts. *See id.; see also id.* at 77:15–18 (“I am not performing a differential diagnosis . . .”).

1 Dr. Sawyer’s excuse for this gap in his analysis is that he simply did not have time to perform a
2 proper differential diagnosis. *See id.* at 105:6–10. Thus, Dr. Sawyer’s specific causation opinion
3 is supported by nothing more than a comparison of his “exposure” calculation for Plaintiffs to data
4 points from three epidemiology studies, which he does not purport to analyze in any way. The
5 Court should not allow this sort of *ipse dixit* to be presented to a jury.

6 LEGAL STANDARD

7 At this stage of the litigation, the Court plays an important gatekeeping role. First, the
8 Court must inquire into the type of material on which an expert relies, excluding the testimony if
9 the expert relies on materials that an expert cannot reasonably rely on “in forming an opinion upon
10 the subject to which his testimony relates.” *Sargon*, 55 Cal. 4th at 769 (quoting Cal Evid. Code §
11 801(b)). Second, the Court must inquire into whether the material the expert relies on “actually
12 supports the expert’s reasoning” and conclusions. *Id.* at 771 (citing Cal. Evid. Code § 802). The
13 Court must exclude the testimony if there “is simply too great an analytical gap between the data
14 and the opinion proffered.” *Id.* (citation omitted). Finally, the Court must exclude any expert
15 testimony if it is speculative or barred by other decisional law. *Id.* “In short,” *Sargon* instructs
16 trial courts “to make certain that an expert . . . employs in the courtroom the same level of
17 intellectual rigor that characterizes the practice of an expert in the relevant field.” *Id.* (quoting
18 *Kumho Tire Co., v. Carmichael*, 526 U.S. 137, 152 (1999)). The studies and other materials on
19 which the expert relies must be valid and the expert’s interpretation and application of the
20 literature to the specific plaintiff must be valid. *Cooper v. Takeda Pharms. Am., Inc.*, 239 Cal.
21 App. 4th 555, 590–91 (2015).

22 ARGUMENT

23 **I. The Court Should Exclude Dr. Sawyer’s General Causation Opinions.**

24 Dr. Sawyer should not be allowed to offer an opinion on general causation—*i.e.*, that
25 Roundup is generally capable of causing NHL in humans—because he has not followed any valid
26 methodology to reach such an opinion. As an initial matter, Dr. Sawyer’s report in this case does
27 not specify *any* methodology for reaching a general causation opinion. Indeed, the general
28 causation section of his report is just a summary of the ingredients and properties of Roundup.

1 See Brown Decl. Ex. 1, Sawyer Rpt. 26–108. Moreover, to the extent Dr. Sawyer attempts to
2 apply the Bradford Hill criteria (a method for assessing causation)—which he does not mention in
3 his report, but has purported to apply in other Roundup cases¹—he has not reliably applied that
4 methodology.

5 The Bradford Hill criteria can be applied only *after* epidemiology data demonstrates an
6 association. See Michael D. Green et al., *Reference Guide on Epidemiology*, in Fed. Judicial Ctr.,
7 *Reference Manual on Scientific Evidence* 549, 598–99 (3d ed. 2011) (“We emphasize that these
8 guidelines are employed only *after* a study finds an association to determine whether that
9 association reflects a true causal relationship.”); see also A. Bradford Hill, *The Environment and*
10 *Disease: Association or Causation?*, 58 Proc. Royal Soc’y Med. 295, 295–96 (1965). Critically,
11 Dr. Sawyer has not even attempted to assess the epidemiological studies in this case. See, e.g.,
12 Brown Decl. Ex. 1, Sawyer Rpt. 117 (“I have deferred epidemiological causation opinions to other
13 experts retained in the current matter.”); see also Brown Decl. Ex. 2, Sawyer Dep. Tr. 39:22–40:8
14 (same); *id.* at 201:1–203:5 (testifying that he would defer to epidemiologists to testify about the
15 reliability of epidemiology studies). And because Dr. Sawyer has not analyzed the epidemiology
16 evidence to determine whether there is an association between GBHs and NHL, he cannot
17 properly reach any general causation opinion.

