

Case No. _____

IN THE SUPREME COURT OF NEVADA

R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually,
and as successor-by-merger to LORILLARD TOBACCO COMPANY and as
successor-in-interest to the United States tobacco business of BROWN &
WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger
to THE AMERICAN TOBACCO COMPANY,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE
NADIA KRALL, DISTRICT COURT JUDGE,

Respondents,

- and -

SANDRA CAMACHO, individually; ANTHONY CAMACHO, individually;
PHILIP MORRIS USA, INC., a foreign corporation; LIGGETT GROUP, LLC, a
foreign corporation; and ASM NATIONWIDE CORPORATION d/b/a
SILVERADO SMOKES & CIGARS, a domestic corporation,

Real Parties in Interest.

District Court Case No. A-19-807650-C, Department IV

**APPENDIX OF EXHIBITS TO PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION**

VOLUME 1 OF 6

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November 4, 2021

**APPENDIX OF EXHIBITS TO PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION**

VOLUME 1 OF 6

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**APPENDIX OF EXHIBITS TO PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION**

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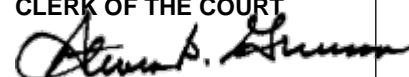
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EXHIBIT 1

EXHIBIT 1



CASE NO: A-19-807650-C
Department 4

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DISTRICT COURT

CLARK COUNTY, NEVADA

SANDRA CAMACHO, individually,
and ANTHONY CAMACHO, individually,

Plaintiffs,

v.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation,
individually, and as successor-by-merger to
LORILLARD TOBACCO COMPANY and as
successor-in-interest to the United States
tobacco business of BROWN &
WILLIAMSON TOBACCO CORPORATION,
which is the successor-by-merger to THE
AMERICAN TOBACCO COMPANY;
LIGGETT GROUP, LLC., a foreign limited
liability company; and ASM NATIONWIDE
CORPORATION d/b/a SILVERADO
SMOKES & CIGARS, a domestic corporation;
and LV SINGHS INC. d/b/a SMOKES &
VAPORS, a domestic corporation; DOES I-X;
and ROE BUSINESS ENTITIES XI-XX,
inclusive,

Defendants.

CASE NO.:

DEPT. NO.:

COMPLAINT

JURY TRIAL DEMAND

COMES NOW, SANDRA CAMACHO, individually, and ANTHONY CAMACHO, individually, by and through their attorney of record, CLAGGETT & SYKES LAW FIRM, complaining of Defendants and allege as follows:

JURISDICTION, VENUE, AND PARTIES

1. This Court has jurisdiction over this matter under NRS 14.065 and NRS 4.370(1), as the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess of \$15,000.00. Venue is proper pursuant to NRS 13.040, as Defendants, or any one of them, reside and/or conduct business in Clark County, Nevada at the commencement of this action.

2. Plaintiff, SANDRA CAMACHO (hereinafter "Plaintiff"), was and is at all times relevant herein, a resident of Clark County, Nevada.

3. Plaintiff, ANTHONY CAMACHO, was and is at all times relevant herein, married to Plaintiff, SANDRA CAMACHO, and was and is a resident of Clark County, Nevada.

4. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Defendant PHILIP MORRIS USA, INC. (hereinafter "PHILIP MORRIS"), was and is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Virginia with its principal place of business located in the State of Virginia. Defendant, PHILIP MORRIS, resides and/or conducts business in every county within the State of Nevada and did so during all times relevant to this action.

5. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Defendant R.J. REYNOLDS TOBACCO COMPANY, INC. (hereinafter "R.J. REYNOLDS"), was and is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of North Carolina

1 with its principal place of business located in the State of North Carolina. Defendant, R.J.
2 REYNOLDS, resides and/or conducts business in every county within the State of Nevada and did so
3 during all times relevant to this action.

4 6. R.J. REYNOLDS TOBACCO COMPANY is also the successor-by-merger to
5 LORILLARD TOBACCO COMPANY (hereinafter “LORILLARD”), and is the successor-in-interest
6 to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION
7 (n/k/a Brown & Williamson Holdings, Inc.) (hereinafter “BROWN & WILLIAMSON”), which is the
8 successor-by-merger to the AMERICAN TOBACCO COMPANY (hereinafter “AMERICAN”).
9

10 7. Plaintiffs are informed and believe and thereon allege that at all times relevant herein,
11 Defendant LIGGETT GROUP, LLC (f/k/a LIGGETT GROUP, INC., f/k/a BROOKE GROUP, LTD.,
12 Inc., f/k/a LIGGETT & MEYERS TOBACCO COMPANY) (hereinafter “LIGGETT”), was and is a
13 limited liability company authorized to do business within this jurisdiction of Clark County, Nevada,
14 and was duly organized, created, and existing under and by virtue of the laws of the State of Delaware
15 with its principal place of business located in the State of North Carolina. Defendant, LIGGETT,
16 resides and/or conducts business in every county within the State of Nevada and did so during all times
17 relevant to this action.
18

19 8. The TOBACCO INDUSTRY RESEARCH COMMITTEE (“TIRC”) was formed in
20 1954, and later was re-named the COUNCIL FOR TOBACCO RESEARCH (“CTR”). This was a
21 disingenuous, fake “research committee” organized by Defendants as part of their massive public
22 relations campaign to create a controversy regarding the health hazards of cigarettes.
23

24 9. The TOBACCO INSTITUTE, INC. (“TI”) was formed in 1958 and was intended to
25 supplement the work of TIRC/CTR. TI spokespeople appeared on media/news outlets responding on
26 behalf of the cigarette industry with misrepresentations and false statements regarding health concerns
27 over cigarettes.
28

10. Plaintiffs are informed and believe, and thereon allege that Defendant, ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS (“SILVERADO”), was and is a domestic corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Nevada. At all times material, SILVERADO’S registered agent resides at 430 E. Silverado Ranch Blvd. No 120. SILVERADO’S owns and operates a store that sells tobacco and cigarette products located at 430 E. Silverado Ranch Blvd, Ste. 120, Las Vegas NV 89123. SILVERADO’S is a retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Plaintiff, SANDRA CAMACHO.

11. Plaintiffs are informed and believe, and thereon allege that Defendant, LV SINGHS INC. d/b/a SMOKES & VAPES (“SMOKES & VAPES”), was and is a domestic corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Nevada. At all times material, SMOKES & VAPES’ registered agent resides at 9101 w. Sahara Ave. Ste 101, Las Vegas NV 89117. SMOKES & VAPES owns and operates a store that sells tobacco and cigarette products located at 430 E. Silverado Ranch Blvd. Ste 120, Las Vegas NV 89183. ASM’S is a retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Plaintiff, SANDRA CAMACHO.

12. Plaintiffs further allege that Defendants, at all times material to this cause of action, through their agents, employees, executives, and representatives, conducted, engaged in and carried on a business venture of selling cigarettes in the State of Nevada and/or maintained an office or agency in this state and/or committed tortious acts within the State of Nevada and knowingly allowed the Plaintiff to be exposed to an unreasonably dangerous and addictive product, to-wit: cigarettes and/or cigarette smoke.

1 17. Plaintiff, SANDRA CAMACHO, was diagnosed on or about March of 2018 with
2 laryngeal cancer, which was caused by smoking L&M brand cigarettes, Marlboro brand cigarettes, and
3 Basic brand cigarettes, to which she was addicted and smoked continuously from approximately 1964
4 until 2017.

5 18. At all times material, L&M cigarettes were designed, manufactured, and sold by
6 Defendant, Liggett.

7 19. At all times material, Marlboro and Basic cigarettes were designed, manufactured, and
8 sold by Defendant, Philip Morris USA, Inc.

9 20. Plaintiff, SANDRA CAMACHO, purchased and smoked L&M, Marlboro, and Basic
10 cigarettes from the SILVERADO'S in sufficient quantities to be a substantial contributing cause of her
11 laryngeal cancer.

12 21. Plaintiff, SANDRA CAMACHO, purchased and smoked L&M, Marlboro, and Basic
13 cigarettes from the SMOKES & VAPORS in sufficient quantities to be a substantial contributing cause
14 of her laryngeal cancer.

15 22. At all times material, Defendants purposefully and intentionally designed cigarettes to
16 be highly addictive. They added ingredients such as ammonia and diammonium-phosphate to "free-
17 base" nicotine and manipulated levels of nicotine and pH in smoke to make cigarettes more addictive,
18 better tasting, and easier to inhale. They also deliberately manipulated and/or added compounds in
19 cigarettes such as arsenic, polonium-210, tar, methane, methanol, carbon monoxide, nitrosamines,
20 butane, formaldehyde, tar, carcinogens, and other deadly and poisonous compounds to cigarettes.

21 23. Astonishingly, for over half a century, Defendants concealed the addictive and deadly
22 nature of cigarettes from Plaintiff, the government, and the American public by making knowingly
23 false and misleading statements and by engaging in an over two-hundred and fifty-billion-dollar
24 conspiracy.

1 24. Despite knowing internally, dating back to the 1950s, that cigarettes were deadly,
2 addictive, and caused death and disease, Defendants, for over five decades, purposefully and
3 intentionally lied, concealed information, and made knowingly false and misleading statements to the
4 public, including Plaintiff, that cigarettes were allegedly *not* harmful.

5
6 25. Defendants failed to acknowledge or admit the truth until they were forced to do, as a
7 result of litigation, in the year 2000.

8 26. Plaintiff's injuries arose out of Defendants' acts and/or omissions which occurred
9 inside and outside of the State of Nevada.

10 27. At all times material to this action, Defendants knew or should have known the
11 following:

- 12 a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as
13 COPD, which includes emphysema and chronic bronchitis, laryngeal cancer, and lung
14 cancer, including squamous cell carcinoma, small cell carcinoma, adenocarcinoma,
15 and large cell carcinoma;
- 16 b. Nicotine in cigarettes is addictive;
- 17 c. Defendants placed cigarettes on the market that were defective and unreasonably
18 dangerous;
- 19 d. Defendants concealed or omitted material information not otherwise known or
20 available, knowing that the material was false and misleading, or failed to disclose a
21 material fact concerning the health effects or addictive nature of smoking cigarettes, or
22 both;
- 23 e. Defendants entered into an agreement to conceal or omit information regarding the
24 health effects of cigarettes or their addictive nature with the intention that smokers and
25 the public would rely on this information to their detriment;
- 26
27
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- f. Defendants sold or supplied cigarettes that were defective;
- g. Defendants are negligent;
- h. Children and teenagers are more likely to become addicted to cigarettes if they begin smoking at an early age;
- i. Continued and frequent use of cigarettes highly increases one's chances of becoming, and remaining, addicted;
- j. Continued and frequent use of cigarettes highly increases one's chances of developing serious illness and death;
- k. It is extremely difficult to quit smoking;
- l. "Many, but not most, people who would like to stop smoking are able to do so" (Concealed Document, 1982);
- m. "Defendants' cannot defend continued smoking as "free choice" if the person is addicted" (Concealed Document 1980);
- n. It is possible to develop safe cigarettes free of nicotine, carcinogens, and other deadly and poisonous compounds;
- o. "The thing Defendants' sell most is nicotine" (Concealed Document 1980);
- p. Filtered, low tar, low nicotine, and "light" cigarettes are more dangerous than "regular" cigarettes;
- q. "Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and would almost certainly fail" (Concealed Document 1966);
- r. "Without the nicotine, the cigarette market would collapse, and Defendants' would all lose their jobs and their consulting fees" (Concealed Document 1977);
- s. "Carcinogens are found in practically every class of compounds in smoke" (Concealed Document 1961);

t. "Cigarettes have certain unattractive side effects . . . they cause lung cancer"
(Concealed Document 1963).

28. Defendants' tortious and unlawful conduct caused consumers, including SANDRA CAMACHO, to suffer dangerous diseases and injuries.

**Historical Allegations of Defendants Unlawful Conduct
Giving Rise to the Lawsuit**

29. Lung cancer, caused by cigarette smoking, is the number one leading cause of death in the United States.

30. Cigarettes kill more than 500,000 Americans every year. Over 20 million Americans have died from lung cancer.

31. Lung cancer is a disease manufactured and created by the cigarette industry, including Defendants herein.

32. Prior to 1900, lung cancer was virtually unknown as a cause of death in the United States.

33. By 1935, there were only an estimated 4,000 lung cancer deaths. By 1945, as a result of the rise of cigarette consumption, the number of deaths almost tripled.

34. Because of this phenomenon, scientists began conducting research and experiments regarding the link between cigarette smoking and lung cancer.

35. In addition to scientists, Defendants themselves began to conduct similar research. By February 2, 1953 Defendants had concrete proof that cigarette smoking increased the risk of lung cancer. A previously secret and concealed document by Defendant, an R.J. Reynolds' states:

Studies of clinical data tend to confirm the relationship between heavy smoking and prolonged smoking and incidence of cancer of the lung.

36. Approximately six months later on December 21, 1953, Life Magazine and Reader's Digest published articles regarding a ground-breaking mouse painting study, conducted by Drs.

Wynder and Graham, which concluded that tar from cigarettes painted on the backs of mice developed into cancer.

37. As a result of these articles and mounting public awareness regarding the link between cigarette smoking and lung cancer, Defendants grew fearful their customers would stop smoking, which would in turn bankrupt their companies.

38. Thus, in order to maximize profits, Defendants decided to intentionally ban together to form a conspiracy which, for over half a century, was devoted to creating and spreading doubt regarding a disingenuous “open debate” about whether cigarettes were or were not harmful.

39. This conspiracy was formed in December of 1953 at the Plaza Hotel in New York City. Paul Hahn, president of American Tobacco, sent telegrams to presidents of the seven largest tobacco companies and one tobacco growers’ organization, inviting them to meet at the Plaza Hotel.



40. Executives from every cigarette company, except for Liggett, met at the Plaza Hotel on December 14, 1953. The executives discussed the following topics: (i) the negative publicity from the recent articles in the media, (ii) the need to hire a public relations firm, Hill & Knowlton, and (iii) the major threat to their corporations’ economic future.

