IN THE COURT OF APPEALS
STATE OF GEORGIA

CASE NO. A24A0657

FORD MOTOR COMPANY,

Defendant-Appellant,

v.

KIM HILL and ADAM HILL, surviving children and Co-Administrators of the Estates of Melvin Hill and Voncile Hill, deceased,

Plaintiffs-Appellees.

AMICUS CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE GEORGIA CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANT-APPELLANT FORD MOTOR COMPANY

Laurie Webb Daniel
Georgia Bar No. 204225
Matthew D. Friedlander
Georgia Bar No. 416707
WEBB DANIEL FRIEDLANDER LLP
75 14th Street N.W., Suite 2450
Atlanta, Georgia 30309
Phone: (404) 433-6430
laurie.daniel@webbdaniel.law
matthew.friedlander@webbdaniel.law

Judson H. Turner
Georgia Bar No. 719485
GILBERT HARRELL
SUMERFORD &MARTIN, P.C.
777 Gloucester Street, Suite 200
Brunswick, Georgia 31520
Telephone: (912) 265-6700
Facsimile: (912) 264-0244
jturner@ghsmlaw.com

Counsel for Amicus Curiae The Chamber of Commerce of the United States of America and the Georgia Chamber of Commerce

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STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America ("the U.S. Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community. The U.S. Chamber has filed many amicus briefs in significant punitive-damages cases.

The Georgia Chamber of Commerce, Inc. ("Georgia Chamber") serves the unified interests of its nearly 50,000 members—ranging in size from small businesses to Fortune 500 corporations—covering a diverse range of industries across Georgia's 159 counties. The Georgia Chamber is the State's largest business advocacy organization and is dedicated to representing the interests of both businesses and citizens in the State. Established in 1915, the Georgia Chamber's primary mission is creating, keeping, and growing jobs in Georgia. The Georgia Chamber pursues this mission, in part, by aggressively advocating the business and

industry viewpoint in the shaping of law and public policy to ensure that Georgia is economically competitive nationwide and in the global economy.

Many members of the U.S. Chamber and all members of the Georgia Chamber (collectively, the "Chambers") are businesses operating in Georgia. The trial court's unwarranted "death penalty" sanction, erroneous evidentiary ruling, and refusal to remit the jury's punitive damages award to its constitutionally permissible limits is deeply problematic for all the Chambers' members—especially those who face products liability lawsuits that permit jurors to award uncapped punitive damages without a showing of specific intent to cause harm.

The Chambers support all of Appellant Ford Motor Company's well-reasoned enumerations of error. The trial court greatly exceeded its statutory and inherent authority in imposing "death penalty" sanctions, and it compounded that error with the erroneous admission of highly prejudicial "other similar incident" evidence but exclusion of probative defense evidence. The trial court functionally directed a verdict in favor of Plaintiffs on the punitive-damages claim, allowed Plaintiffs to arouse the passions of the jury with prejudicial similar incident evidence, and deprived Ford of an opportunity to present any defense whatsoever—which led to a jaw-dropping $1.7 billion punitive-damages award.

All these errors greatly concern the Chambers and their members, but the Chambers are especially concerned with the trial court's abrogation of its duty to

reduce the punitive damages award to its constitutionally permissible limits. Few issues are more important to U.S. businesses than the fair and lawful administration of punitive damages. As a result, the Chambers have a vital interest in the proper enforcement of the constitutional limits on punitive damages.

Indeed, Georgia is hardly immune from the trend of growing punitive-damages awards. The U.S. Chamber's Institute for Legal Reform has reported that Georgia's liability system ranked 44th amongst the states in its fairness and reasonableness of damages awards, as perceived by U.S. businesses. *See* U.S. Chamber Institute for Legal Reform, *2019 Climate Survey: Ranking the States, A Survey of the Fairness and Reasonableness of State Liability Systems* at 16 (Sept. 2019), *available at* https://instituteforlegalreform.com/wp-content/uploads/2020/10/2019-Lawsuit-Climate-Survey-Ranking-the-States.pdf. According to another ILR study, the costs of Georgia's tort system ranks 9th highest in the nation as a percentage of state GDP (2.56%), and 7th highest in the nation in costs per household ($4,157). *See* https://instituteforlegalreform.com/wp-content/uploads/2022/11/Tort-Costs-in-America-An-Empirical-Assessment-of-Costs-and-Compensation-of-the-U.S.-Tort-System.pdf. These statistics are extremely troubling for Georgia businesses. And they depend on Georgia courts to enforce their well-established federal and state constitutional due-process rights in the face of runaway punitive damages awards.