18 Nor can Dr. Sawyer testify solely about animal or mechanism studies without explaining
19 how such evidence can be properly extrapolated to humans. See, e.g., *Gen. Elec. Co. v. Joiner*,
20 522 U.S. 136, 144–45 (1997) (affirming exclusion of animal data where expert failed to
21 adequately extrapolate to humans).² Here, although Dr. Sawyer describes certain genotoxicity
22

23 ¹ See, e.g., Brown Decl. Ex. 3, Tr. of 2/26/18 Sawyer Dep., *Johnson v. Monsanto*, No. CGC-16-
24 550128 (Cal. Super. Ct. Feb. 26, 2018) at 145 (testifying that he uses the Bradford Hill criteria in
forming causation opinions).

25 ² See also *In re Lockheed Litig. Cases*, 23 Cal. Rptr. 3d 762, 780 (Ct. App. 2005), *rev. dismissed*
26 83 Cal. Rptr. 3d 478 (ruling animal data legally insufficient where expert did not account for
dosage or species extrapolation); *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1314 (11th Cir.
27 1999) (expert “failed to adequately establish the link between the animal, retinal, and anti-collagen
studies and [plaintiff]’s complaints of disease”); *Richardson v. Richardson-Merrell, Inc.*, 857 F.2d
28 823, 830 (D.C. Cir. 1988) (animal studies of “scant utility in drawing conclusions about whether a

[Footnote continues on following page]

1 studies in his report, he offers no explanation for how the results of those studies can be
2 extrapolated to reach a conclusion that GBHs can cause NHL in humans. Accordingly, any
3 general causation opinion that Dr. Sawyer may attempt to offer would be based entirely on his
4 say-so, and should be excluded.³

5 **II. The Court Should Exclude Dr. Sawyer’s Specific Causation Opinions.**

6 Dr. Sawyer acknowledges that he has *not* performed a differential diagnosis in this case,
7 Brown Decl. Ex. 2, Sawyer Dep. Tr. 77:15–18, but nonetheless opines that Roundup was “a
8 significant factor contributing to” Plaintiffs’ NHL, Brown Decl. Ex. 1, Sawyer Rpt. 117. That
9 opinion should be excluded because Dr. Sawyer has not followed any valid methodology.⁴ He
10 apparently concludes that Roundup can be considered a potential cause for Plaintiffs based solely
11 on data extracted from epidemiology studies which, as explained above, he has not analyzed. And
12 there is nothing “specific” about such a causation analysis—it would deem Roundup to be
13 “significant factor” for *any individual anywhere in the world* who has been exposed to a threshold

14 [Footnote continues from previous page]

15 substance will cause birth defects in humans”); *Soldo v. Sandoz Pharm. Corp.*, 244 F. Supp. 2d
16 434, 546 (W.D. Pa. 2003) (“[S]tudies of laboratory animals are routinely excluded as irrelevant
17 and unreliable when proffered as a basis for medical causation testimony.”); *In re Accutane Prods.*
18 *Liab.*, 511 F. Supp. 2d 1288, 1294–95 (M.D. Fla. 2007) (“The problem with this approach is also
19 extrapolation—whether one can generalize the findings from the artificial setting of tissues in
20 laboratories to whole human beings.” (internal quotation omitted)).

21 ³ Dr. Sawyer also claims that his general causation opinion includes an opinion on the “latency” of
22 NHL. *See* Brown Decl. Ex. 1, Sawyer Rpt. 117. His “latency” opinion consists of nothing more
23 than presenting a chart that merely lists latency periods from certain epidemiology studies (which,
24 as noted above, he concedes he is not analyzing). *See id.* at 112–13. Dr. Sawyer’s extraction of
25 these latency estimates without further analysis is not a proper expert opinion, would not be
26 helpful to the jury, and should be excluded.