41. In an internal planning memorandum Hill & Knowlton assessed their cigarette clients’ problems in the following manner:

“There is only one problem -- confidence, and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. **And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any pooh-poohing**

1 **logic -- every time they light a cigarette.** No resort to mere logic ever cured panic yet,
2 whether on Madison Avenue, Main Street, or in a psychologist's office. And no mere
3 recitation of arguments pro, or ignoring of arguments con, or careful balancing of the
4 two together, is going to deal with such fear now. That, gentlemen, is the nature of the
5 unexampled challenge to this office."

6 42. On December 28, 1953, Defendants again met at the Plaza Hotel where they knowingly
7 and purposefully agreed to form a fake "research committee," called the Tobacco Industry Research
8 Committee ("TIRC") (later renamed the Council for Tobacco Research ("CTR")). Paul Hahn,
9 president of American Tobacco, was elected the temporary chairman of TIRC.

10 43. TIRC's *public* mission statement was to supposedly aid and assist with so-called
11 "independent" research into cigarette use and health.

12 44. The formation and purpose of TIRC was announced on January 4, 1954, in a full-page
13 advertisement called "A Frank Statement to Cigarette Smokers" published in 448 newspapers
14 throughout the United States.

15 45. The Frank Statement was signed by the following domestic cigarette and tobacco
16 product manufacturers, including Defendants herein, organizations of leaf tobacco growers, and
17 tobacco warehouse associations that made up TIRC: American Tobacco by Paul Hahn, President;
18 B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip
19 Morris by O. Parker McComas, President; Defendant, R.J Reynolds by Edward A. Darr, President;
20 Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S.
21 Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley
22 Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company,
23 Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton,
24 General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco
25 Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson,
26 President.
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46. In their Frank Statement to Cigarette Smokers, Defendants knowingly and intentionally mislead Plaintiff, the public, and the American government when they disingenuously promised to “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and health, and reveal to the public the results of their purported “objective” research.

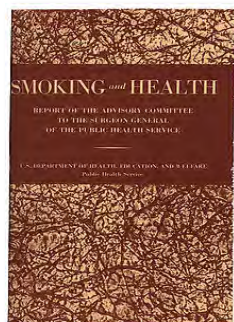
47. For the next five decades, TIRC/CTR worked diligently, and quite successfully, to rebuff the public’s concern about the dangers of cigarettes. Defendants, through TIRC/CTR, invented the false and misleading notion that there was an “open question” regarding cigarette smoking and health. They appeared on television and radio to broadcast this message.

48. TIRC/CTR hired fake scientists and spokespeople to attack genuine, legitimate scientific studies. Virtually none of the so-called “research” funded by TIRC/CTR centered on the immediate questions relating to carcinogenesis and tobacco. Rather than addressing the compounds and carcinogens in cigarette smoke and their hazardous effect on the human body, TIRC/CTR instead directed its resources to alternative theories of the origins of cancer, centering on genetic factors and environmental risks.

49. The major initiative of TIRC/CTR, through their Scientific Advisory Board (SAB), was to, “create the appearance of [Defendants] devoting substantial resources to the problem without the risk of funding further ‘contrary evidence.’”

50. TIRC/CTR’s efforts worked brilliantly and cigarette consumption rapidly increased.

51. In 1964 there was another dip in the consumption of cigarettes because the United States Surgeon General reported, “cigarette smoking is causally related to lung cancer in men . . . the data for women, though less extensive, points in the same direction.”



52. The cigarette industry's *public* response, through TIRC, to the 1964 Surgeon General Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements. As a result, cigarette consumption again began to rise.

53. Despite Defendant's *public* response, internally they were fully aware of the magnitude and depth of lies and deception they were promulgating. They knew and understood they were making fake, misleading promises that would never come to fruition. Their own internal records reveal that they knew, even back in 1964, that cigarettes were not only hazardous, but deadly:

"Cigarettes have certain unattractive side effects . . . they cause lung cancer" (Concealed Document 1963).

"Carcinogens are found in practically every class of compounds in smoke" (Concealed Document 1961).

"The amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such indictment is scant" (Concealed Document 1962).

54. Furthermore, not only did Defendants know and appreciate the dangers of cigarettes, but they were also intentionally manipulating ingredients, such as nicotine, in cigarettes to make them more addictive. Their documents reveal they knew the following:

"Our industry is based upon design, manufacture and sale of attractive dosage forms of nicotine" (Concealed Document 1972).

"We can regulate, fairly precisely, the nicotine . . . to almost any desired level management might require" (Concealed Document 1963).

"Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and would almost certainly fail" (Concealed Document 1966).

"Nicotine is addictive . . . We are then, in the business of selling nicotine, an addictive drug" (Concealed Document 1963).

1 **“We have deliberately played down the role of nicotine”** (Concealed
2 Document 1972).

3 **“Very few consumers are aware of the effects of nicotine, i.e., it’s addictive**
4 **nature and that nicotine is a poison”** (Concealed Document 1978).

5 **“Determine minimum nicotine required to keep normal smoker ‘hooked.’”**
6 (Concealed Document 1965).

7 **“The thing we sell most is nicotine”** (Concealed Document 1980).

8 **“Without the nicotine, the cigarette market would collapse, and**
9 **Defendants’ would all lose their jobs and their consulting fees”** (Concealed
10 Document 1977).

11 55. Defendants deliberately added chemicals such as urea, ammonia, diammonium-
12 phosphate, tar, nitrosamines, arsenal, polonium-210, formaldehyde, and other carcinogens to
13 cigarettes. They “free-based” nicotine in cigarettes and manipulated levels of pH in smoke to make
14 cigarettes more addictive and easier to inhale.

15 56. Defendant’s sole priority was to make as much money as quickly as possible, with no
16 concern about the safety and well-being of their customers.

17 57. In 1966, the United States Government mandated that a “Caution” Label be placed on
18 packs of cigarettes stating, “Cigarette Smoking May be Hazardous to Your Health.”

19 58. The cigarette industry responded to the “Caution” label by continuing their massive
20 public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the
21 public.

22 59. Throughout this period Defendants also introduced “filtered” cigarettes – cigarettes
23 falsely marketed, advertised, and promoted as “less tar” and “less nicotine.”

24 60. However, internally, in Defendants’ previously concealed, hidden documents,
25 discussions regarding the true nature of filtered cigarettes was revealed – filters were just as harmful,
26 dangerous, and hazardous as unfiltered cigarettes; In fact, they were more dangerous. In a previously
27
28

1 secret document from 1976, Ernie Pepples from Brown & Williamson states, “the smoker of a filter
2 cigarette was getting as much or more nicotine and tar as he would have gotten from a regular
3 cigarette.”

4
5 61. Throughout the 1960s, 1970s, 1980s and 1990s, the cigarette industry, including
6 Defendants herein, spent two-hundred and fifty-billion-dollars in marketing efforts to promote the
7 sale of cigarettes.

8 62. The cigarette industry spent more money on marketing and advertising cigarettes *in*
9 *one day* than the public health community spent *in one year*.

10 63. Cigarette smoking was glamorized – celebrities smoked, athletes smoked, doctors
11 smoked, politicians smoked – everyone smoked cigarettes.

12 64. As early as the 1920s, and continuing today, cigarette manufacturers, including
13 Defendants herein, were also intentionally targeting children. Their documents reveal:

14
15 **“School days are here. And that means BIG TOBACCO BUSINESS for**
16 **somebody . . . line up the most popular students”** (Concealed Document
17 1927).

18 **“SUMMER SCHOOL IS STARTING . . . lining up these students . . . as**
19 **consumers”** (Concealed Document 1928).

20 **“Today’s teenager is tomorrow’s potential regular customer”** (Concealed
21 Document 1981).

22 **“The 14-24 age group . . . represent tomorrow’ cigarette business”**
23 (Concealed Document 1974).

24 65. Cigarette manufacturers, including Defendants herein, also targeted and prayed upon
25 minority populations in an effort to increase their market share and ultimately their profits.

26 66. Cigarettes were the number one most heavily advertised product on television until the
27 United States Government banned television advertisements in 1972.
28

67. When cigarettes advertising was banned on television Defendants turned to marketing in stadiums, sponsoring sporting events such as the Winston Cup and Marlboro 500, sponsoring concerts, utilizing print advertisements in magazines, adding product placement in movies, and more.



68. Meanwhile, internally Defendants were praising themselves for accomplishing this “brilliantly conceived” conspiracy which deceived SANDRA CAMACHO, millions of Americans, the government, and the public health community.

“for nearly 20 years, this industry has employed a single strategy to defend itself . . . brilliantly conceived and executed . . . a holding strategy . . . creating doubt about the health charge without actually denying it”
(Concealed Document 1972).

69. In 1985, four rotating warning labels were placed on packs of cigarettes which warned, for the first time, that smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.

70. The cigarette industry, including Defendants herein, opposed these warning labels and throughout the 1980s, despite the warning labels being placed on their cigarettes, spoke publicly through their representatives in the Tobacco Institute (TI) that it was allegedly still unknown whether smoking cigarettes caused cancer or was addictive because, apparently, “more research was needed.”

71. In 1988 the United States Surgeon General reported that cigarettes and other forms of tobacco were addicting, and nicotine is the drug in tobacco that causes addiction. In fact, in his report, the Surgeon General compared tobacco addiction to heroine and cocaine.

72. In response, the cigarette industry, including Defendants herein, issued a press release knowingly and disingenuously stating, "Claims that cigarettes are addictive is irresponsible and scare tactics."

73. Defendants continued to publicly deny the addictive nature and health hazards of smoking cigarettes until the year 2000, after litigation was brought against them by the Attorneys Generals of multiple States and their previously concealed documents were made public.

74. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein, testified under oath before the United States Congress that it was their opinion that it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die.



75. Despite their own intensive research and (millions of) internal documents describing the dangers and addictive qualities of cigarettes, Defendants' negligently, willfully, maliciously, and intentionally made false and misleading statements to Congress, the public, and Plaintiff, SANDRA CAMACHO.

76. Even after Defendants knowingly lied during these Congressional hearings, Defendants continued, and still are continuing to, perpetuate their conspiracy.

1 77. For example, in 1997 Liggett announced that they would voluntarily place a warning
2 label on their cigarette packages, in addition to the labels mandated by the United States government,
3 that smoking is addictive. Defendant, Philip Morris, immediately filed a restraining order against
4 Liggett to prevent them from adding this warning label. Then, in 1998 Liggett sold its three major
5 cigarette brands, L&N, Lark, and Chesterfield, to Philip Morris who immediately removed the
6 “smoking was addictive” warning label from these products.
7

8 78. Furthermore from 2000 through 2010, Defendants continued to mislead the public by
9 marketing and promoting “light” and “ultra-light” cigarettes despite knowing internally that such
10 cigarettes were just as dangerous and addictive as “regular” cigarettes.
11

12 79. In 2010 after Defendants were required, by the United States government, to remove
13 the misleading “light” and “ultra-light” labels from their cigarettes, they instead added “onserts” to
14 their packages of cigarettes explaining that, for example, “Your Marlboro Lights pack is changing.
15 But your cigarette stays the same. In the future, ask for ‘Marlboro in the gold pack.’”
16

17 80. Additionally, as recently as 2018, Defendants have continued to oppose proposed FDA
18 regulations which would reduce or eliminate the levels of nicotine in cigarettes.
19

20 81. As recently as 2019, Defendants do not admit or acknowledge that nicotine in their
21 cigarette smoke “is” addictive.
22

23 82. As recently as 2019, Defendants do not admit or acknowledge that nicotine addiction
24 can cause diseases.
25

26 83. As recently as 2019, Defendants continue to make false or misleading statements that
27 filtered cigarettes, lights, ultra-lights and low tar are less hazardous than conventional full favored
28 cigarettes.
29

30 84. Finally, Defendants have continued to target and prey upon children, teenagers,
31 minorities, and other segment populations, all in the name of money.
32

85. Defendants, despite being rivals and competitors, locked arms and banned together to purposefully and internationally engage in an over 65-year conspiracy to deceive the public regarding the addictive nature and health hazards of cigarette smoking.

86. This sophisticated conspiracy involved hundreds of billions of dollars spent on marketing efforts, massive deception including lying under oath before Congress and other governmental entities, forming fake organizations with fake scientists and fake research, and creating a “brilliantly conceived” public relations campaign designed to create and sustain doubt and confusion regarding a – made up – cigarette controversy.

87. This conspiracy is memorialized through Defendants’ own documents authored by their own executives and scientists, including over fourteen million previously concealed records.

FIRST CLAIM FOR RELIEF

(NEGLIGENCE)

Sandra Camacho Against Defendants Philip Morris and Liggett

88. Plaintiffs repeat and reallege the allegations as contained in paragraphs 1 through 87 and incorporate the same herein by reference.

89. Defendants owed a duty to the general public, including Plaintiff, to manufacture, design, sell, market, promote, and/or otherwise produce a product and/or any of its component parts safe and free of unreasonable and harmful defects when used in the manner and for the purpose it was designed, manufactured, and/or intended to be used.

90. Plaintiff was exposed to and did inhale smoke from cigarettes which were designed, manufactured, marketed, distributed, and/or sold by Defendants.

91. Each exposure to Defendants’ cigarettes caused Plaintiff to inhale smoke which caused him to become addicted to cigarettes, and further caused him to develop pharyngeal cancer and suffer severe bodily injuries.