INTRODUCTION

Among its various flaws, the judgment in this case is facially unconstitutional. After a trial tainted by questionable rulings against the defense, including an unwarranted "death penalty" sanction and erroneous harmful evidentiary rulings, the jury awarded the decedents' two surviving children $1,700,000,000 in punitive damages—over *302 times* the $5,626,950 compensatory award attributable to Ford for which punitive damages could attach. But "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process," and "[w]hen compensatory damages are substantial," as they are here, then a punitive-damages award "equal to compensatory damages . . . reach[es] the outermost limit of the due process guarantee." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). Thus, the trial court here entered and then refused to adjust a blatantly unconstitutional $1,716,826,950 judgment on the jury's verdict without even *considering* the U.S. Supreme Court's guidance on the federal constitutional limitations of runaway punitive-damages awards.

Moreover, the trial court did not heed the additional limits on punitive damages imposed by Georgia's own constitution. For example, not only does this punitive-damages award run afoul of Georgia's constitutional prohibition of excessive fines, this punitive-damages award is not based on the "enlightened

conscience" of the jury as needed to comport with the due process guaranteed by the Georgia Constitution. The record shows that this runaway verdict is the product of passion and prejudice arising from the inflammatory instructions the trial court gave the jury, telling them that they must accept as fact—though unproven—that Ford willfully inflicted harm on an unsuspecting public. And, under Georgia law, the vast disparity between a punitive and compensatory damages—well over $1 billion here—confirms that this punitive-damages award is infected by bias, requiring a reversal.

In sum, both the federal and the state due-process clauses require a level of predictability that is belied by this and other outlandish punitive damages awards. Even more than others, this case calls out for the Court to step in and correct this abuse of Georgia's judicial system. So, the Court should take this opportunity to make clear that Georgia courts will enforce constitutional limits on punitive damage, whether addressed under federal or state law. The Court should reverse.

ARGUMENT

I. This Court should enforce the constitutional limitations on punitive-damages awards where, as here, the compensatory award is "substantial."

After three seminal opinions from the United States Supreme Court and a multitude of state and federal appellate decisions interpreting them, it is now widely settled that where the compensatory award is substantial—and anything

over $1 million certainly is—a punitive-damages award generally should be capped at a 1:1 ratio under the Due Process clause of the Fourteenth Amendment to the United States Constitution absent some other extraordinary circumstance. *See, e.g. Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1073-74 (10th Cir. 2016); *Boerner v. Brown & Williams Tobacco Co.*, 394 F.3d 594, 603 (8th Cir. 2005).

The trial court here, however, did not evaluate the constitutional propriety of the $1.7 billion dollar punitive-damages award under the mandatory, settled framework established by the U.S. Supreme Court. True, Georgia's appellate courts have not explicitly embraced this now well-established constitutional cap on punitive-damages awards, but this Court should take the opportunity to do so here. Guidance from this Court on the analytical framework required by the U.S. Constitution is needed to prevent lower courts from entering judgments on unconstitutionally excessive punitive-damage awards like the one in this case.

A. The Due Process clause of the Fourteenth Amendment mandates "exacting" review of an exorbitant punitive-damages award.