27 ⁴ Importantly, Dr. Sawyer has conceded that he has *not* concluded that Roundup is a “substantial
28 contributing factor” in causing Plaintiffs’ NHL as that term will be defined for the jury. *See*
Brown Decl. Ex. 2, Sawyer Dep. Tr. 79:5–80:6 (“Q: You are not trying to apportion some
percentage of the cause of the Pilliod’s NHL to glyphosate, when you use the word ‘significant,’
right? A: No. I’m deferring that to the epidemiologist.”). Instead, he claims that he deliberately
used the term “significant factor” to mean only that he can say to a 95% confidence level that
Plaintiffs fit into exposure groups that he has identified in epidemiology studies. *See id.* This
admission is proof positive that his opinion does not fit the specific causation inquiry in this case.
Furthermore, Dr. Sawyer should not be allowed to tell the jury that Roundup was a “significant
factor” in causing Plaintiffs’ NHL because such testimony would only create confusion about the
meaning of a “substantial” or “significant” factor.

1 amount of glyphosate. As if to confirm the point, Dr. Sawyer did not attempt to analyze most of
2 the Plaintiffs’ other risk factors in either his report or at deposition, claiming instead that he
3 “deferred” such an analysis to other experts. Dr. Sawyer’s results-driven analysis does not
4 resemble any sort of valid specific causation analysis, and should be excluded under *Sargon*.

5 **A. Dr. Sawyer Concludes That Roundup Is A “Significant Factor” in Plaintiffs’**
6 **NHL Based On His Say-So About Epidemiological Studies That He**
7 **Admittedly Did Not Analyze.**

8 The foundation for Dr. Sawyer’s “specific causation” opinion is his comparison of the
9 number of days Plaintiffs used Roundup to usage thresholds from three epidemiology studies,
10 which, according to him, demonstrate that a person with Plaintiffs’ exposure is at increased risk of
11 developing NHL. *See* Brown Decl. Ex. 1, Sawyer Rpt. 22–23. This analysis has several flaws
12 that, taken alone or together, require exclusion.

13 *First*, Dr. Sawyer lacks the requisite expertise to draw conclusions from the
14 epidemiological studies. Dr. Sawyer based his exposure threshold on data from epidemiology
15 studies, but he is not an epidemiologist, he does not consider himself an epidemiology expert, and
16 he disclaimed any attempt to analyze or interpret the studies at issue. *See, e.g.*, Brown Decl. Ex. 4,
17 Tr. of 12/20/18 Sawyer Dep. (*Stevick v Monsanto*) 244:13–15 (“Sawyer *Stevick* Dep. Tr.”); Brown
18 Decl. Ex. 1, Sawyer Rpt. 117. In fact, he stated in his report that he had “deferred epidemiological
19 causation opinions to other experts retained in the current matter.” Brown Decl. Ex. 1, Sawyer
20 Rpt. 117. At his deposition, he practically refused to answer substantive questions about the
21 epidemiological studies on which he relies. Rather, he testified that he would defer to
22 epidemiologists on virtually every aspect of the epidemiology studies, from big-picture questions
23 about the sufficiency of human data to show a connection between GBHs and NHL, *see* Brown
24 Decl. Ex. 2, Sawyer Dep. Tr. 39:22–40:22, to other matters such as epidemiological study design;
25 statistical analysis of epidemiology studies; results of epidemiological studies; and the validity of
26 epidemiological studies, *see id.* at 207:2–6; 209:25–210:13; 213:8–20; 231:25–232:8; 233:11–
27 234:25. In fact, although he claims the epidemiology data he extracted shows a “dose response”
28 relationship, he refused to say whether that “response” (*i.e.*, an elevated odds ratio) was actually
attributable to GBHs, as opposed to other factors such as a personal history of cancer or other

1 pesticides. *Id.* at 260:9–261:13. The Court should not allow Dr. Sawyer to opine on topics that
2 exceed his expertise, which includes extracting alleged thresholds from studies he is not qualified
3 to evaluate. *See, e.g., Dura Auto. Sys. of Ind., Inc. v. CTS Corp.*, 285 F.3d 609, 614 (7th Cir.
4 2002) (“A scientist, however well credentialed he may be, is not permitted to be the mouthpiece of
5 a scientist in a different specialty. That would not be responsible science.”).