- 1 92. Defendants were negligent in all the following respects, same being the proximate
2 and/or legal cause of SANDRA CAMACHO's injuries and disabilities, including but not limited to:
- 3 a. designing and manufacturing an unreasonably dangerous and deadly product;
 - 4 b. designing and manufacturing cigarettes to be addictive;
 - 5 c. designing and manufacturing cigarettes to be inhalable;
 - 6 d. manipulating the level of nicotine in cigarettes to make them more addictive;
 - 7 e. genetically modifying nicotine in tobacco plants;
 - 8 f. blending different types of tobacco to obtain a desired amount of nicotine;
 - 9 g. engineering cigarettes to be rapidly inhaled into the bloodstream;
 - 10 h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and
11 other deadly, poisonous compounds to cigarettes;
 - 12 i. adding and/or manipulating compounds such as ammonia and diammonium phosphate
13 to Defendants' cigarettes to "free-base" nicotine;
 - 14 j. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and
15 low tar;
 - 16 k. adding "onserts" to packages of cigarettes even after the United States government
17 banned marketing of "light" and "ultra-light" cigarettes;
 - 18 l. manipulating levels of pH in Defendants' cigarettes;
 - 19 m. targeting children who could not understand or comprehend the seriousness or
20 addictive nature of nicotine and smoking;
 - 21 n. targeting minority populations such as African Americans, Hispanics, and women to
22 obtain a greater market share to increase their profits;
 - 23 o. failing to develop and utilize alternative designs, manufacturing methods, and/or
24 materials to reduce and/or eliminate harmful materials from cigarettes;
 - 25
 - 26
 - 27
 - 28

- 1 p. continuing to manufacture, distribute, and/or sell cigarettes when Defendant knew at
2 all times material that its products could cause, and in fact were more likely to cause,
3 injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal
4 cancer, lung cancer, and/or other forms of cancer when used as intended;
5
6 q. making knowingly false and misleading statements to Plaintiff, the public, and the
7 American government that cigarettes were safe and/or not proven to be dangerous;
8
9 r. failing to remove and recall cigarettes from the stream of commerce and the
10 marketplace upon ascertaining that said products would cause disease and death.
11
12 93. Additionally, prior to July 1, 1969, Defendants failed to warn/and or adequately warn
13 foreseeable users, such as SANDRA CAMACHO, of the following, including but not limited to:
14
15 a. failing to warn and/or adequately warn foreseeable users, such as SANDRA
16 CAMACHO, of the dangerous and deadly nature of cigarettes;
17
18 b. failing to warn foreseeable users, such as SANDRA CAMACHO, that they could
19 develop fatal injuries including, but not limited to, emphysema, COPD, throat cancer,
20 laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking
21 and/or inhaling smoke from Defendants' cigarettes;
22
23 c. failing to warn foreseeable users, such as SANDRA CAMACHO, that the use of
24 cigarettes would more likely than not lead to addiction, habituation, and/or dependence;
25
26 d. failing to warn foreseeable users, such as SANDRA CAMACHO, that quitting and/or
27 limiting use of cigarettes would be extremely difficult, particularly if users started
28 smoking at an early age;

e. failing to disclose to consumers of cigarettes, such as SANDRA CAMACHO, the
results of genuine scientific research conducted by and/or known to Defendant that
cigarettes were dangerous, defective, and addictive.

1 94. Defendants breached said aforementioned duties of due and reasonable care in that they
2 produced, designed, manufactured, sold, and/or marketed defective cigarettes and/or any of its
3 component parts which contained risks of harm to the user/consumer and which were reasonably
4 foreseeable to cause harm in the use or exercise of reasonable and/or ordinary care.

5
6 95. As a direct and proximate and/or legal result of Defendants' aforementioned
7 negligence, SANDRA CAMACHO was severely injured when she was exposed to Defendants'
8 cigarettes. Each exposure to Defendants' cigarettes caused SANDRA CAMACHO to become
9 addicted to cigarettes and to inhale smoke which caused her to develop laryngeal cancer, in addition
10 to other related physical conditions which resulted in and directly caused her to suffer severe bodily
11 injuries. Each exposure to such products was harmful and caused or contributed substantially to
12 SANDRA CAMACHO's aforementioned injuries.

13
14 96. SANDRA CAMACHO's aforementioned injuries arose out of and were connected to
15 and incidental to the way Defendants' designed, manufactured, marketed, distributed, and/or sold
16 its products.

17 97. The aforementioned damages of SANDRA CAMACHO were directly and proximately
18 and/or legally caused by Defendants' negligence, in that it produced, sold, manufactured, and/or
19 otherwise placed into the stream of intrastate and interstate commerce, cigarettes which it knew, or
20 in the exercise of ordinary care should have known, were deleterious and highly harmful to
21 SANDRA CAMACHO's health and well-being.

22
23 98. Defendants, prior to selling and/or distributing the cigarettes to which SANDRA
24 CAMACHO was exposed, knew or should have known that exposure to cigarette smoke was
25 harmful and caused injuries including, but not limited to, lung cancer, pharyngeal cancer, laryngeal
26 cancer, emphysema, COPD, heart disease, other forms of cancer, and/or result in death.

1 99. As a direct and proximate and/or legal cause of Defendants' aforesaid negligence,
2 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining
3 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

4 100. As a further direct and proximate and/or legal cause of Defendants' aforesaid
5 negligence, SANDRA CAMACHO has incurred damages, both general and special, including
6 medical expenses as a result of the necessary treatment of her injuries, and will continue to incur
7 damages for future medical treatment necessitated by smoking-related injuries she has suffered, in
8 a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

9 101. As a further direct and proximate and/or legal cause of Defendants' aforesaid
10 negligence, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and
11 other health care providers to examine, treat, and care for her and did incur medical and incidental
12 expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA
13 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
14 (\$15,000.00)

15 102. As a further direct and proximate and/or legal cause of Defendants' aforesaid
16 negligence, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered
17 and continues to suffer loss of companionship and care, emotional and moral support and/or sexual
18 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

19 103. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

20 104. Defendants' conduct was despicable and so contemptible that it would be looked down
21 upon and despised by ordinary decent people and was carried on by Defendants with willful and
22 conscious disregard for the safety of SANDRA CAMACHO.
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105. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005 in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future.

106. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent agents, independent contractors, and/or servants, as set forth herein.

107. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SECOND CLAIM FOR RELIEF

(STRICT PRODUCTS LIABILITY)

Sandra Camacho Against Defendants Philip Morris and Liggett

108. Plaintiffs repeat and reallege the allegations as contained in paragraphs 1 through 87 and incorporate the same herein by reference.

109. Upon information and belief, at all times material, Defendants were/are in the business of designing, engineering, manufacturing, distributing, marketing, selling, and/or otherwise placing cigarettes into the stream of commerce.

110. The products complained of were cigarettes designed, manufactured, marketed, distributed, and/or sold by Defendants and used by SANDRA CAMACHO.

111. The aforesaid products were distributed, sold, manufactured, and/or otherwise placed into the stream of commerce by Defendants.

112. Defendants' defective and unreasonably dangerous cigarettes reached SANDRA CAMACHO without substantial change from that in which such products were when within the possession of Defendants.

113. Defendants' cigarettes were dangerous beyond the expectation of the ordinary user/consumer when used as intended or in a manner reasonably foreseeable by Defendants.

114. The nature and degree of danger of Defendants' cigarettes were beyond the expectation of the ordinary consumer, including SANDRA CAMACHO, when used as intended or in a reasonably foreseeable manner.

115. Defendants' cigarettes were unreasonably dangerous because a less dangerous design and/or modification was economically and scientifically feasible.

116. Defendants' cigarettes were defective and unreasonably dangerous in the following ways, including but not limited to:

- a. designing and manufacturing an unreasonably dangerous and deadly product;
- b. designing and manufacturing cigarettes to be addictive;
- c. designing and manufacturing cigarettes to be inhalable;
- d. manipulating levels of nicotine in cigarettes to make them more addictive;
- e. genetically modifying nicotine in tobacco plants;
- f. blending different types of tobacco to obtain a desired amount of nicotine;
- g. engineering cigarettes to be rapidly inhaled into the lungs;
- h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and other deadly, poisonous compounds to cigarettes;
- i. adding and/or manipulating compounds such as ammonia and diammonium phosphate to Defendants' cigarettes to "free-base" nicotine;
- j. manipulating levels of pH in Defendants' cigarettes;
- k. utilizing deadly and harmful additives, compounds, and ingredients in their cigarette design and manufacturing process when alternative, less dangerous materials were available;

1. marketing and advertising “light” and “ultra light” cigarettes as safe, low nicotine, and low tar;
- m. adding “onserts” to packages of cigarettes even after the United States government banned marketing of “light” and “ultra-light” cigarettes;
- n. prior to July 1, 1969, failing to warn and/or adequately warn foreseeable users, such as SANDRA CAMACHO, of the dangerous and deadly nature of cigarettes;
- o. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that they could develop fatal injuries including, but not limited to, emphysema, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants’ cigarettes;
- p. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that the use of cigarettes would more likely than not lead to addiction, habituation and/or dependence;
- q. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;
- r. prior to July 1, 1969, failing to disclose to consumers of cigarettes, such as SANDRA CAMACHO, the results of scientific research conducted by and/or known to Defendant that cigarettes may be dangerous, defective, and/or addictive.

117. SANDRA CAMACHO was unaware of the defective and unreasonably dangerous condition of Defendants’ cigarettes, and at a time when such products were being used for the purposes for which they were intended, was exposed to, breathed smoke from, and inhaled Defendants’ cigarettes.

118. Defendants knew their cigarettes would be used without inspection for defects, and by placing them on the market, represented that they would be safe.

119. SANDRA CAMACHO was unaware of the hazards and defects in Defendants' cigarettes, to-wit: That exposure to said products would cause SANDRA CAMACHO to become addicted and develop laryngeal cancer.

120. As a direct and proximate and/or legal cause of the aforesaid defective and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was injured. SANDRA CAMACHO thereby experienced great pain to her body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

121. As a further direct and proximate and/or legal cause of the defective and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

122. As a further direct and proximate and/or legal cause of the aforementioned defective and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat, and care for her and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

123. As a further direct and proximate and/or legal cause of Defendants' aforesaid defective and unreasonably dangerous condition of Defendants' cigarettes, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered and continues to suffer loss of

1 companionship and care, emotional and moral support and/or sexual intimacy and alleges he has
2 suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

3 124. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

4 125. Defendants' conduct was despicable and so contemptible that it would be looked down
5 upon and despised by ordinary decent people and was carried on by Defendants with willful and
6 conscious disregard for the safety of SANDRA CAMACHO.
7

8 126. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
9 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
10 example of Defendants, and to deter similar conduct in the future.

11 127. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
12 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
13 agents, independent contractors, and/or servants, as set forth herein.
14

15 128. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
16 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
17 attorney fees and costs of suit.
18

19 **THIRD CLAIM FOR RELIEF**

20 **(FRAUDULENT MISREPRESENTATION)**

21 **Sandra Camacho Against Defendants Philip Morris and Liggett**

22 129. Plaintiffs repeat and reallege each and every allegation as contained in paragraphs 1
23 through 87 and incorporate the same herein by reference.

24 130. Beginning at an exact time unknown to Plaintiff, and continuing even today, the
25 cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a
26 campaign designed to deceive the public, including SANDRA CAMACHO, the government, and
27
28

1 others as to the health hazards and addictive nature of cigarettes, through false statements and/or
2 misrepresentations of material facts.

3 131. Defendants made intentional misrepresentations, false promises, concealed
4 information, and failed to disclose material information to SANDRA CAMACHO, the public, and the
5 American government.
6

7 131. Defendants carried out its campaign of fraud, false statements, and/or
8 misrepresentations in at least six ways:

- 9 a. Defendants falsely represented to SANDRA CAMACHO that questions about
10 smoking and health would be answered by an unbiased, trustworthy source;
- 11 b. Defendants misrepresented and confused facts about health hazards of cigarettes and
12 addiction;
- 13 c. Defendants, along with other cigarette manufacturers, spent billions of dollars hiring
14 lawyers, fake scientists, and public relations firms to misdirect purported “objective”
15 scientific research;
- 16 d. Defendants discouraged meritorious litigation by engaging in “scorched earth” tactics
17 – in fact in a previously secret 1988 document they commented “to paraphrase General
18 Patton, the way we won these cases was not by spending all of [their] money, but by
19 making that other son of a bitch spend all of his;”
20
- 21 e. Defendants suppressed and distorted evidence to protect its existence and profits;
- 22 f. Defendants designed, marketed, and sold “filtered” and “light” cigarettes despite
23 knowing internally that such cigarettes were just as addictive, dangerous, and deadly
24 as “regular” cigarettes.
25

26 132. Cigarette manufacturers, including Defendants herein, knew cigarettes were dangerous
27 and addictive. It became their practice, purpose, and goal to question any scientific research which
28

1 concluded cigarettes were dangerous. They did this through misleading media campaigns, mailings
2 to doctors and other scientific professionals, and testimony before governmental bodies.

3 133. Defendants made multiple misrepresentations to SANDRA CAMACHO including
4 misrepresentations and misleading statements in advertisements, news programs and articles, media
5 reports, and press releases.

6
7 134. These misrepresentations and false statements include, but are not limited to, the
8 aforementioned statements and conduct contained in the *Historical Allegations of Defendants*
9 *Unlawful Conduct Giving Rise to the Lawsuit* section above.