"[T]he stark unpredictability of punitive awards" is a "real problem." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 499 (2008). "Apart from impairing the fairness, predictability and proportionality of the legal system, judgments awarding unreasonable amounts as damages impose harmful, burdensome costs on society." *Payne v. Jones*, 711 F.3d 85, 94 (2d Cir. 2013). "[A]n excessive verdict that is

allowed to stand establishes a precedent for excessive awards in later cases." *Id.* Indeed, "[t]he publicity that accompanies huge punitive damages awards will encourage future jurors to impose similarly large amounts." *Id.* (internal citation omitted). In turn, "[u]nchecked awards levied against significant industries can cause serious harm to the national economy." *Id.*

Fortunately, "it is well established that there are procedural and substantive constitutional limitations on [punitive damages] awards." *State Farm*, 538 U.S. at 416. Due process "prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." *Id.* These limitations derive from the principle that a person is entitled to "fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996). This notice allows members of the public—including businesses—to shape their conduct according to their expected liability.

The U.S. Supreme Court has addressed the constitutionality of punitive damages in three seminal decisions. In *Gore*, a jury returned a verdict finding BMW liable for compensatory damages of $4,000 and punitive damages of $4,000,000, upon a finding that a BMW disclosure policy constituted malicious fraud. 517 U.S. at 564. The Alabama Supreme Court affirmed, but reduced the

award to $2 million because the jury calculated the punitive damages based on non-disclosure in all states, not just Alabama. *Id.* at 567.

In concluding that the award against BMW was still "excessive" in violation of the Due Process Clause of the Fourteenth Amendment to United States Constitution, the U.S. Supreme Court established "three guideposts" to assess the constitutionality of a punitive-damages award: (1) "the degree of reprehensibility of" the misconduct; (2) "the disparity between the harm or potential harm suffered by" the plaintiff and the punitive damages award; and (3) "the difference between this remedy and the civil penalties authorized or imposed in comparable cases." *Id.* at 575. The Court eschewed a "mathematical formula" because, in certain circumstances, a higher ratio may be justified "if, for example, a particularly egregious act has resulted in only a small amount of economic damages" or "the injury is hard to detect or the monetary value of the noneconomic harm might have been difficult to determine." *Id.* at 582-83.

In *State Farm*, a jury awarded $1 million in compensatory damages and $145 million in punitive damages against State Farm for bad faith, fraud, and intentional infliction of emotional distress when it refused to settle a wrongful-death claim for the insured plaintiff's policy limit. 538 U.S. at 413-14. The Court held that, "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process" and

that "an award of more than four times the amount of compensatory damages might be close to the line of constitution impropriety." *Id.* Although a ratio could exceed four-to-one, the Court reiterated such an award should be reserved for "a particularly egregious act [that] has resulted in only a small amount of economic damages." *Id.* The Court made clear that "exacting" judicial review of a jury's punitive damages award was necessary to "ensure[] that an award of punitive damages is based upon an application of law, rather than a decisionmaker's caprice." *Id.* at 418 (internal quotation marks omitted).

In *State Farm*, the Supreme Court "addressed [the ratio] guidepost with markedly greater emphasis and more constraining language" than it had in previous cases, "tighten[ing]" the limits on constitutional punitive awards. *Simon v. San Paolo U.S. Holding Co*., 113 P.3d 63, 76 (Cal. 2005). Most importantly, *State Farm* "emphasizes and supplements" *Gore* "by holding that '[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.'" *Bains LLC v. ARCO Prods. Co*., 405 F.3d 764, 776 (9th Cir. 2005) (quoting *State Farm*, 538 U.S. at 425).

Most recently, in *Exxon,* the Court addressed an extremely large punitive-damages award in a maritime case governed by the common law, but its opinion requiring a substantial reduction drew heavily from due-process jurisprudence. 554

U.S. at 479. Exxon pleaded guilty to violations of the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act, requiring it to pay $25 million in fines and $100 million in restitution. *Id.* at 479. In subsequent consolidated civil actions, the jury was instructed on punitive damages in accordance with the guideposts set forth in *Gore* and awarded $5 billion against Exxon. *Id.* at 481. In recognizing the shortcomings of its guideposts, the Court stated that "[t]he real problem . . . is the stark unpredictability of punitive awards." *Id.* at 499. The Court chose to adopt a 1:1 ratio as a "fair upper limit" in maritime cases to guard against this unpredictability. *Id.* at 514.