6 *Second*, even if Dr. Sawyer were qualified to properly analyze the epidemiology data on
7 which he relies, that analysis could not justify his conclusion that Roundup caused *a particular*
8 *plaintiff’s* cancer. As Judge Chhabria has recognized in the parallel MDL proceeding, “[w]hether
9 [an] agent *causes* the outcome ... cannot be proven by epidemiological studies alone.” *In re*
10 *Roundup*, 2018 WL 3368534, at *7; *see also* Reference Manual on Scientific Evidence at 598
11 (“[E]pidemiology cannot prove causation”). One of Plaintiffs’ own experts confirms the
12 point, agreeing that epidemiologists do not make “hard” conclusions about cause. *See* Brown
13 Decl. Ex. 5, Tr. of 11/26/2018 Weisenburger Dep., *Adams v. Monsanto*, No. 17SL-CC0271 (Mo.
14 Cir. Ct. Nov. 26, 2018), 41:19–42:4. But that is what Dr. Sawyer has done: He has concluded
15 that merely because Plaintiffs were exposed to Roundup for a number of days that exceeds his
16 minimal “number-of-days” threshold presented by two of the three epidemiological studies on
17 which he relies, Roundup caused their NHL.⁵ Moving from general causation (can an agent cause
18 cancer) to specific causation (did it cause the particular plaintiff’s cancer) requires more than just
19 say-so—but that is all Dr. Sawyer has provided.

20 *Third*, while the foregoing points suffice to justify exclusion of Dr. Sawyer’s threadbare
21 analysis, it is also important to note that his exposure calculations are flawed. Dr. Sawyer used the
22 United Kingdom Prediction Operator Exposure Model (POEM) to calculate an estimated daily
23 dose of glyphosate to which Plaintiffs allegedly were exposed, expressed as milligrams per

24 ⁵ While Dr. Sawyer noted that certain studies allegedly show that Roundup can have a genotoxic
25 effect on human cells, he provides no justification for concluding that Roundup had this kind of
26 effect on Plaintiffs, and no explanation for how any alleged genotoxic effect led to their
27 developing NHL. In fact, Dr. Sawyer conceded that he did not review any pathology slides for
28 Plaintiffs, testifying again that he defers to other experts for that analysis. *See* Brown Decl. Ex. 2,
Sawyer Dep. Tr. 180:4–181:18. So here too, Dr. Sawyer’s analysis consists of general causation
evidence combined with pure *ipse dixit*.

1 kilogram per day. Brown Decl., Ex. 1, Sawyer Rpt. 16. The POEM model is a European
2 regulatory formula used to estimate pesticide exposure in pesticide spray operators in the United
3 Kingdom; because it is a regulatory formula, it systematically overestimates exposure. See Brown
4 Decl. Ex. 4, Sawyer *Stevick* Dep. Tr. 205:14–206:25. Dr. Sawyer has conceded that this model is
5 not calibrated for glyphosate, Brown Decl. Ex. 6, Tr. of 10/16/18 Sawyer Dep., *Hall v. Monsanto*,
6 No. 1622-CC01071 (Mo. Cir. Ct. Oct. 16, 2018) 437:7–11 (agreeing that POEM was not based on
7 glyphosate exposure), and was instead created using a “surrogate chemical,” see *id.*, which is more
8 easily absorbed and less readily excreted than glyphosate.⁶ Dr. Sawyer offered no explanation for
9 why it was appropriate to use POEM in this case, with these Plaintiffs, and with glyphosate. See,
10 e.g., *O’Conner v. Commonwealth Edison Co.*, 807 F. Supp. 1376, 1390 (C.D. Ill. 1992) (“Rules of
11 both science and evidence require a scientist or an expert to have a verifiable scientific basis for
12 his opinion.”).

