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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARY KAREN MORETTI,  
  
Plaintiff,  
  
v.  
  
PLIVA, INC., and TEVA  
PHARMACEUTICALS, USA, INC.,  
  
Defendants.

2:08-CV-396 JCM (GWF)

**ORDER**

Presently before the court is defendant PLIVA Inc.’s motion to alter and/or amend judgment. (Doc. # 254). Defendant filed a notice of submission of proposed order and partial withdrawal of motion to alter and/or amend judgment. (Doc. # 255). Plaintiff Mary Karen Moretti filed an opposition. (Doc. # 257). Defendant filed a reply in support of its motion. (Doc. #258).

On July 26, 2010, the court held a hearing on the plaintiff’s motion for partial summary judgment (doc. #196), defendants Teva Pharmaceuticals USA Inc. and PLIVA’s joint motion for summary judgment (doc. #206<sup>1</sup>), and the joint motion to dismiss based on federal preemption (doc. #198). At the conclusion of the hearing, the court instructed the defendant to “[p]repare an appropriate order for [it] granting summary judgment” (doc. #256). Subsequently, on August 2, 2010, defendant PLIVA submitted a proposed order to the court (doc. #248), denying the plaintiff’s

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<sup>1</sup> Defendants’ summary judgment motion (doc. #206) superseded an initial joint motion for summary judgment (doc. #204) which was missing pages when filed. Subsequently, defendant Teva reached a settlement agreement with the plaintiff, and was dismissed.

1 motion for summary judgment and granting PLIVA's motion for summary judgment. Further,  
2 PLIVA stated in the caption that the court denied the motion to dismiss as moot. Being that the court  
3 never actually stated the motion was 'moot' at the hearing, PLIVA thought it was mistaken, and  
4 revised the proposed order and resubmitted it on August 19, 2010. (Doc. #249).

5 After the court's August 2, 2010, deadline for the defendant to file the order, the plaintiff  
6 submitted her own proposed order to the court (doc. #250) on August 20, 2010. Listing both parties'  
7 counsel's information at the top of the proposed order, plaintiff made it appear to the court as if both  
8 parties had agreed to the order. The court entered the plaintiff's proposed order on August 23, 2010  
9 (doc. #252). In addition, as PLIVA asserts, the plaintiff removed findings of fact that were discussed  
10 in oral argument, and incorrectly stated that the court held that plaintiff's claims were not preempted  
11 by federal law. For these reasons, PLIVA asks this court to amend its August 23, 2010, order to  
12 reflect the accurate outcome of the hearing on the motions.

13 Pursuant to Federal Rule of Civil Procedure 52(b), "after the entry of judgment, the court may  
14 amend its finding—or make additional findings—and may amend the judgment accordingly." After  
15 filing the motion to amend, PLIVA provided the court with a red-lined version of the court's order  
16 (plaintiff's proposed order) (doc. #255-2), as well as a version of the court's order (doc. #255-1)  
17 asserting to be an accurate reflection of the July 26, 2010 hearing.

18 Upon review of the transcript of the hearing on July 26, 2010 (doc. #256), the parties'  
19 proposed and entered orders, and the pleadings on the motion herein, the court is inclined to amend  
20 the judgment (doc. #252). Specifically, the signed order stated, with regards to the motion to dismiss  
21 for federal preemption (doc. #198), that the court held that "this [c]ourt will not go against the weight  
22 of authority" and that "[p]laintiff's claims against [PLIVA] are not preempted by Federal Law, and  
23 [PLIVA]'s [m]otion to [d]ismiss is denied."

24 However, in the transcript of the hearing (doc. #256), the court clearly stated that it was  
25 "almost inclined to grant the motion to dismiss and say its federal preemption because it just seems  
26 like it's not expressed preemption, but practically speaking its preemption." The court did state that  
27 the preemption argument had been rejected by many circuits, but followed it by stating that the  
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1 preemption argument is “a pretty good argument.” Further, the court held that, although it may not  
2 be an expressed preemption where ‘the statute says or the regulations say...this federal statute  
3 preempts the state law,’ the effect of the ‘scheme’ is that you’re “never going to have a state claim.”  
4 Rather than ruling that the claims were *not* preempted by federal law, the court actually held that it  
5 was “reluctant to handle the case on that basis,” and instead ruled on the merits of the motion for  
6 summary judgment with regards to the issue of adequate warning.

7 Further, the plaintiff’s proposed order omitted language pertaining to the undisputed fact that  
8 the plaintiff did not read the warning, and admittedly never even looked at it, which breaks the  
9 requisite link to prove proximate cause. This fact was discussed at the hearing several times, and was  
10 relied upon by the court. (Doc. # 256). The court stated that the plaintiff “didn’t read the label,” and  
11 that plaintiff testified that “she doesn’t read labels at all.” *Id.* The court even continued by asking  
12 “what claim does she have,” when “she didn’t read the warning, but the warning was there.” *Id.* The  
13 court’s ruling was that “it wouldn’t have made any difference here [if the statistics on the label were  
14 correct], because she didn’t read the label.”

15 Therefore, this court is inclined to vacate the plaintiff’s proposed order that the court entered  
16 (doc. #252), and enter the revised version of the order submitted by defendant PLIVA, which  
17 contains the necessary portions discussed above.

18 Accordingly,

19 IT IS HEREBY ORDERED ADJUDGED AND DECREED that defendant PLIVA Inc.’s  
20 motion to alter and/or amend judgment (doc. # 254) be, and the same hereby is, GRANTED.

21 IT IS FURTHER ORDERED that in light of the court’s ruling on the defendant’s motion for  
22 summary judgment (doc. #206), the motion to dismiss (doc. #198) be, and the same hereby is,  
23 DENIED as moot.

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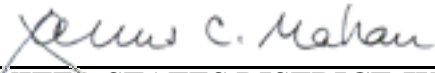
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IT IS FURTHER ORDERED that the court's order (doc. #252) be, and the same hereby is, VACATED, and that PLIVA's revised order (doc. # 255-1) be entered as the court's final judgment on the July 26, 2010 hearing.

DATED December 21, 2010.

  
UNITED STATES DISTRICT JUDGE