Despite the maritime context of the opinion, the Court emphasized that "the potential relevance of the ratio between compensatory and punitive damages is indisputable" and that analysis of such ratios is "a central feature in our due process analysis." *Id.* at 507. The Court reiterated that "a single-digit maximum is appropriate in all but the most exceptional of cases," and "*when compensatory damages are substantial*, then a lesser ratio, perhaps *only equal to compensatory damages*, can reach the outermost limit of the due process guarantee." *Id.* at 514-15. (emphasis added).

To be sure, these principles do not establish a rigid mathematical formula for calculating punitive damages, but instead create a rough framework under which the maximum permissible ratio is directly related to the degree of reprehensibility

and inversely related to the harm caused. In other words, for any particular degree of reprehensibility, as the compensatory damages increase, the maximum permissible ratio decreases. *See Williams v. First Advantage LNS Screening Sols. Inc*, 947 F.3d 735, 755 (11th Cir. 2020) ("[H]igher ratios between compensatory damages and punitive damages are more reasonably justified when the former is for a relatively small amount of money."); *see also Cote v. Philip Morris USA, Inc*., 985 F.3d 840, 849 (11th Cir. 2021) (similar). And for any particular amount of compensatory damages, the lower on the reprehensibility spectrum the conduct falls, the lower the constitutionally permissible ratio. Thus, "[w]hen compensatory damages are low but the degree of reprehensibility high, double digit ratios, such as 10:1, might comport with due process." *Lompe*, 818 F.3d at 1069. But "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *State Farm*, 538 U.S. at 425.

B. Courts nationwide frequently reduce punitive-damages awards to a 1:1 ratio when the compensatory damages are deemed "substantial."

Federal appellate courts across the United States have taken the U.S. Supreme Court's guidance seriously and reduced punitive-damages awards to a 1:1 ratio when the compensatory damages are deemed "substantial." *See, e.g. Saccameno v. U.S. Bank Nat'l Assn*.. 943 F.3d 1071, 1078 (7th Cir. 2019)

(reducing a punitive-damages award of $3 million to the size of the compensatory-damages award of $582,000, which was considered a "large total compensatory award."); *Boerner*, 394 F.3d at 603 (reducing the jury's punitive award from $15 million (3:1 ratio) to $5 million (1.25:1 ratio) because the award "is excessive when measured against the substantial compensatory award"); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (reducing punitive award with 10:1 ratio to 1:1 ratio because "plaintiff's large compensatory award" of $600,000 "militates against departing from the heartland of permissible exemplary damages"); *Payne*, 711 F.3d at 103 (remitting punitive-damages award of $300,000 to $100,000 when the compensatory damages were $60,000 "given the substantial amount of the compensatory award"); *Jurinko v. Med. Protective Co*., 305 F. App'x 13 (3d Cir. 2008) (reducing 3.13:1 ratio to 1:1 ratio where compensatory damages and attorneys' fees totaled $2 million); *Bach v. First Union Nat'l Bank*, 486 F.3d 150 (6th Cir. 2007) (ordering remittitur of $2,628,600 punitive award to no more than $400,000, where compensatory damages were $400,000); *Jones v. United Parcel Serv., Inc*., 674 F.3d 1187, 1206-08 (10th Cir. 2012) (reducing $2,000,000 punitive award to amount equal to the $630,307 compensatory award).