10 135. These misrepresentations and false statements also include the following statements
11 which were heard, read, and relied upon by Plaintiff, SANDRA CAMACHO, including but not limited
12 to:

- 13 a. In 1953, Cigarette manufacturers, including Defendants herein, took out a full-page
14 advertisement called the “Frank Statement to Cigarette Smokers” which falsely assured
15 the public, the American government, and SANDRA CAMACHO, that the cigarette
16 manufacturers, including Defendant herein, would purportedly “safeguard” the health
17 of smokers, support allegedly “disinterested” research into smoking and health, and
18 reveal to the public the results of their alleged “objective” research;
- 19 b. Beginning in 1953 and continuing for decades, Cigarette manufacturers, including
20 Defendants herein, falsely assured the public that TIRC/CTR was an “objective”
21 research committee when internal company document reveal that TIRC/CTR
22 functioned not for the promotion of scientific goals, but for public relations, politics,
23 and positioning for litigation;
- 24 c. In the 1950s and 1960s, Cigarette manufacturers, including Defendants herein,
25 sponsored, were quoted in, and helped publish articles to mislead the public including
26
27
28

- 1 but not limited to the following: “Smoke-Cancer Tie Termed Obscure” (1955), “Study
2 of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962),
3 “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in
4 Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);
5
6 d. In response to the 1964 Surgeon General Report which linked cigarette smoking to
7 health, the cigarette industry falsely assured the public that (i) cigarettes were not
8 injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii)
9 more research was needed, and (iv) if there were any bad elements discovered in
10 cigarettes, the cigarette manufacturers would remove those elements.
11
12 e. In the 1950s and 1960s, the Cigarette manufacturers, including Defendants herein,
13 advertised and promoted cigarettes on television and radio as safe and glamorous, to
14 the extent that cigarette advertising was the number one most heavily advertised
15 product on television;
16
17 f. Falsely advertised and promoted “filtered” and “light” cigarettes as “low tar” and “low
18 nicotine” through print advertisements in magazines and newspapers throughout the
19 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
20
21 g. Knowingly made false and misleading statements to governmental entities, including
22 in 1982 when the CEO of Defendant R.J. Reynolds, Edward Horrigan, disingenuously
23 stated during a governmental hearing, “there is absolutely no proof that cigarettes are
24 addictive;”
25
26 h. In 1984, continuing to purposefully target children yet openly in press releases falsely
27 claim, “We don’t advertise to children . . . Some straight talk about smoking for young
28 people;”
29
30 i. In 1988, in response to the United States Surgeon General’s report that cigarettes are

addictive and nicotine is the drug in tobacco that causes addiction, issuing a press release knowingly and disingenuously stating, “Claims that cigarettes are addictive is irresponsible and scare tactics;”

j. Through representatives in the Tobacco Institute, making countless publicized appearances on television and radio disingenuously denying cigarettes were addictive and claimed smoking was a matter of free choice and smokers could quit smoking if they wanted to;

k. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein, knowingly providing false and misleading testimony under oath before the United States Congress that it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die.

136. Defendants made intentional misrepresentations to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. The aforementioned representations were regarding material facts about cigarettes and were knowingly false;
- b. Defendants knew said representations were false at the time they made such statements;
- c. Defendants knew SANDRA CAMACHO did not hold sufficient information to understand or appreciate the dangers of cigarettes;
- d. Defendants intended to induce SANDRA CAMACHO, and did indeed induce SANDRA CAMACHO, to rely upon the aforementioned false representations/acts/statements;
- e. SANDRA CAMACHO was unaware of the falsity of Defendants’ aforementioned false representations/acts/statements;
- f. CLEVELAND CALRK was justified in relying upon Defendants’ misrepresentations

1 because they were made by Defendants who possessed superior knowledge regarding
2 the health hazards and addictive nature of cigarettes;

3 g. As a direct and proximate and/or legal cause of Defendants' intentional
4 misrepresentations, SANDRA CAMACHO became addicted to cigarettes and
5 developed laryngeal cancer.
6

7 137. Furthermore, Defendants made false promises to Plaintiff, SANDRA CAMACHO, in the following
8 ways:

9 a. Defendants made false promises to the public, including SANDRA CAMACHO to (i)
10 cooperate with public health, including the Surgeon General, (ii) conduct allegedly
11 "objective" research regarding the addictive nature and health hazards of cigarettes, (ii)
12 remove any harmful elements to cigarettes, if there were any, (iv) form purported
13 "objective" research committees dedicated to undertaking an interest in health as its
14 "basic responsibility paramount to every other consideration," (v) falsely pledging to
15 provide aid and assistance to research cigarette use and health and others;
16

17 b. At all times material, Defendants did not intend to keep its promises;

18 c. Defendants made its promises with the intent to induce Plaintiff to begin and continue
19 smoking;
20

21 d. Plaintiff was unaware of Defendants' intention not to perform their promises;

22 e. Plaintiff acted in reliance upon Defendants' promises;

23 f. Plaintiff was justified in relying upon Defendants' promises;

24 g. As a direct and proximate and/or legal cause of Defendants' false promises, SANDRA
25 CAMACHO became addicted to cigarettes and developed laryngeal cancer.

26 138. As a direct and proximate and/or legal cause of Defendants' fraudulent acts and misrepresentations,
27 SANDRA CAMACHO was injured. SANDRA CAMACHO thereby experienced great pain to her
28

body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

139. As a further direct and proximate and/or legal cause of Defendants' fraudulent acts and misrepresentations, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

140. As a further direct and proximate and/or legal cause of Defendants' fraudulent acts and misrepresentations, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat, and care for her and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

141. As a further direct and proximate and/or legal cause of Defendants' aforesaid fraudulent acts and misrepresentations, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered and continues to suffer loss of companionship and care, emotional and moral support and/or sexual intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

142. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

143. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people and was carried on by Defendants with willful and conscious disregard for the safety of SANDRA CAMACHO.

144. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an

1 example of Defendants, and to deter similar conduct in the future.

2 145. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
3 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
4 agents, independent contractors, and/or servants, as set forth herein.

5 146. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
6 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
7 attorney fees and costs of suit.
8

9 **FOURTH CLAIM FOR RELIEF**

10 **(FRAUDULENT CONCEALMENT)**

11 **Sandra Camacho Against Defendants Philip Morris and Liggett**

12 147. Plaintiffs repeat and reallege each and every allegation as contained in paragraphs 1 through 87 and
13 paragraphs 129 through 148 and incorporate the same herein by reference.
14

15 148. Beginning at an exact time unknown to SANDRA CAMACHO, and continuing today,
16 cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out, a
17 campaign designed to deceive the public, including SANDRA CAMACHO, physicians, the
18 government, and others as to the true danger of cigarettes.

19 149. Cigarette manufacturers, including Defendants herein, carried out their plan by
20 concealing and suppressing facts, information, and knowledge about the dangers of smoking,
21 including addiction.
22

23 150. Defendants carried out its scheme by concealing its knowledge concerning the dangers
24 of cigarettes and its addictive nature as set forth in the *Historical Allegations of Defendants Unlawful*
25 *Conduct Giving Rise to the Lawsuit* allegations referenced above.

26 151. Defendants also carried out such scheme by concealing its knowledge concerning, but
27 not limited to, the following:
28

- a. the highly addictive nature of nicotine cigarettes;
- b. the design of cigarettes to make them more addictive and easier to inhale;
- c. the manipulating and controlling of nicotine content of their products to create and perpetuate users' addiction to cigarettes;
- d. the manufacturing and engineering process of making cigarettes, including adding tar, carcinogens, arsenal, polonium-210, formaldehyde, nitrosamines, and other compounds;
- e. the deliberate use of ammonia technology and/or certain tobacco
- f. blends to boost the pH of cigarette smoke to "free base" nicotine in cigarettes;
- g. its intentional use of tobacco high in nitrosamines—a potent carcinogen not found in natural, green tobacco leaf, but created during the tobacco curing process;
- h. its scheme to target and addict children to replace customers who were dying from smoking cigarettes;
- i. the true results of its research regarding the dangers posed by smoking cigarettes. For example, in response to the 1965 Surgeon General report that related cigarette smoking to lung cancer in men, the cigarette manufacturers, including Defendant herein, concealed their research, from the year prior, which concluded:

Moreover, nicotine is addictive. We are, then in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms ... But cigarettes - we assume the Surgeon General's Committee to say - despite the beneficent effect of nicotine, have certain unattractive side effects:

1. They cause, or predispose to, lung cancer.
 2. They contribute to certain cardiovascular disorders.
 3. They may well be truly causative in emphysema, etc.
- j. the risks of contracting cancer, including but not limited to laryngeal cancer, esophageal cancer, other head and neck cancers, oral cancer, emphysema, COPD, lung

cancer, heart disease, strokes, bladder cancer, other forms of cancer;

k. filtered, low tar, low nicotine, and/or “light” cigarettes were not safe, safer, or less dangerous than “regular” cigarettes;

l. the Federal Trade Commission (“FTC”) method of measuring “tar & nicotine” levels underestimated and did not accurately reflect the levels of tar and nicotine delivered to a smoker.

152. Cigarette manufacturers, including Defendants herein, also concealed and/or made fraudulent statements and misrepresentations to the public, including SANDRA CAMACHO, through their actions, funding, and involvement with TIRC/CTR, including but not limited to the following:

- a. falsely concealing the true purpose of TIRC/CTR was public relations, politics, and positioning for litigation;
- b. falsely pledging to provide aid and assistance to research cigarette use and health;
- c. expressly undertaking a disingenuous interest in health as its “basic responsibility paramount to every other consideration;”
- d. affirmatively assumed a (broken) promise to truthfully disclose adverse information regarding the health hazards of smoking;
- e. purposely created the illusion that scientific research regarding the dangers of cigarettes was being conducted and the results of which would be made public;
- f. concealing information regarding the lack of bona fide research being conducted by TIRC/CTR and the lack of funds being provided for research;
- g. concealing that TIRC/CTR was nothing more than a “public relations” front and shield.

153. Defendants made false promises to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. Defendants assumed the responsibility to provide SANDRA CAMACHO, and the

- 1 public, accurate and truthful information about their own products;
- 2 b. Defendants concealed and/or suppressed the aforementioned material facts about the
- 3 dangers of cigarettes;
- 4 c. Defendants were under a duty to disclose material facts about the dangers of cigarettes
- 5 to Plaintiff;
- 6 d. Defendants knew it was concealing material facts about the dangers of cigarettes from
- 7 Plaintiff;
- 8 e. Defendants intended to induce Plaintiff to smoke and become addicted to cigarettes;
- 9 f. Plaintiff was unaware of the dangerous and addictive nature of cigarettes, and would
- 10 not have begun or continued to smoke had he known the aforementioned concealed
- 11 and/or suppressed information Defendants' possessed;
- 12 g. Plaintiff was unaware of the danger of Defendants' cigarettes, the addictive nature of
- 13 Defendants' cigarettes, and that low tar, low nicotine, "light," and/or filtered cigarettes
- 14 were just as dangerous as unfiltered and "regular" cigarettes;
- 15 h. Plaintiff justifiably relied upon Defendants to disseminate the superior knowledge and
- 16 information it possessed regarding the dangers of cigarettes;
- 17 i. The concealment and/or suppressed of material facts regarding the hazards of cigarettes
- 18 caused Plaintiff to become addicted to cigarettes, and also caused her to develop
- 19 laryngeal cancer.
- 20
- 21
- 22

23 154. As a direct and proximate and/or legal cause of Defendants' fraudulent concealment,

24 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining

25 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

26 155. As a further direct and proximate and/or legal cause of Defendants' fraudulent

27 concealment, SANDRA CAMACHO has incurred damages, both general and special, including

28

1 medical expenses as a result of the necessary treatment of her injuries, and will continue to incur
2 damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a
3 sum in excess of Fifteen Thousand Dollars (\$15,000.00).

4
5 156. As a further direct and proximate and/or legal cause of Defendants' fraudulent
6 concealment, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other
7 health care providers to examine, treat, and care for her and did incur medical and incidental expenses
8 thereby. The exact amount of such expenses is unknown at this present time, but SANDRA
9 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
10 (\$15,000.00).

11
12 157. As a further direct and proximate and/or legal cause of Defendants' aforesaid
13 fraudulent concealment, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband,
14 has suffered and continues to suffer loss of companionship and care, emotional and moral support
15 and/or sexual intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars
16 (\$15,000.00).

17 158. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

18 159. Defendants' conduct was despicable and so contemptible that it would be looked down
19 upon and despised by ordinary decent people and was carried on by Defendants with willful and
20 conscious disregard for the safety of SANDRA CAMACHO.

21
22 160. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
23 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
24 example of Defendants, and to deter similar conduct in the future.

25 161. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
26 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
27 agents, independent contractors, and/or servants, as set forth herein.
28

162. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

FIFTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

Sandra Camacho Against Defendants Philip Morris; R.J. Reynolds; and Liggett

163. Plaintiffs repeat and reallege the allegations as contained in paragraphs 1 through 87, paragraphs 129 through 148, and paragraphs 149 through 164, and incorporate the same herein by reference.

164. Defendants acted in concert to accomplish an unlawful objective for the purposes of harming Plaintiff, SANDRA CAMACHO. Defendants' actions include, but are not limited to the following:

- a. Defendants, along with other cigarette manufacturers, and CTR, TIRC, and TI, along with attorneys and law firms retained by Defendants, unlawfully agreed to conceal and/or omit, and did in fact conceal and/or omit, information regarding the health hazards of cigarettes and/or their addictive nature with the intention that smokers and the public would rely on this information to their detriment. Defendants agreed to execute their scheme by performing the abovementioned unlawful acts and/or by doing lawful acts by unlawful means;
- b. Defendants, along with other entities including TIRC, CTR, TI and persons including their in-house lawyers and outside retained counsel, entered into a conspiracy in 1953 to conceal the harms of smoking cigarettes;

- c. Defendants, through their executives, employees, agents, officers and representatives made numerous public statements from 1953 through 2000 directly denying the health hazards and addictive nature of smoking cigarettes.

165. After the year 2000, Defendants continued their conspiratorial acts in furtherance of their conspiracy related to the harms of smoking including but not limited to the following acts:

- a. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
- b. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- c. Marketing and/or advertising lights and ultra-light cigarettes as safer or less hazardous to health;
- d. Knowingly concealing from the public that filtered, low tar, lights, and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes;
- e. Adding “onserts” to packages of cigarettes even after the United States government banned marketing of “light” and “ultra-light” cigarettes;
- f. Opposing, and continuing to oppose proposed FDA regulations to reduce or eliminate levels of nicotine in cigarettes;
- g. Continuing to market and prey upon children and teenagers who are not able to understand or appreciate the risks and dangers associated with cigarette smoking.

166. Defendants’ actions, as they relate to their acts in furtherance of their conspiracy as alleged in this complaint, continues through the present.

167. Two or more of the cigarette manufacturers, including Defendants herein, by their aforementioned concerted actions, intended to accomplish, and did indeed accomplish, an unlawful objective of misleading and deceiving the public, for the purpose of harming Plaintiff.