13 Dr. Sawyer further admitted that the data he selected for input into his POEM calculations
14 were chosen to “represent[] the potential worst case exposure in a single year” of Plaintiffs’ thirty
15 years of use. Brown Decl. Ex. 2, Sawyer Dep. Tr. 303:1–4. For example, Dr. Sawyer based his
16 POEM calculation on Plaintiffs’ alleged use at only one of the four properties where they report
17 having used Roundup, even though that property was not where Plaintiffs lived or where their use
18 was most consistent and persistent. See *id.* at 303:19–302:25; Brown Decl. Ex. 1, Sawyer Rpt.
19 12–14. Indeed, Dr. Sawyer candidly admitted that his POEM exposure calculations “do not
20 represent the average exposure on a typical application day when [Plaintiffs] applied glyphosate
21 through their course of applying glyphosate.” Brown Decl. Ex. 2, Sawyer Dep. Tr. 303:5–11.
22 This highlights the results-driven nature of Dr. Sawyer’s opinions, which is yet another basis for
23 exclusion. See *Lust ex rel. Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996)
24 (affirming exclusion of expert testimony, noting that experts cannot pick and choose from the
25 scientific landscape).

26 _____
27 ⁶ See Int’l Agency for Research on Cancer, *Some Organophosphate Insecticides and Herbicides*,
28 *Monograph Vol. 112 on the Evolution of Carcinogenic Risks to Humans* 363–65 (2015),
<https://monographs.iarc.fr/wp-content/2018/07/mono112.pdf>.

1 **B. Dr. Sawyer Does Not Consider Other Potential Causes of Plaintiffs' NHL.**

2 Dr. Sawyer's failure to consider other possible risk factors confirms that his "specific
3 causation" opinion is not, in fact, a specific causation opinion at all. When asked whether he
4 considered other possible risk factors "for the purpose of [his] expert opinion as to the cause of the
5 Pilliods' NHL diagnosis," Dr. Sawyer responded, "I deferred that." Brown Decl. Ex. 2, Sawyer
6 Dep. Tr. at 77:22-25. He testified that he has not evaluated the Pilliods' ██████████
7 ██████████, saying "I'm deferring that to the oncologists." *Id.* at 78:14-18. When
8 asked whether he considered the Pilliods' ██████████ as a risk factor, he again testified, "I'm deferring
9 that." *Id.* at 83:21-25. And when asked whether the Pilliods' NHL could be the result of
10 unknown causes, he responded, "it's deferred." *Id.* at 175:12-176:9. Dr. Sawyer relinquished any
11 ability to offer a specific causation opinion by his repeated deferrals. He cannot properly reach
12 such an opinion without considering Plaintiffs' individual circumstances, such as whether their
13 NHL might be attributable to some factor other than Roundup. *See, e.g., In re Hanford Nuclear*
14 *Reservation Litig.*, 292 F.3d 1124, 1133 (9th Cir. 2002) (explaining that specific or "'individual
15 causation' refers to whether a particular individual suffers from a particular ailment as a result of
16 exposure to a substance").

17 In sum, there is nothing "specific" about Dr. Sawyer's specific causation opinion. His
18 methodology consists of nothing more than counting days of exposure and comparing them to data
19 plucked from epidemiology studies he is not qualified to analyze, with no analysis whatsoever of
20 Plaintiffs' unique medical history and circumstances. Thus, any specific causation opinion he
21 attempted to offer would be based on nothing more than his say-so, and should be excluded.