A number of state appellate courts also have reduced punitive awards to the amount of the compensatory damages or below. *See, e.g. Nardelli v. Metro. Grp.*

Prop. & Cas. Ins. Co., 277 P.3d 789, 806-10 (Ariz. Ct. App. 2012) (reducing to a 1:1 ratio a punitive award that the lower court had already reduced from roughly 355:1 to 4:1, since the conduct was at most in "the middle range of the reprehensibility scale" and the harm was only economic); *Roby v. McKesson Corp.*, 219 P.3d 749, 770 (Cal. 2009) (holding that 1:1 was constitutional maximum in light of the "relatively low degree of reprehensibility and the substantial award of noneconomic damages"); *Weinstein v. Prudential Prop. & Cas. Ins. Co*., 233 P. 3d 1221, 1262 (Idaho 2010) (reducing $6 million punitive award to $1.89 million, the amount of compensatory damages); *Thistlethwaite v. Gonzalez*, 106 So. 3d 238, 267-68 (La. Ct. App. 2012) (reducing punitive award to a 1:1 ratio, citing the high level of compensatory damages); *Burns v. Prudential Sec., Inc*., 857 N.E.2d 621, 659 (Ohio Ct. App. 2006) (reducing punitive award from $250 million to $6.8 million where compensatory damages on tort claim were approximately $6 million).

Thus, especially where compensatory damages awards are substantial, courts must carefully adhere to the U.S. Supreme Court's guidance on the ratio requirement. This remains true even in cases where the conduct at issue might be deemed highly reprehensible. *See, e.g., Ondrisek v. Hoffman*, 698 F.3d 1020, 1030 (8th Cir. 2012) (surveying other Eighth Circuit decisions and concluding that, "[d]espite the exceptionally reprehensible nature of [the defendant's] conduct, it

would be unconstitutional to let the punitive damages—and their 10:1 ratio to compensatory damages—stand"); *Boerner*, 394 F.3d at 602–03 (holding that even though defendant's conduct was "highly reprehensible," a $15 million punitive damages award, when measured against $4.025 million compensatory award, was excessive, and remitting to a 1:1 ratio); *Mendez-Matos v. Guaynabo*, 557 F.3d 36, 54-55 (1st Cir. 2009) (reducing 10:1 ratio to 1:1 where defendant's conduct "was reprehensible," but "not particularly egregious.").

C. This Court's analysis of Fourteenth Amendment jurisprudence also supports use of the 1:1 ratio where, as here, the compensatory damages are substantial.

Since *Gore*, *State Farm*, and *Exxon*, this Court has addressed the federal constitutional limits of punitive-damages awards on a handful of occasions. For example, in 1996, this Court concluded that *Gore* did not require remittance of a $45,000 punitive damages award just because the compensatory damages were nominal. *Se. Sec. Ins. Co. v. Hotle*, 222 Ga. App. 161 (1996). But the *Hotle* case stands for the unremarkable proposition that a modest punitive damages award imposed on top of a nominal award of compensatory damages does not violate the Due Process clause of the Fourteenth Amendment, *see id.* at 161. And this Court—in conformity with federal appellate courts—has since noted more explicitly that a ratio analysis is not informative when compensatory damages are nominal. *See Bearoff v. Craton*, 350 Ga. App. 826, 845 (2019) ("[A] number of federal appellate

courts have recognized that in cases where a plaintiff receives only a small amount of compensatory damages or nominal damages, a punitive damages award may exceed the single digit ratio without violating due process.").

This Court also has allowed varying ratios where the compensatory damages were more than nominal but well below $1 million. *See Fassnacht v. Moler*, 358 Ga. App. 463, 479 (2021) (affirming a judgment entered on verdict awarding $30,000 in compensatory damages and $375,000 in punitive damages); *Bowen & Bowen Const. Co. v. Fowler*, 265 Ga. App. 274, 278 (2004) (upholding punitive damages capped at $250,000 that were awarded on top of a $100,000 compensatory award) *Craig v. Holsey*, 264 Ga. App. 344, 344 (2003) (allowing punitive damages that were multiples of the jury's insubstantial $8,801 compensatory award); *Kent v. A.O. White*, 253 Ga. App. 492, 503 (2002); (reducing punitive damages to 5:1 ratio where the compensatory damages were in the low five figures). But these decisions are entirely compatible with the precedents from federal courts that apply a 1:1 ratio where the compensatory damages are substantial, exceeding $1 million.