168. As a direct proximate and/or legal cause of Defendants’ concerted actions, SANDRA

1 CAMACHO was injured and experienced great pain to her body and mind, sustaining injuries and
2 damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

3 169. As a further direct and proximate and/or legal cause of Defendants' concerted actions,
4 SANDRA CAMACHO has incurred damages, both general and special, including medical expenses
5 as a result of the necessary treatment of her injuries, and will continue to incur damages for future
6 medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of
7 Fifteen Thousand Dollars (\$15,000.00).
8

9 170. As a further direct and proximate and/or legal cause of Defendants' concerted actions,
10 SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care
11 providers to examine, treat, and care for her and did incur medical and incidental expenses thereby.
12 The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO
13 alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).
14

15 171. As a further direct and proximate and/or legal cause of Defendants' aforesaid concerted
16 actions, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered and
17 continues to suffer loss of companionship and care, emotional and moral support and/or sexual
18 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).
19

20 172. Defendants' concerted actions were taken knowingly, wantonly, willfully, and/or
21 maliciously.

22 173. Defendants' conduct was despicable and so contemptible that it would be looked down
23 upon and despised by ordinary decent people and was carried on by Defendants with willful and
24 conscious disregard for the safety of SANDRA CAMACHO.

25 174. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
26 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
27 example of Defendants, and to deter similar conduct in the future.
28

175. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent agents, independent contractors, and/or servants, as set forth herein.

176. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SIXTH CLAIM FOR RELIEF

(VIOLATION OF DECEPTIVE TRADE PRACTICES ACT – NRS 598.0903)

Sandra Camacho Against Defendants Philip Morris; R.J. Reynolds; And Liggett

177. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs herein and incorporate the same herein by reference.

178. At all times relevant herein, there was a statute in effect entitled Nevada Deceptive Trade Practices Act, NRS 598.0903 et. seq.

179. Defendants are subject to the provisions of the Nevada Deceptive Trade Practices Act, and Plaintiff is one of the persons the Act was enacted to protect.

180. Plaintiffs bring this claim pursuant to NRS 41.600, which entitles any person who is the victim of consumer fraud to bring an action. A deceptive trade practice as defined in NRS 598.0915 to 598.0925 constitutes consumer fraud.

181. NRS 598.0915 states that a person engages in a deceptive trade practice if, in the course of his or her business or occupation:

2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease.

3. Knowingly makes a false representation as to affiliation, connection, association with or certification by another person.

1 5. Knowingly makes a false representation as to the characteristics, ingredients, uses,
2 benefits, alterations or quantities of goods or services for sale or lease or a false
3 representation as to the sponsorship, approval, status, affiliation or connection of a
4 person therewith.

5 7. Represents that goods or services for sale or lease are of a particular standard, quality
6 or grade, or that such goods are of a particular style or model, if he or she knows or
7 should know that they are of another standard, quality, grade, style or model.

8 ****

9 15. Knowingly makes any other false representation in a transaction.

10 182. Upon information and belief, Defendants knowingly violated NRS 598.0915 by
11 making the following false and misleading statements and representations, including but not limited
12 to:

- 13 a. making countless publicized appearances on television and radio disingenuously
14 denying cigarettes were addictive and claimed smoking was a matter of free choice and
15 smokers could quit smoking if they wanted to;
- 16 b. representing to the public that it was not known whether cigarettes were harmful or
17 caused disease;
- 18 c. falsely advertising and promoting cigarettes as safe, not dangerous, and not harmful;
- 19 d. falsely advertising and promoting “filtered” and “light” cigarettes as “low tar” and “low
20 nicotine” through print advertisements in magazines and newspapers throughout the
21 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- 22 e. falsely representing that questions about smoking and health would be answered by an
23 allegedly unbiased, trustworthy source;
- 24 f. misrepresenting and confusing facts about health hazards of cigarettes and addiction;
- 25 g. creating a made up “cigarette controversy;”
- 26 h. taking out a full page advertisement called the “Frank Statement to Cigarette Smokers”
27 which falsely assured the public, the American government, and SANDRA
28

CAMACHO, that would purportedly “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and health, and reveal to the public the results of their alleged “objective” research;

- i. falsely assuring the public that TIRC/CTR was an “objective” research committee when internal company documents reveals that TIRC/CTR functioned not for the promotion of scientific goals, but for public relations, politics, and positioning for litigation;
- j. sponsoring, being quoted in, and helping publish articles to mislead the public including but not limited to the following: “Smoke-Cancer Tie Termed Obscure” (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);
- k. responding to the 1964 Surgeon General Report which linked cigarette smoking to health, by falsely assuring the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements.
- l. advertising and promoting cigarettes on television and radio as safe and glamorous, to the extent that cigarette advertising was the number one most heavily advertised product on television;
- m. making knowingly false and misleading statements during a governmental hearing, including stating that, “there is absolutely no proof that cigarettes are addictive;”
- n. purposefully targeting children yet openly in press releases falsely claiming, “We don’t

1 advertise to children . . . Some straight talk about smoking for young people;”

- 2 o. responding the 1988 United States Surgeon General’s report that nicotine is the drug
3 in tobacco that causes addiction, by issuing press releases stating, “Claims that
4 cigarettes are addictive is irresponsible and scare tactics;”
5
6 p. lying under oath before the United States Congress in 1994 that it was their opinion
7 that it had not been proven that cigarettes were addictive, caused disease, or caused one
8 single person to die.

9 183. As a direct and proximate and/or legal cause of Defendants’ aforementioned acts,
10 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining
11 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

12 184. As a further direct and proximate and/or legal cause of Defendants’ aforementioned
13 acts, SANDRA CAMACHO has incurred damages, both general and special, including medical
14 expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for
15 future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess
16 of Fifteen Thousand Dollars (\$15,000.00).

17 185. As a further direct proximate and/or legal cause of Defendants’ aforementioned acts,
18 SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care
19 providers to examine, treat, and care for her and did incur medical and incidental expenses thereby.
20 The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO
21 alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

22 186. As a further direct and proximate and/or legal cause of Defendants’ aforementioned
23 acts, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO’S husband, has suffered and
24 continues to suffer loss of companionship and care, emotional and moral support and/or sexual
25 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).
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187. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

188. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people and was carried on by Defendants with willful and conscious disregard for the safety of SANDRA CAMACHO.

189. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future.

190. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent agents, independent contractors, and/or servants, as set forth herein.

191. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SEVENTH CLAIM FOR RELIEF

(STRICT PRODUCT LIABILITY)

Sandra Camacho Against Defendant, ASM Nationwide Corporation d/b/a Silverado Smokes & Cigars, a domestic corporation, and LV Singhs Inc. d/b/a Smokes & Vapors, a domestic corporation

192. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 and 87 and paragraphs 108 through 129, and incorporate the same herein by reference.

193. Defendants, SILVERADO and SMOKES & VAPORS, are in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

194. Defendants, SILVERADO and SMOKES & VAPORS' sold cigarettes to the public, including Plaintiff SANDRA CAMACHO.

195. The aforesaid products were distributed, sold and/or otherwise placed into the stream of

1 commerce by Defendants, SILVERADO and SMOKES & VAPORS.

2 196. Defendants, SILVERADO and SMOKES & VAPORS', defective and unreasonably
3 dangerous cigarettes reached SANDRA CAMACHO without substantial change from that in which
4 such products were when within the possession of Defendants.

5 197. Defendants, SILVERADO and SMOKES & VAPORS' cigarettes were dangerous
6 beyond the expectation of the ordinary user/consumer when used as intended or in a manner
7 reasonably foreseeable by Defendants.

8 198. The nature and degree of danger of Defendants, SILVERADO and SMOKES &
9 VAPORS' cigarettes were dangerous beyond the expectation of the ordinary consumer, including
10 SANDRA CAMACHO, when used as intended or in a reasonably foreseeable manner.

11 199. Defendants, SILVERADO and SMOKES & VAPORS' cigarettes were unreasonably
12 dangerous because a less dangerous design and/or modification was economically and scientifically
13 feasible.

14 200. As a direct and proximate and/or legal cause of the aforesaid defective and
15 unreasonably dangerous condition of cigarette products sold by Defendants, SILVERADO and
16 SMOKES & VAPORS, SANDRA CAMACHO was injured. SANDRA CAMACHO thereby
17 experienced great pain to her body and mind, and sustained injuries and damages in a sum in excess
18 of Fifteen Thousand Dollars (\$15,000.00).

19 201. As a further direct and proximate and/or legal cause of the defective and unreasonably
20 dangerous condition of Defendants' cigarettes, SANDRA CAMACHO has incurred damages, both
21 general and special, including medical expenses as a result of the necessary treatment of her injuries,
22 and will continue to incur damages for future medical treatment necessitated by smoking-related
23 injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

24 202. As a further direct and proximate and/or legal cause of the aforementioned defective
25
26
27
28

1 and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was
2 required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,
3 and care for her and did incur medical and incidental expenses thereby. The exact amount of such
4 expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered
5 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).
6

7 203. As a further direct and proximate and/or legal cause of Defendants' aforesaid defective
8 and unreasonably dangerous condition of Defendants' cigarettes, Plaintiff, ANTHONY CAMACHO,
9 as SANDRA CAMACHO'S husband, has suffered and continues to suffer loss of companionship and
10 care, emotional and moral support and/or sexual intimacy and alleges he has suffered damages in
11 excess of Fifteen Thousand Dollars (\$15,000.00).
12

13 204. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

14 205. Defendants' conduct was despicable and so contemptible that it would be looked down
15 upon and despised by ordinary decent people and was carried on by Defendants with willful and
16 conscious disregard for the safety of SANDRA CAMACHO.
17

18 206. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
19 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
20 example of Defendants, and to deter similar conduct in the future.
21

22 207. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
23 damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent
24 agents, independent contractors, and/or servants, as set forth herein.

25 208. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
26 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
27 attorney fees and costs of suit.
28

WHEREFORE, Plaintiffs, SANDRA CAMACHO and ANTHONY CAMACHO expressly

1 reserving the right to amend this Complaint at the time of trial to include all items of damage not yet
2 ascertained, demand judgment against Defendants, PHILIP MORRIS USA, INC.; R.J. REYNOLDS
3 TOBACCO COMPANY, individually, and as successor-by-merger to LORILLARD TOBACCO
4 COMPANY and as successor-in-interest to the United States tobacco business of BROWN &
5 WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE
6 AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC.; ASM NATIONWIDE
7 CORPORATION d/b/a SILVERADO SMOKES & CIGARS; LV SINGHS INC. d/b/a SMOKES &
8 VAPORS; DOES I-X; and ROE BUSINESS ENTITIES XI-XX as follows:

10 1. For general damages in excess of Fifteen Thousand Dollars (\$15,000.00), to be set
11 forth and proven at the time of trial;

12 2. For special damages in excess of Fifteen Thousand Dollars (\$15,000.00), to be set forth
13 and proven at the time of trial;

14 3. For exemplary and punitive damages in excess of Fifteen Thousand Dollars
15 (\$15,000.00);

16 4. For reasonable attorneys' fees;

17 5. For costs of suit incurred;

18 ///

19 ///

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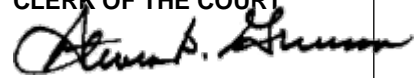
26 ///

- DATED this 30th day of December, 2019.

/s/ Sean K. Claggett
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EXHIBIT 2

EXHIBIT 2



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DISTRICT COURT

CLARK COUNTY, NEVADA

12 SANDRA CAMACHO, individually,
13 and ANTHONY CAMACHO, individually,

14 Plaintiffs,

15 v.

16 PHILIP MORRIS USA, INC., a foreign
17 corporation; R.J. REYNOLDS TOBACCO
18 COMPANY, a foreign corporation,
19 individually, and as successor-by-merger to
20 LORILLARD TOBACCO COMPANY and as
21 successor-in-interest to the United States
22 tobacco business of BROWN &
23 WILLIAMSON TOBACCO CORPORATION,
24 which is the successor-by-merger to THE
25 AMERICAN TOBACCO COMPANY;
26 LIGGETT GROUP, LLC., a foreign
27 corporation; and ASM NATIONWIDE
28 CORPORATION d/b/a SILVERADO
SMOKES & CIGARS, a domestic corporation,
and LV SINGHS INC. d/b/a SMOKES &
VAPORS, a domestic corporation; DOES I-X;
and ROE BUSINESS ENTITIES XI-XX,
inclusive,

Defendants.

CASE NO.: A-19-807650-C

DEPT. NO.: IV

AMENDED COMPLAINT

JURY TRIAL DEMAND

COMES NOW, SANDRA CAMACHO, individually, and ANTHONY CAMACHO, individually, by and through their attorney of record, CLAGGETT & SYKES LAW FIRM, complaining of Defendants and allege as follows:

JURISDICTION, VENUE, AND PARTIES

1. This Court has jurisdiction over this matter under NRS 14.065 and NRS 4.370(1), as the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess of \$15,000.00. Venue is proper pursuant to NRS 13.040, as Defendants, or any one of them, reside and/or conduct business in Clark County, Nevada at the commencement of this action.

2. Plaintiff, SANDRA CAMACHO (hereinafter "Plaintiff"), was and is at all times relevant herein, a resident of Clark County, Nevada.

3. Plaintiff, ANTHONY CAMACHO, was and is at all times relevant herein, married to Plaintiff, SANDRA CAMACHO, and was and is a resident of Clark County, Nevada.

4. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Defendant PHILIP MORRIS USA, Inc. (hereinafter "PHILIP MORRIS"), was and is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Virginia with its principal place of business located in the State of Virginia. Defendant, PHILIP MORRIS, resides and/or conducts business in every county within the State of Nevada and did so during all times relevant to this action.

5. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Defendant R.J. REYNOLDS TOBACCO COMPANY, Inc. (hereinafter "R.J. REYNOLDS"), was and is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of North Carolina with its principal place of business located in the State of North Carolina. Defendant, R.J.

1 REYNOLDS, resides and/or conducts business in every county within the State of Nevada and did so
2 during all times relevant to this action.

3 6. R.J. REYNOLDS TOBACCO COMPANY is also the successor-by-merger to
4 LORILLARD TOBACCO COMPANY (hereinafter “LORILLARD”), and is the successor-in-interest
5 to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION
6 (n/k/a Brown & Williamson Holdings, Inc.) (hereinafter “BROWN & WILLIAMSON”), which is the
7 successor-by-merger to the AMERICAN TOBACCO COMPANY (hereinafter “AMERICAN”).

