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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NIKKI POOSHS,
Plaintiff,
v.
PHILIP MORRIS USA, INC., et al.,
Defendants.

Case No. 04-cv-1221-PJH

ORDER

In accordance with the discussion at the January 11, 2016 hearing, the court hereby ORDERS as follows.

A. Jury Instructions (Doc. 424-1)

1. The court will not give an additional instruction to supplement the two “failure to warn” instructions – No. 23 (strict liability failure to warn) and No. 24 (negligent failure to warn).

2. The parties will meet and confer and advise the court whether they wish the court to give the jury, at the beginning of the trial, (a) only the introductory instructions, (b) the introductory instructions plus Nos. 23, 24, 27 (the “core” instructions), (c) the introductory instructions, the “core” instructions, and additional explanatory instructions re causation, substantial factor, and reliance (Nos. 22, 25, 26, 28, 29), or (d) all the instructions.

3. The court will give the concealment instruction (No. 27) as written, unless plaintiff puts on evidence of only a single fact that defendants concealed.

4. Instruction No. 30 (express preemption) will be revised to substitute

1 the phrase "Pursuant to the Labeling Act enacted by Congress, effective July 1, 1969," in
2 place of the phrase "Pursuant to the Surgeon General's directive"

3 5. Instruction No. 42 (punitive damages) will be revised to substitute the
4 phrase "malice and oppression" in place of the phrase "malice, fraud, and oppression;
5 and to substitute "Nikki Pooshs" in place of "Ms. Pooshs."

6 6. The parties shall re-submit the jury instructions to include the
7 revisions set forth above.

8 B. Verdict Form (Doc. 428-1)

9 1. Defendants shall modify the Verdict Form to include titles that
10 correspond with the jury instructions.

11 2. Question 19 shall be modified to substitute "percentage of damages"
12 in place of "percentage of responsibility."

13 3. No later than January 19, 2016, plaintiff shall file a brief, not to
14 exceed five pages, on the issue counsel raised at the hearing regarding "apportionment"
15 of liability or damages. Defendants may file a response, also not to exceed five pages,
16 no later than two days after plaintiff's brief is filed.

17 C. Exhibits

18 In designating exhibits and objections thereto, the parties may follow the
19 procedure set forth in the Sixth Final Pretrial Order (Doc. 406) at 12 with regard to
20 submission of deposition designations and objections thereto.

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22 **IT IS SO ORDERED.**

23 Dated: January 12, 2016

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PHYLLIS J. HAMILTON
United States District Judge