Moreover, where there has been a high dollar compensatory award, the ratios approved *by this Court* have approximated 1:1. *See Time Warner Ent. Co. v. Six Flags Over Georgia, LLC*, 254 Ga. App. 598, 607 (2002) (affirming a ratio of 1.3:1 in a business tort suit where the compensatory award was nine figures and the

jury found a specific intent to harm); *Sumitomo Corp. of Am. v. Deal*, 256 Ga. App. 703, 710 (2002) (affirming a ratio of 1.42:1 in a trespass and nuisance case where the compensatory award was six figures). Accordingly, this Court's prior decisions fully support capping the punitive damages in this case at the 1:1 ratio given the substantial compensatory damages that were awarded here.

II. The punitive-damages award here is facially unconstitutional under the Due Process Clause of the Fourteenth Amendment.

Even if the evidence permits an award of punitive damages, *cf.* Appellant's Br. at 30-33, the award here dramatically exceeds what due process allows. Applying the constitutionally required standards, the punitive-damages award here—over 302 times the compensatory award attributable to Ford and for which punitive damages might attach—far exceeds constitutional limits, regardless of Ford's conduct. In *State Farm*, the Court held that a punitive-damages award 145 times compensatory damages exceeded constitutional bounds—i.e., $145 million in punitive damages compared to a "substantial" $1 million compensatory award. 538 U.S. 410-411. That case was "neither close nor difficult." *Id.* at 418.

This case is even easier. The ratio of punitive to compensatory damages is over 302:1, double the clearly unconstitutional ratio in *State Farm* and far beyond single digits. The only question is the amount of reduction necessary to ensure that any punitive-damages award satisfies due process (if any award at all is warranted).

As Ford explains in its opening brief, there is scant, if any, evidence that it engaged in reprehensible conduct. *See* Appellant's Br. at 30-32, 42-43. At minimum, to satisfy due process, the punitive-damages award must be reduced to the amount of substantial compensatory damages to reflect a constitutionally permissible 1:1 ratio. Even if there were evidence of Ford's alleged reprehensibility, there is nothing "exceptional" about this case that merits a higher single-digit multiplier. *See Exxon*, 554 U.S. at 514-15; *Mendez-Matos*, 557 F.3d at 54-55.

III. Due to the inflammatory jury instructions on the willfulness issue, the punitive damages verdict is not the product of unbiased jury deliberations but is rather tainted by passion and prejudice in violation of Georgia's Due Process Clause.

Like the United States Constitution, the Georgia Constitution has a due process clause. Ga. Const. Art. I, Sec. I, Par. I ("No person shall be deprived of life, liberty, or property except by due process of law."). Under Georgia law, due process in the punitive damages context limits an award to damages appropriate for the deterrence of willful, wanton, or similar conduct prohibited by Georgia's punitive damages statute, as determined by the "enlightened conscience of the jury." *See Hosp. Auth. of Gwinnett Cty. v. Jones*, 259 Ga. 759, 761 (1989). Such an award is generally entitled to deference and, under Georgia law, it is not subject to a strict ratio rule. *Id.* at 762; *see also Time Warner*, 254 Ga. App. at 603. But "an appellate court may look to the ratio of compensatory to punitive damages for

some evidence that the punitive damages award is infected by bias or prejudice" and thus is unlawful. *Time Warner*, 254 Ga. App. at 604; *see also id.* at 605 n.8 (observing that due process under the Georgia Constitution requires an analysis "quite similar to that applied to common law excessiveness claims[,]" which looks to whether the award is tainted by passion and prejudice); *Jones*, 259 Ga. at 762 n. 9 ("An inordinately large deterrence award may be set aside as reflecting undue passion and prejudice rather than an enlightened conscience.") (citing *Jones v. Spindel*, 122 Ga. App. 390, 394 (1970)).

Spindel is illustrative. There, an engineer was awarded compensatory damages of approximately $30,000 to which the jury added punitive damages of almost equal amount to bring the total award to $60,000. *Spindel*, 122 Ga. App. at 394. In vacating the award and ordering a new trial, this Court held that the punitive damages award using a 1:1 ratio was nonetheless, as a matter of law, excessive where the jury's compensatory award was at the high end of the evidence.