8 7. Plaintiffs are informed and believe and thereon allege that at all times relevant herein,
9 Defendant LIGGETT GROUP, Inc. (f/k/a LIGGETT GROUP, INC., f/k/a BROOKE GROUP, LTD.,
10 Inc., f/k/a LIGGETT & MEYERS TOBACCO COMPANY) (hereinafter “LIGGETT”), was and is a
11 corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly
12 organized, created, and existing under and by virtue of the laws of the State of Delaware with its
13 principal place of business located in the State of North Carolina. Defendant, LIGGETT, resides and/or
14 conducts business in every county within the State of Nevada and did so during all times relevant to
15 this action.
16

17 8. The TOBACCO INDUSTRY RESEARCH COMMITTEE (“TIRC”) was formed in
18 1954, and later was re-named the COUNCIL FOR TOBACCO RESEARCH (“CTR”). This was a
19 disingenuous, fake “research committee” organized by Defendants as part of their massive public
20 relations campaign to create a controversy regarding the health hazards of cigarettes.
21

22 9. The TOBACCO INSTITUTE, INC. (“TI”) was formed in 1958 and was intended to
23 supplement the work of TIRC/CTR. TI spokespeople appeared on media/news outlets responding on
24 behalf of the cigarette industry with misrepresentations and false statements regarding health concerns
25 over cigarettes.
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10. Plaintiffs are informed and believe, and thereon allege that Defendant, ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS (“SILVERADO”), was and is a domestic corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Nevada. At all times material, SILVERADO’S registered agent resides at 430 E. Silverado Ranch Blvd. No 120. SILVERADO’S owns and operates a store that sells tobacco and cigarette products located at 430 E. Silverado Ranch Blvd, Ste. 120, Las Vegas NV 89123. SILVERADO’S is a retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Plaintiff, SANDRA CAMACHO.

11. Plaintiffs are informed and believe, and thereon allege that Defendant, LV SINGHS INC. d/b/a SMOKES & VAPES (“SMOKES & VAPES”), was and is a domestic corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Nevada. At all times material, SMOKES & VAPES’ registered agent resides at 9101 w. Sahara Ave. Ste 101, Las Vegas NV 89117. SMOKES & VAPES owns and operates a store that sells tobacco and cigarette products located at 430 E. Silverado Ranch Blvd. Ste 120, Las Vegas NV 89183. ASM’S is a retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Plaintiff, SANDRA CAMACHO.

12. Plaintiffs further allege that Defendants, at all times material to this cause of action, through their agents, employees, executives, and representatives, conducted, engaged in and carried on a business venture of selling cigarettes in the State of Nevada and/or maintained an office or agency in this state and/or committed tortious acts within the State of Nevada and knowingly allowed the Plaintiff to be exposed to an unreasonably dangerous and addictive product, to-wit: cigarettes and/or cigarette smoke.

13. Plaintiffs do not know the true names of Defendants Does I through X and sue said Defendants by fictitious names. Upon information and belief, each of the Defendants designated herein as Doe is legally responsible in some manner for the events alleged in this Complaint and actually, proximately, and/or legally caused injury and damages to Plaintiffs. Plaintiffs will seek leave of the Court to amend this Complaint to substitute the true and correct names for these fictitious names upon learning that information.

14. Plaintiffs do not know the true names of Defendants Roe Business Entities XI through XX and sue said Defendants by fictitious names. Upon information and belief, each of the Defendants designated herein as Roe Business Entities XI through XX, are predecessors-in-interest, successors-in-interest, and/or agencies otherwise in a joint venture with, and/or serving as an alter ego of, any and/or all Defendants named herein; and/or are entities responsible for the supervision of the individually named Defendants at the time of the events and circumstances alleged herein; and/or are entities employed by and/or otherwise directing the individual Defendants in the scope and course of their responsibilities at the time of the events and circumstances alleged herein; and/or are entities otherwise contributing in any way to the acts complained of and the damages alleged to have been suffered by the Plaintiff herein. Upon information and belief, each of the Defendants designated as a Roe Business Entity is in some manner negligently, vicariously, and/or statutorily responsible for the events alleged in this Complaint and actually, proximately, and/or legally caused damages to Plaintiff. Plaintiff will seek leave of the Court to amend this Complaint to substitute the true and correct names for these fictitious names upon learning that information.

15. All conditions precedent to the bringing of this action have been complied with or waived.

FACTS COMMON TO ALL CLAIMS

16. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

1 17. Plaintiff, SANDRA CAMACHO, was diagnosed on or about March of 2018 with
2 laryngeal cancer, which was caused by smoking L&M brand cigarettes, Marlboro brand cigarettes, and
3 Basic brand cigarettes, to which she was addicted and smoked continuously from approximately 1964
4 until 2017.

5 18. At all times material, L&M cigarettes were designed, manufactured, and sold by
6 Defendant, Liggett.

7 19. At all times material, Marlboro and Basic cigarettes were designed, manufactured, and
8 sold by Defendant, Philip Morris USA, Inc.

9 20. Plaintiff, SANDRA CAMACHO, purchased and smoked L&M, Marlboro, and Basic
10 cigarettes from the SILVERADO'S in sufficient quantities to be a substantial contributing cause of her
11 laryngeal cancer.

12 21. Plaintiff, SANDRA CAMACHO, purchased and smoked L&M, Marlboro, and Basic
13 cigarettes from the SMOKES & VAPORS in sufficient quantities to be a substantial contributing cause
14 of her laryngeal cancer.

15 22. At all times material, Defendants purposefully and intentionally designed cigarettes to
16 be highly addictive. They added ingredients such as ammonia and diammonium-phosphate to "free-
17 base" nicotine and manipulated levels of nicotine and pH in smoke to make cigarettes more addictive,
18 better tasting, and easier to inhale. They also deliberately manipulated and/or added compounds in
19 cigarettes such as arsenic, polonium-210, tar, methane, methanol, carbon monoxide, nitrosamines,
20 butane, formaldehyde, tar, carcinogens, and other deadly and poisonous compounds to cigarettes.

21 23. Astonishingly, for over half a century, Defendants concealed the addictive and deadly
22 nature of cigarettes from Plaintiff, the government, and the American public by making knowingly
23 false and misleading statements and by engaging in an over two-hundred and fifty-billion-dollar
24 conspiracy.

1 24. Despite knowing internally, dating back to the 1950s, that cigarettes were deadly,
2 addictive, and caused death and disease, Defendants, for over five decades, purposefully and
3 intentionally lied, concealed information, and made knowingly false and misleading statements to the
4 public, including Plaintiff, that cigarettes were allegedly *not* harmful.

5 25. Defendants failed to acknowledge or admit the truth until they were forced to do, as a
6 result of litigation, in the year 2000.

7 26. Plaintiff's injuries arose out of Defendants' acts and/or omissions which occurred
8 inside and outside of the State of Nevada.

9 27. At all times material to this action, Defendants knew or should have known the
10 following:

- 11 a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as
12 COPD, which includes emphysema and chronic bronchitis, laryngeal cancer, and lung
13 cancer, including squamous cell carcinoma, small cell carcinoma, adenocarcinoma,
14 and large cell carcinoma;
- 15 b. Nicotine in cigarettes is addictive;
- 16 c. Defendants placed cigarettes on the market that were defective and unreasonably
17 dangerous;
- 18 d. Defendants concealed or omitted material information not otherwise known or
19 available, knowing that the material was false and misleading, or failed to disclose a
20 material fact concerning the health effects or addictive nature of smoking cigarettes, or
21 both;
- 22 e. Defendants entered into an agreement to conceal or omit information regarding the
23 health effects of cigarettes or their addictive nature with the intention that smokers and
24 the public would rely on this information to their detriment;

- f. Defendants sold or supplied cigarettes that were defective;
- g. Defendants are negligent;
- h. Children and teenagers are more likely to become addicted to cigarettes if they begin smoking at an early age;
- i. Continued and frequent use of cigarettes highly increases one's chances of becoming, and remaining, addicted;
- j. Continued and frequent use of cigarettes highly increases one's chances of developing serious illness and death;
- k. It is extremely difficult to quit smoking;
- l. "Many, but not most, people who would like to stop smoking are able to do so" (Concealed Document, 1982);
- m. "Defendants' cannot defend continued smoking as "free choice" if the person is addicted" (Concealed Document 1980);
- n. It is possible to develop safe cigarettes free of nicotine, carcinogens, and other deadly and poisonous compounds;
- o. "The thing Defendants' sell most is nicotine" (Concealed Document 1980);
- p. Filtered, low tar, low nicotine, and "light" cigarettes are more dangerous than "regular" cigarettes;
- q. "Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and would almost certainly fail" (Concealed Document 1966);
- r. "Without the nicotine, the cigarette market would collapse, and Defendants' would all lose their jobs and their consulting fees" (Concealed Document 1977);
- s. "Carcinogens are found in practically every class of compounds in smoke" (Concealed Document 1961);

1 t. "Cigarettes have certain unattractive side effects . . . they cause lung cancer"
2 (Concealed Document 1963).

3 28. Defendants' tortious and unlawful conduct caused consumers, including SANDRA
4 CAMACHO, to suffer dangerous diseases and injuries.

5 **Historical Allegations of Defendants Unlawful Conduct**
6 **Giving Rise to the Lawsuit**

7 29. Lung cancer, caused by cigarette smoking, is the number one leading cause of death in
8 the United States.

9 30. Cigarettes kill more than 500,000 Americans every year. Over 20 million Americans
10 have died from lung cancer.

11 31. Lung cancer is a disease manufactured and created by the cigarette industry, including
12 Defendants herein.

13 32. Prior to 1900, lung cancer was virtually unknown as a cause of death in the United
14 States.

15 33. By 1935, there were only an estimated 4,000 lung cancer deaths. By 1945, as a result
16 of the rise of cigarette consumption, the number of deaths almost tripled.

17 34. Because of this phenomenon, scientists began conducting research and experiments
18 regarding the link between cigarette smoking and lung cancer.

19 35. In addition to scientists, Defendants themselves began to conduct similar research. By
20 February 2, 1953 Defendants had concrete proof that cigarette smoking increased the risk of lung
21 cancer. A previously secret and concealed document by Defendant, an R.J. Reynolds' states:

22 **Studies of clinical data tend to confirm the relationship between heavy smoking**
23 **and prolonged smoking and incidence of cancer of the lung.**

24 36. Approximately six months later on December 21, 1953, Life Magazine and Reader's
25 Digest published articles regarding a ground-breaking mouse painting study, conducted by Drs.
26
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Wynder and Graham, which concluded that tar from cigarettes painted on the backs of mice developed into cancer.

37. As a result of these articles and mounting public awareness regarding the link between cigarette smoking and lung cancer, Defendants grew fearful their customers would stop smoking, which would in turn bankrupt their companies.

38. Thus, in order to maximize profits, Defendants decided to intentionally ban together to form a conspiracy which, for over half a century, was devoted to creating and spreading doubt regarding a disingenuous “open debate” about whether cigarettes were or were not harmful.

39. This conspiracy was formed in December of 1953 at the Plaza Hotel in New York City. Paul Hahn, president of American Tobacco, sent telegrams to presidents of the seven largest tobacco companies and one tobacco growers’ organization, inviting them to meet at the Plaza Hotel.



40. Executives from every cigarette company, except for Liggett, met at the Plaza Hotel on December 14, 1953. The executives discussed the following topics: (i) the negative publicity from the recent articles in the media, (ii) the need to hire a public relations firm, Hill & Knowlton, and (iii) the major threat to their corporations’ economic future.

41. In an internal planning memorandum Hill & Knowlton assessed their cigarette clients’ problems in the following manner:

“There is only one problem -- confidence, and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. **And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any pooh-poohing**

1 **logic -- every time they light a cigarette.** No resort to mere logic ever cured panic yet,
2 whether on Madison Avenue, Main Street, or in a psychologist's office. And no mere
3 recitation of arguments pro, or ignoring of arguments con, or careful balancing of the
4 two together, is going to deal with such fear now. That, gentlemen, is the nature of the
5 unexampled challenge to this office."

6 42. On December 28, 1953, Defendants again met at the Plaza Hotel where they knowingly
7 and purposefully agreed to form a fake "research committee," called the Tobacco Industry Research
8 Committee ("TIRC") (later renamed the Council for Tobacco Research ("CTR")). Paul Hahn,
9 president of American Tobacco, was elected the temporary chairman of TIRC.

10 43. TIRC's *public* mission statement was to supposedly aid and assist with so-called
11 "independent" research into cigarette use and health.

12 44. The formation and purpose of TIRC was announced on January 4, 1954, in a full-page
13 advertisement called "A Frank Statement to Cigarette Smokers" published in 448 newspapers
14 throughout the United States.

15 45. The Frank Statement was signed by the following domestic cigarette and tobacco
16 product manufacturers, including Defendants herein, organizations of leaf tobacco growers, and
17 tobacco warehouse associations that made up TIRC: American Tobacco by Paul Hahn, President;
18 B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip
19 Morris by O. Parker McComas, President; Defendant, R.J Reynolds by Edward A. Darr, President;
20 Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S.
21 Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley
22 Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company,
23 Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton,
24 General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco
25 Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson,
26 President.
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46. In their Frank Statement to Cigarette Smokers, Defendants knowingly and intentionally mislead Plaintiff, the public, and the American government when they disingenuously promised to “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and health, and reveal to the public the results of their purported “objective” research.

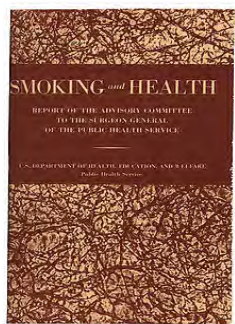
47. For the next five decades, TIRC/CTR worked diligently, and quite successfully, to rebuff the public’s concern about the dangers of cigarettes. Defendants, through TIRC/CTR, invented the false and misleading notion that there was an “open question” regarding cigarette smoking and health. They appeared on television and radio to broadcast this message.