22 **III. The Court Should Exclude Dr. Sawyer's Remaining Opinions.**

23 The Court should preclude Dr. Sawyer from opining about Monsanto documents and the
24 ethics of Monsanto's employees. Dr. Sawyer has agreed that he is not qualified to offer an expert
25 opinion on Monsanto's conduct, intent, or state of mind. *See* Brown Decl. Ex. 4, Sawyer *Stevick*
26 Dep. Tr. 264:13-266:18; *see also* Brown Decl. Ex. 2, Sawyer Dep. Tr. 29:6-9 (agreeing that he
27 does not intend to offer opinions about the intent of the drafter of any documents). Moreover, Dr.
28 Sawyer should be precluded from offering opinions about what conclusions could be drawn from

1 Monsanto documents or from attempting to define the terms used in emails. *See, e.g., In re*
2 *Rezulin Prods. Liab. Litig.*, 309 F. Supp. 2d 531, 551 (S.D.N.Y. 2004) (excluding opinion of
3 expert who sought to serve as a storyteller for a party without bringing relevant expertise to bear
4 on facts at issue in the case). Jury inferences are for the jury to make. Dr. Sawyer’s own
5 interpretations of those emails are, if anything, *less* admissible than his speculation about what the
6 authors of those emails intended.

7 Dr. Sawyer also should be precluded from offering any opinions about “ethics with respect
8 to what a toxicologist is charged to do.” *See* Brown Decl. Ex. 2, Sawyer Dep. Tr. 29:11–21. That
9 Dr. Sawyer is a toxicologist does not automatically render him an expert on the “ethics” for
10 toxicologists. *See, e.g., Vaxiion Therapeutics, Inc. v. Foley & Lardner LLP*, 593 F. Supp. 2d
11 1153, 1163 (S.D. Cal. 2008) (explaining that the “length of tenure in a given profession” and
12 “awareness and familiarity” with ethics rules do not make someone an “expert in the ethical
13 matters of that profession” (internal quotation omitted)).⁷ Moreover, Dr. Sawyer has no
14 experience actually applying any ethical standards to the conduct of other scientists. *See* Brown
15 Decl. Ex. 7, Tr. of 8/23/18 Sawyer Dep., *Hall v. Monsanto*, No. 1622-CC01071 (Mo. Cir. Ct. Aug.
16 23, 2018) 86–88. Accordingly, to the extent Dr. Sawyer seeks to offer opinions about the ethics
17 (toxicological or otherwise) of Monsanto or any of its employees, he should be precluded from
18 doing so.

19 CONCLUSION

20 For the reasons set forth above, the Court should grant Monsanto’s Motion to Exclude
21

22 ⁷ *Dickerson Fla., Inc. v. Taylor Eng’g, Inc.*, No. 16-2012-CA-10185, 2014 WL 10802879 (Fla.
23 Cir. Ct. Oct. 22, 2014) (holding that a “presumably ... qualified engineer” is not an expert on
24 engineering ethics, noting that “[a] professional is not automatically an expert on the ethics of his
25 or her profession.”); *Am. Family Mut. Ins. Co. v. Electrolux Home Prods., Inc.*, No. 11-cv-678-slc,
26 2014 WL 2893179, at *8 (W.D. Wisc. June 26, 2014) (holding that mechanical engineer with 30
27 years of experience was “not qualified to offer an opinion regarding ‘engineering ethics’” because
28 he had “no special background or expertise in the field beyond his general familiarity with the
Engineering Code of Ethics”); *Williams v. Desperito*, No. 9C-10-164 CLS, 2011 WL 7452803, at
*4 (Del. Super. Ct. Oct. 14, 2011) (holding that urological surgeon with “impressive” curriculum
vitae was not qualified to offer opinion on medical ethics and hospital advertisements because he
did not have any knowledge on those topics and had never “sat on a medical ethics committee”).

1 Testimony of Dr. William Sawyer.

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Respectfully submitted,

3 /s/ Kirby Griffis

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