> We recognize that ordinarily, if exemplary damages are authorized, the amount is dependent on the enlightened conscience of impartial jurors, and that an authorized verdict which has the approval of the trial judge should not be disturbed. Blind adherence to this rule, however, by an appellate court eliminates reason from the law. . . . [I]t is obvious that the jury selected the upper range of the evidence . . . . To compensate the plaintiff additionally by the [same] amount . . . appears to us to be indicative of an undue bias for the plaintiff and against the defendants[.]

Id.

If the punitive damages award in *Spindel* was excessive as a matter of law under Georgia's due process clause because it was roughly the same amount as the high-end compensatory award, surely the punitive damages award in this case violates Georgia's due process clause. Standing alone, a punitive damages award that is 302 times the amount of the compensatory damages is overwhelming evidence that "that the punitive damages award is infected by bias or prejudice." *Spindel*, 122 Ga. App. at 394. But this record is even stronger than that. Here, the record shows that the jury necessarily was biased against Ford because the trial court instructed the jurors, based on the sanctions order, that they had to accept as fact—though it was not proven—that Ford had willfully inflicted harm on an unknowing public. This instruction was highly inflammatory and specifically designed to bias the jury against Ford. Thus, at a minimum, this punitive damages award must be vacated because it is repugnant to the due process clause of the Georgia Constitution.

IV. The Court should not only overturn the award but also make clear that trial courts must perform an exacting constitutional gate-keeping function when ruling on punitive damages.

As shown above, under the federal and state constitutions, reviewing courts must take an active role in policing punitive awards for excessiveness. *See State Farm*, 538 U.S. at 418. Civil juries tasked with setting punitive damages have

"nothing to rely on other than the instincts of the jurors and random, often inaccurate, bits of information derived from press accounts or word of mouth in the community about how [punitive damages] have been valued in other cases." *Payne*, 711 F.3d at 93. They have "no objective standards to guide them, and understandably outraged by the bad conduct of the defendant, jurors may be impelled to set punitive damages at any amount." *Id.* at 93-94; *see also Williams*, 947 F.3d at 762 (11th Cir. 2020) ("[J]uries are often left to pick a number out of the sky, tethered to nothing more than the jury's emotional reaction to the misdeed of a corporation with deep pockets.")

Studies have shown that "salient numbers, such as a plaintiff's request for a specific dollar amount, have a dramatic impact on [mock] jurors' awards" of punitive damages, whether or not those numbers have a legitimate relationship to the appropriate punishment for the defendant's conduct. CASS R. SUNSTEIN ET AL., PUNITIVE DAMAGES: HOW JURIES DECIDE 240 (2002). Moreover, jurors may be influenced by extraneous factors such as "[r]egional biases against particular companies." *Payne*, 711 F.3d at 94. It is thus critically important that courts diligently carry out their role under the Due Process Clause to ensure that punitive damages imposed by a civil jury are no "greater than reasonably necessary to punish and deter." *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 22 (1991).

Here, the trial court abdicated its gate-keeping role with respect to the punitive-damages process. Instead of engaging in an exacting review to determine whether deterrence could be accomplished by a lesser sanction, the court entered judgment on a $1.7 billion punitive damages award based on two paragraphs of cursory analysis that failed to even cite the *State Farm* framework. Instead of considering the Fourteenth Amendment's requirements, the court simply noted that Georgia's punitive-damages statute "expressly excludes" products liability cases from any statutory cap. But the lack of a statutory cap in this context cannot trump constitutional due-process rights. Moreover, by noting that a products liability defendant can never face more than one punitive-damages award for its misconduct, the trial court expressed an apparent belief that the $1.7 billion punitive-damages award properly punished Ford for an injury to society at large. But that rationale also violates the Due Process Clause of the Fourteenth Amendment. *See Philip Morris USA v. Williams*, 549 U.S. 346, 349 (2007) (holding that a punitive damages award based in part on a "desire to punish the defendant for harming persons who are not before the court . . . would amount to a taking of property from the defendant without due process.").