48. TIRC/CTR hired fake scientists and spokespeople to attack genuine, legitimate scientific studies. Virtually none of the so-called “research” funded by TIRC/CTR centered on the immediate questions relating to carcinogenesis and tobacco. Rather than addressing the compounds and carcinogens in cigarette smoke and their hazardous effect on the human body, TIRC/CTR instead directed its resources to alternative theories of the origins of cancer, centering on genetic factors and environmental risks.

49. The major initiative of TIRC/CTR, through their Scientific Advisory Board (SAB), was to, “create the appearance of [Defendants] devoting substantial resources to the problem without the risk of funding further ‘contrary evidence.’”

50. TIRC/CTR’s efforts worked brilliantly and cigarette consumption rapidly increased.

51. In 1964 there was another dip in the consumption of cigarettes because the United States Surgeon General reported, “cigarette smoking is causally related to lung cancer in men . . . the data for women, though less extensive, points in the same direction.”



1
2 52. The cigarette industry's *public* response, through TIRC, to the 1964 Surgeon General
3 Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry
4 would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were
5 any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements.
6 As a result, cigarette consumption again began to rise.
7

8 53. Despite Defendant's *public* response, internally they were fully aware of the magnitude
9 and depth of lies and deception they were promulgating. They knew and understood they were
10 making fake, misleading promises that would never come to fruition. Their own internal records
11 reveal that they knew, even back in 1964, that cigarettes were not only hazardous, but deadly:

12 **"Cigarettes have certain unattractive side effects . . . they cause lung**
13 **cancer"** (Concealed Document 1963).

14 **"Carcinogens are found in practically every class of compounds in smoke"**
15 **(Concealed Document 1961).**

16 **"The amount of evidence accumulated to indict cigarette smoke as a**
17 **health hazard is overwhelming. The evidence challenging such indictment**
18 **is scant"** (Concealed Document 1962).

19 54. Furthermore, not only did Defendants know and appreciate the dangers of cigarettes,
20 but they were also intentionally manipulating ingredients, such as nicotine, in cigarettes to make
21 them more addictive. Their documents reveal they knew the following:

22 **"Our industry is based upon design, manufacture and sale of attractive**
23 **dosage forms of nicotine"** (Concealed Document 1972).

24 **"We can regulate, fairly precisely, the nicotine . . . to almost any desired**
25 **level management might require"** (Concealed Document 1963).

26 **"Cigarette[s] that do not deliver nicotine cannot satisfy the habituated**
27 **smoker and would almost certainly fail"** (Concealed Document 1966).

28 **"Nicotine is addictive . . . We are then, in the business of selling nicotine,**
an addictive drug" (Concealed Document 1963).

1 **“We have deliberately played down the role of nicotine”** (Concealed
2 Document 1972).

3 **“Very few consumers are aware of the effects of nicotine, i.e., it’s addictive**
4 **nature and that nicotine is a poison”** (Concealed Document 1978).

5 **“Determine minimum nicotine required to keep normal smoker ‘hooked.’”**
6 (Concealed Document 1965).

7 **“The thing we sell most is nicotine”** (Concealed Document 1980).

8 **“Without the nicotine, the cigarette market would collapse, and**
9 **Defendants’ would all lose their jobs and their consulting fees”** (Concealed
10 Document 1977).

11 55. Defendants deliberately added chemicals such as urea, ammonia, diammonium-
12 phosphate, tar, nitrosamines, arsenal, polonium-210, formaldehyde, and other carcinogens to
13 cigarettes. They “free-based” nicotine in cigarettes and manipulated levels of pH in smoke to make
14 cigarettes more addictive and easier to inhale.

15 56. Defendant’s sole priority was to make as much money as quickly as possible, with no
16 concern about the safety and well-being of their customers.

17 57. In 1966, the United States Government mandated that a “Caution” Label be placed on
18 packs of cigarettes stating, “Cigarette Smoking May be Hazardous to Your Health.”

19 58. The cigarette industry responded to the “Caution” label by continuing their massive
20 public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the
21 public.

22 59. Throughout this period Defendants also introduced “filtered” cigarettes – cigarettes
23 falsely marketed, advertised, and promoted as “less tar” and “less nicotine.”

24 60. However, internally, in Defendants’ previously concealed, hidden documents,
25 discussions regarding the true nature of filtered cigarettes was revealed – filters were just as harmful,
26 dangerous, and hazardous as unfiltered cigarettes; In fact, they were more dangerous. In a previously
27
28

1 secret document from 1976, Ernie Pepples from Brown & Williamson states, “the smoker of a filter
2 cigarette was getting as much or more nicotine and tar as he would have gotten from a regular
3 cigarette.”

4 61. Throughout the 1960s, 1970s, 1980s and 1990s, the cigarette industry, including
5 Defendants herein, spent two-hundred and fifty-billion-dollars in marketing efforts to promote the
6 sale of cigarettes.

7 62. The cigarette industry spent more money on marketing and advertising cigarettes *in*
8 *one day* than the public health community spent *in one year*.

9 63. Cigarette smoking was glamorized – celebrities smoked, athletes smoked, doctors
10 smoked, politicians smoked – everyone smoked cigarettes.

11 64. As early as the 1920s, and continuing today, cigarette manufacturers, including
12 Defendants herein, were also intentionally targeting children. Their documents reveal:

13 **“School days are here. And that means BIG TOBACCO BUSINESS for**
14 **somebody . . . line up the most popular students”** (Concealed Document
15 1927).

16 **“SUMMER SCHOOL IS STARTING . . . lining up these students . . . as**
17 **consumers”** (Concealed Document 1928).

18 **“Today’s teenager is tomorrow’s potential regular customer”** (Concealed
19 Document 1981).

20 **“The 14-24 age group . . . represent tomorrow’ cigarette business”**
21 (Concealed Document 1974).

22 65. Cigarette manufacturers, including Defendants herein, also targeted and prayed upon
23 minority populations in an effort to increase their market share and ultimately their profits.

24 66. Cigarettes were the number one most heavily advertised product on television until the
25 United States Government banned television advertisements in 1972.
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67. When cigarettes advertising was banned on television Defendants turned to marketing in stadiums, sponsoring sporting events such as the Winston Cup and Marlboro 500, sponsoring concerts, utilizing print advertisements in magazines, adding product placement in movies, and more.



68. Meanwhile, internally Defendants were praising themselves for accomplishing this “brilliantly conceived” conspiracy which deceived SANDRA CAMACHO, millions of Americans, the government, and the public health community.

“for nearly 20 years, this industry has employed a single strategy to defend itself . . . brilliantly conceived and executed . . . a holding strategy . . . creating doubt about the health charge without actually denying it”
(Concealed Document 1972).

69. In 1985, four rotating warning labels were placed on packs of cigarettes which warned, for the first time, that smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.

70. The cigarette industry, including Defendants herein, opposed these warning labels and throughout the 1980s, despite the warning labels being placed on their cigarettes, spoke publicly through their representatives in the Tobacco Institute (TI) that it was allegedly still unknown whether smoking cigarettes caused cancer or was addictive because, apparently, “more research was needed.”

71. In 1988 the United States Surgeon General reported that cigarettes and other forms of tobacco were addicting, and nicotine is the drug in tobacco that causes addiction. In fact, in his report, the Surgeon General compared tobacco addiction to heroine and cocaine.

72. In response, the cigarette industry, including Defendants herein, issued a press release knowingly and disingenuously stating, "Claims that cigarettes are addictive is irresponsible and scare tactics."

73. Defendants continued to publicly deny the addictive nature and health hazards of smoking cigarettes until the year 2000, after litigation was brought against them by the Attorneys Generals of multiple States and their previously concealed documents were made public.

74. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein, testified under oath before the United States Congress that it was their opinion that it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die.



75. Despite their own intensive research and (millions of) internal documents describing the dangers and addictive qualities of cigarettes, Defendants' negligently, willfully, maliciously, and intentionally made false and misleading statements to Congress, the public, and Plaintiff, SANDRA CAMACHO.

76. Even after Defendants knowingly lied during these Congressional hearings, Defendants continued, and still are continuing to, perpetuate their conspiracy.

1 77. For example, in 1997 Liggett announced that they would voluntarily place a warning
2 label on their cigarette packages, in addition to the labels mandated by the United States government,
3 that smoking is addictive. Defendant, Philip Morris, immediately filed a restraining order against
4 Liggett to prevent them from adding this warning label. Then, in 1998 Liggett sold its three major
5 cigarette brands, L&N, Lark, and Chesterfield, to Philip Morris who immediately removed the
6 “smoking was addictive” warning label from these products.
7

8 78. Furthermore from 2000 through 2010, Defendants continued to mislead the public by
9 marketing and promoting “light” and “ultra-light” cigarettes despite knowing internally that such
10 cigarettes were just as dangerous and addictive as “regular” cigarettes.
11

12 79. In 2010 after Defendants were required, by the United States government, to remove
13 the misleading “light” and “ultra-light” labels from their cigarettes, they instead added “onserts” to
14 their packages of cigarettes explaining that, for example, “Your Marlboro Lights pack is changing.
15 But your cigarette stays the same. In the future, ask for ‘Marlboro in the gold pack.’”
16

17 80. Additionally, as recently as 2018, Defendants have continued to oppose proposed FDA
18 regulations which would reduce or eliminate the levels of nicotine in cigarettes.
19

20 81. As recently as 2019, Defendants do not admit or acknowledge that nicotine in their
21 cigarette smoke “is” addictive.
22

23 82. As recently as 2019, Defendants do not admit or acknowledge that nicotine addiction
24 can cause diseases.
25

26 83. As recently as 2019, Defendants continue to make false or misleading statements that
27 filtered cigarettes, lights, ultra-lights and low tar are less hazardous than conventional full flavored
28 cigarettes.
29

 84. Finally, Defendants have continued to target and prey upon children, teenagers,
minorities, and other segment populations, all in the name of money.

85. Defendants, despite being rivals and competitors, locked arms and banded together to purposefully and internationally engage in an over 65-year conspiracy to deceive the public regarding the addictive nature and health hazards of cigarette smoking.

86. This sophisticated conspiracy involved hundreds of billions of dollars spent on marketing efforts, massive deception including lying under oath before Congress and other governmental entities, forming fake organizations with fake scientists and fake research, and creating a “brilliantly conceived” public relations campaign designed to create and sustain doubt and confusion regarding a – made up – cigarette controversy.

87. This conspiracy is memorialized through Defendants’ own documents authored by their own executives and scientists, including over fourteen million previously concealed records.

FIRST CLAIM FOR RELIEF

(NEGLIGENCE)

Sandra Camacho Against Defendants Philip Morris and Liggett

88. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87 and incorporate the same herein by reference.

89. Defendants owed a duty to the general public, including Plaintiff, to manufacture, design, sell, market, promote, and/or otherwise produce a product and/or any of its component parts safe and free of unreasonable and harmful defects when used in the manner and for the purpose it was designed, manufactured, and/or intended to be used.

90. Plaintiff was exposed to and did inhale smoke from cigarettes which were designed, manufactured, marketed, distributed, and/or sold by Defendants.

91. Each exposure to Defendants’ cigarettes caused Plaintiff to inhale smoke which caused him to become addicted to cigarettes, and further caused him to develop pharyngeal cancer and suffer severe bodily injuries.

- 1 92. Defendants were negligent in all the following respects, same being the proximate
2 and/or legal cause of SANDRA CAMACHO's injuries and disabilities, including but not limited to:
- 3 a. designing and manufacturing an unreasonably dangerous and deadly product;
 - 4 b. designing and manufacturing cigarettes to be addictive;
 - 5 c. designing and manufacturing cigarettes to be inhalable;
 - 6 d. manipulating the level of nicotine in cigarettes to make them more addictive;
 - 7 e. genetically modifying nicotine in tobacco plants;
 - 8 f. blending different types of tobacco to obtain a desired amount of nicotine;
 - 9 g. engineering cigarettes to be rapidly inhaled into the bloodstream;
 - 10 h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and
11 other deadly, poisonous compounds to cigarettes;
 - 12 i. adding and/or manipulating compounds such as ammonia and diammonium phosphate
13 to Defendants' cigarettes to "free-base" nicotine;
 - 14 j. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and
15 low tar;
 - 16 k. adding "onserts" to packages of cigarettes even after the United States government
17 banned marketing of "light" and "ultra-light" cigarettes;
 - 18 l. manipulating levels of pH in Defendants' cigarettes;
 - 19 m. targeting children who could not understand or comprehend the seriousness or
20 addictive nature of nicotine and smoking;
 - 21 n. targeting minority populations such as African Americans, Hispanics, and women to
22 obtain a greater market share to increase their profits;
 - 23 o. failing to develop and utilize alternative designs, manufacturing methods, and/or
24 materials to reduce and/or eliminate harmful materials from cigarettes;
 - 25
 - 26
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- p. continuing to manufacture, distribute, and/or sell cigarettes when Defendant knew at all times material that its products could cause, and in fact were more likely to cause, injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal cancer, lung cancer, and/or other forms of cancer when used as intended;
- q. making knowingly false and misleading statements to Plaintiff, the public, and the American government that cigarettes were safe and/or not proven to be dangerous;
- r. failing to remove and recall cigarettes from the stream of commerce and the marketplace upon ascertaining that said products would cause disease and death.

93. Additionally, prior to July 1, 1969, Defendants failed to warn/and or adequately warn foreseeable users, such as SANDRA CAMACHO, of the following, including but not limited to:

- a. failing to warn and/or adequately warn foreseeable users, such as SANDRA CAMACHO, of the dangerous and deadly nature of cigarettes;
- b. failing to warn foreseeable users, such as SANDRA CAMACHO, that they could develop fatal injuries including, but not limited to, emphysema, COPD, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;
- c. failing to warn foreseeable users, such as SANDRA CAMACHO, that the use of cigarettes would more likely than not lead to addiction, habituation, and/or dependence;
- d. failing to warn foreseeable users, such as SANDRA CAMACHO, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;
- e. failing to disclose to consumers of cigarettes, such as SANDRA CAMACHO, the results of genuine scientific research conducted by and/or known to Defendant that cigarettes were dangerous, defective, and addictive.