Given the trial court's confusion over its constitutional gate-keeping role with respect to punitive-damages awards, this Court should not only overturn the award in this case, its opinion should make clear that Georgia's lower courts must

carefully review punitive damages to ensure their compliance with the due process rights guaranteed by the constitutions of the United States and the State of Georgia.

CONCLUSION

For the foregoing reasons, this Court should overturn the punitive-damages award and either reduce it using the 1:1 ratio required by federal law, or order a new trial because the award is patently excessive under Georgia law.

Respectfully submitted this 19th day of January, 2024.

This submission does not exceed the word count limit imposed by Rule 24.

/s/ *Laurie Webb Daniel*
Laurie Webb Daniel
Georgia Bar No. 204225
Matthew D. Friedlander
Georgia Bar No. 416707
WEBB DANIEL FRIEDLANDER LLP
75 14th Street N.W., Suite 2450
Atlanta, Georgia 30309
Phone: (404) 433-6430
laurie.daniel@webbdaniel.law
matthew.friedlander@webbdaniel.law

Judson H. Turner
Georgia Bar No. 719485
GILBERT HARRELL SUMERFORD &MARTIN, P.C.
777 Gloucester Street, Suite 200
Brunswick, Georgia 31520
Telephone: (912) 265-6700
Facsimile: (912) 264-0244
jturner@ghsmlaw.com

Counsel for Amicus Curiae The Chamber of Commerce of the United States of America and the Georgia Chamber of Commerce

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, I served a true and correct copy of the foregoing document upon the following counsel by United States mail:

Adam H. Charnes
KILPATRICK TOWNSEND
& STOCKTON LLP
2001 Ross Avenue
Suite 4400
Dallas, TX 75201

C. Allen Garrett Jr.
John P. Jett
K. Bradford Sears
KILPATRICK TOWNSEND
& STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309

Michael R. Boorman
Philip A. Henderson
WATSON SPENCE LLP
999 Peachtree Street NE
Suite 1130
Atlanta, GA 30309

Paul F. Malek
D. Alan Thomas
HUIE FERNAMBUCQ
& STEWART, LLP
3291 US-280, Suite 200
Birmingham, AL 35243

Michael W. Eady
THOMPSON COE, COUSINS
& IRONS, LLP
701 Brazos, Suite 1500
Austin, TX 78701

Counsel for Appellant Ford Motor Company

James E. Butler, Jr.
Ramsey B. Prather
Michael F. Williford
Daniel E. Philyaw
BUTLER PRATHER LLP
105 13th street
P.O Box 2766
Columbus, GA 31902

Gerald Davidson, Jr.
MAHAFFEY PICKENS
TUCKER, LLP
1550 North Brown Road, Suite 125
Lawrenceville, GA 30043

Michael G. Gray
WALKER, HULBERT, GRAY
& MOORE, LLP
909 Ball Street
P.O. Box 1770
Perry, GA 31069

Michael B. Terry
Frank M. Lowrey IV
BONDURANT MIXSON &
ELMORE
1201 W. Peachtree Street NW, Suite 3900
Atlanta, GA 30309

Counsel for Appellees Kim and Adam Hill

Christopher M. Carr, Attorney General
Logan B. Winkles, Deputy Attorney General
Adam W. D'Anella, Assistant Attorney General
GEORGIA DEPARTMENT OF LAW
40 Capitol Square, S.W.
Atlanta, GA 30334-1300

Counsel for the State of Georgia

Patrick T. O'Connor
Timothy D. Roberts
OLIVER MANER LLP
P.O. Box 10186
Savannah, GA 31412

Counsel for Alan Thomas, J. Randolph Evans, Audrey Berland, Michael Eady, Michael Boorman, Philip Henderson, and Paul Malek

/s/ *Matthew D. Friedlander*
Matthew D. Friedlander
Georgia Bar No. 416707