1 94. Defendants breached said aforementioned duties of due and reasonable care in that they
2 produced, designed, manufactured, sold, and/or marketed defective cigarettes and/or any of its
3 component parts which contained risks of harm to the user/consumer and which were reasonably
4 foreseeable to cause harm in the use or exercise of reasonable and/or ordinary care.

5
6 95. As a direct and proximate and/or legal result of Defendants' aforementioned
7 negligence, SANDRA CAMACHO was severely injured when she was exposed to Defendants'
8 cigarettes. Each exposure to Defendants' cigarettes caused SANDRA CAMACHO to become
9 addicted to cigarettes and to inhale smoke which caused her to develop laryngeal cancer, in addition
10 to other related physical conditions which resulted in and directly caused her to suffer severe bodily
11 injuries. Each exposure to such products was harmful and caused or contributed substantially to
12 SANDRA CAMACHO's aforementioned injuries.

13
14 96. SANDRA CAMACHO's aforementioned injuries arose out of and were connected to
15 and incidental to the way Defendants' designed, manufactured, marketed, distributed, and/or sold
16 its products.

17 97. The aforementioned damages of SANDRA CAMACHO were directly and proximately
18 and/or legally caused by Defendants' negligence, in that it produced, sold, manufactured, and/or
19 otherwise placed into the stream of intrastate and interstate commerce, cigarettes which it knew, or
20 in the exercise of ordinary care should have known, were deleterious and highly harmful to
21 SANDRA CAMACHO's health and well-being.

22
23 98. Defendants, prior to selling and/or distributing the cigarettes to which SANDRA
24 CAMACHO was exposed, knew or should have known that exposure to cigarette smoke was
25 harmful and caused injuries including, but not limited to, lung cancer, pharyngeal cancer, laryngeal
26 cancer, emphysema, COPD, heart disease, other forms of cancer, and/or result in death.

1 99. As a direct and proximate and/or legal cause of Defendants' aforesaid negligence,
2 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining
3 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

4 100. As a further direct and proximate and/or legal cause of Defendants' aforesaid
5 negligence, SANDRA CAMACHO has incurred damages, both general and special, including
6 medical expenses as a result of the necessary treatment of her injuries, and will continue to incur
7 damages for future medical treatment necessitated by smoking-related injuries she has suffered, in
8 a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

9 101. As a further direct and proximate and/or legal cause of Defendants' aforesaid
10 negligence, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and
11 other health care providers to examine, treat, and care for her and did incur medical and incidental
12 expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA
13 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
14 (\$15,000.00)

15 102. As a further direct and proximate and/or legal cause of Defendants' aforesaid
16 negligence, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered
17 and continues to suffer loss of companionship and care, emotional and moral support and/or sexual
18 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

19 103. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

20 104. Defendants' conduct was despicable and so contemptible that it would be looked down
21 upon and despised by ordinary decent people and was carried on by Defendants with willful and
22 conscious disregard for the safety of SANDRA CAMACHO.
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105. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005 in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future.

106. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent agents, independent contractors, and/or servants, as set forth herein.

107. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SECOND CLAIM FOR RELIEF

(GROSS NEGLIGENCE)

SANDRA CAMACHO Against Defendant Philip Morris and Liggett

108. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87 and 88 - 107 and incorporate the same herein by reference.

109. Defendants manufactured and created an unreasonably dangerous, addictive, and defective product that caused SANDRA CAMACHO to develop laryngeal cancer. At all times material hereto, Defendants had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to SANDRA CAMACHO would result. Despite that knowledge, the Defendants willfully and wantonly pursued a course of conduct that was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety or rights of SANDRA CAMACHO and Defendants actively and knowingly participated in such conduct, and/or its officers, director or managers knowingly condoned, ratified or consented to such conduct.

110. Upon information and belief, through an examination of Defendants' own previously secret internal documents, Defendants had reason to know facts which could lead a reasonable person

1 to realize that their cigarettes could cause an unreasonable risk of bodily harm to others and involved
2 a high probability that substantial harm would result. Specifically, Defendants had reason to know
3 facts that their cigarettes caused diseases including but not limited to lung cancer, COPD, emphysema,
4 heart disease, pharyngeal cancer, laryngeal cancer, oral cavity cancer.

5
6 111. Defendants knew there were ways to minimize the disease and destruction their
7 product, cigarettes, caused through alternative safer designs of cigarettes including but not limited to
8 nicotine free or reduced nicotine cigarettes.

9 112. Defendants willfully, purposefully, and knowingly did not make safer cigarettes and in
10 fact manipulated the compounds in cigarettes to make them more addictive, deadly, and dangerous.

11 113. Defendants and their co-conspirators also purposefully and knowingly manipulated the
12 public including SANDRA CAMACHO by marketing and promoting their filter, “light” and “low-
13 tar” cigarettes as safer, despite knowing these cigarettes are in fact more dangerous.

14 114. Defendants’ actions in creating, manufacturing, and selling cigarettes despite having
15 knowledge that these actions created an unreasonable risk of bodily harm and involved a high
16 probability that substantial harm would result, was an extreme departure from the ordinary duty of
17 care owed and constitutes gross negligence.

18
19 115. SANDRA CAMACHO’S aforementioned injuries arose out of and were connected to
20 and incidental to the way Defendants’ designed, manufactured, marketed, distributed, and/or sold its
21 products.

22
23 116. The aforementioned damages of SANDRA CAMACHO were directly and proximately
24 and/or legally caused by Defendants’ gross negligence, in that it produced, sold, manufactured, and/or
25 otherwise placed into the stream of intrastate and interstate commerce, cigarettes which it knew, or in
26 the exercise of ordinary care should have known, were deleterious and highly harmful to SANDRA
27 CAMACHO’S health and well-being.
28

1 117. As a direct and proximate and/or legal result of Defendants' aforementioned gross
2 negligence, SANDRA CAMACHO was severely injured when she was exposed to Defendants'
3 cigarettes. Each exposure to Defendants' cigarettes caused SANDRA CAMACHO to become
4 addicted to cigarettes and to inhale smoke which caused her to develop laryngeal cancer, in addition
5 to other related physical conditions which resulted in and directly caused her to suffer severe bodily
6 injuries. Each exposure to such products was harmful and caused or contributed substantially to
7 SANDRA CAMACHO'S aforementioned injuries.
8

9 118. As a direct and proximate and/or legal cause of Defendants' aforesaid gross negligence,
10 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining
11 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).
12

13 119. As a further direct and proximate and/or legal cause of Defendants' aforesaid gross
14 negligence, SANDRA CAMACHO has incurred damages, both general and special, including medical
15 expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for
16 future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess
17 of Fifteen Thousand Dollars (\$15,000.00).
18

19 120. As a further direct and proximate and/or legal cause of Defendants' aforesaid gross
20 negligence, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other
21 health care providers to examine, treat, and care for her and did incur medical and incidental expenses
22 thereby. The exact amount of such expenses is unknown at this present time, but SANDRA
23 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
24 (\$15,000.00).
25

26 121. As a further direct and proximate and/or legal cause of Defendants' aforesaid
27 negligence, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered
28

1 and continues to suffer loss of companionship and care, emotional and moral support and/or sexual
2 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00)

3 122. The actions of Defendants as complained of in this claim for relief was undertaken
4 knowingly, wantonly, willfully, and/or maliciously.

5 123. Defendants' conduct was despicable and so contemptible that it would be looked down
6 upon and despised by ordinary decent people and was carried on by Defendants with willful and
7 conscious disregard for the safety of SANDRA CAMACHO.

8 124. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
9 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
10 example of Defendants and to deter similar conduct in the future.

11 125. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
12 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
13 agents, independent contractors, and/or servants, as set forth herein.

14 126. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
15 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
16 attorney fees and costs of suit.

17 **THIRD CLAIM FOR RELIEF**

18 **(STRICT PRODUCTS LIABILITY)**

19 **Sandra Camacho Against Defendants Philip Morris and Liggett**

20 127. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87
21 and incorporate the same herein by reference.

22 128. Upon information and belief, at all times material, Defendants were/are in the business
23 of designing, engineering, manufacturing, distributing, marketing, selling, and/or otherwise placing
24 cigarettes into the stream of commerce.

1 129. The products complained of were cigarettes designed, manufactured, marketed,
2 distributed, and/or sold by Defendants and used by SANDRA CAMACHO.

3 130. The aforesaid products were distributed, sold, manufactured, and/or otherwise placed into
4 the stream of commerce by Defendants.

5 131. Defendants' defective and unreasonably dangerous cigarettes reached SANDRA
6 CAMACHO without substantial change from that in which such products were when within the
7 possession of Defendants.

8 132. Defendants' cigarettes were dangerous beyond the expectation of the ordinary
9 user/consumer when used as intended or in a manner reasonably foreseeable by Defendants.

10 133. The nature and degree of danger of Defendants' cigarettes were beyond the expectation
11 of the ordinary consumer, including SANDRA CAMACHO, when used as intended or in a
12 reasonably foreseeable manner.

13 134. Defendants' cigarettes were unreasonably dangerous because a less dangerous design
14 and/or modification was economically and scientifically feasible.

15 135. Defendants' cigarettes were defective and unreasonably dangerous in the following
16 ways, including but not limited to:

- 17 a. designing and manufacturing an unreasonably dangerous and deadly product;
18 b. designing and manufacturing cigarettes to be addictive;
19 c. designing and manufacturing cigarettes to be inhalable;
20 d. manipulating levels of nicotine in cigarettes to make them more addictive;
21 e. genetically modifying nicotine in tobacco plants;
22 f. blending different types of tobacco to obtain a desired amount of nicotine;
23 g. engineering cigarettes to be rapidly inhaled into the lungs;
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- h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and other deadly, poisonous compounds to cigarettes;
- i. adding and/or manipulating compounds such as ammonia and diammonium phosphate to Defendants' cigarettes to "free-base" nicotine;
- j. manipulating levels of pH in Defendants' cigarettes;
- k. utilizing deadly and harmful additives, compounds, and ingredients in their cigarette design and manufacturing process when alternative, less dangerous materials were available;
- l. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and low tar;
- m. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;
- n. prior to July 1, 1969, failing to warn and/or adequately warn foreseeable users, such as SANDRA CAMACHO, of the dangerous and deadly nature of cigarettes;
- o. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that they could develop fatal injuries including, but not limited to, emphysema, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;
- p. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that the use of cigarettes would more likely than not lead to addiction, habituation and/or dependence;
- q. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;

1 r. prior to July 1, 1969, failing to disclose to consumers of cigarettes, such as SANDRA
2 CAMACHO, the results of scientific research conducted by and/or known to Defendant
3 that cigarettes may be dangerous, defective, and/or addictive.

4 136. SANDRA CAMACHO was unaware of the defective and unreasonably dangerous
5 condition of Defendants' cigarettes, and at a time when such products were being used for the
6 purposes for which they were intended, was exposed to, breathed smoke from, and inhaled
7 Defendants' cigarettes.

8 137. Defendants knew their cigarettes would be used without inspection for defects, and by
9 placing them on the market, represented that they would be safe.

10 138. SANDRA CAMACHO was unaware of the hazards and defects in Defendants'
11 cigarettes, to-wit: That exposure to said products would cause SANDRA CAMACHO to become
12 addicted and develop laryngeal cancer.

13 139. As a direct and proximate and/or legal cause of the aforesaid defective and
14 unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was injured.
15 SANDRA CAMACHO thereby experienced great pain to her body and mind, and sustained injuries
16 and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

17 140. As a further direct and proximate and/or legal cause of the defective and unreasonably
18 dangerous condition of Defendants' cigarettes, SANDRA CAMACHO has incurred damages, both
19 general and special, including medical expenses as a result of the necessary treatment of her injuries,
20 and will continue to incur damages for future medical treatment necessitated by smoking-related
21 injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

22 141. As a further direct and proximate and/or legal cause of the aforementioned defective
23 and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was
24 required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,
25

1 and care for her and did incur medical and incidental expenses thereby. The exact amount of such
2 expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered
3 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

4
5 142. As a further direct and proximate and/or legal cause of Defendants' aforesaid defective
6 and unreasonably dangerous condition of Defendants' cigarettes, Plaintiff, ANTHONY
7 CAMACHO, as SANDRA CAMACHO'S husband, has suffered and continues to suffer loss of
8 companionship and care, emotional and moral support and/or sexual intimacy and alleges he has
9 suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

10 143. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

11 144. Defendants' conduct was despicable and so contemptible that it would be looked down
12 upon and despised by ordinary decent people and was carried on by Defendants with willful and
13 conscious disregard for the safety of SANDRA CAMACHO.

14
15 145. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
16 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
17 example of Defendants, and to deter similar conduct in the future.

18 146. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
19 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
20 agents, independent contractors, and/or servants, as set forth herein.

21
22 147. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
23 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
24 attorney fees and costs of suit.

FOURTH CLAIM FOR RELIEF
(FRAUDULENT MISREPRESENTATION)

Sandra Camacho Against Defendants Philip Morris and Liggett

148. Plaintiffs repeat and re-allege each and every allegation as contained in paragraphs 1 through 87 and incorporate the same herein by reference.

149. Beginning at an exact time unknown to Plaintiff, and continuing even today, the cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a campaign designed to deceive the public, including SANDRA CAMACHO, the government, and others as to the health hazards and addictive nature of cigarettes, through false statements and/or misrepresentations of material facts.

150. Defendants made intentional misrepresentations, false promises, concealed information, and failed to disclose material information to SANDRA CAMACHO, the public, and the American government.

151. Defendants carried out its campaign of fraud, false statements, and/or misrepresentations in at least six ways:

- a. Defendants falsely represented to SANDRA CAMACHO that questions about smoking and health would be answered by an unbiased, trustworthy source;
- b. Defendants misrepresented and confused facts about health hazards of cigarettes and addiction;
- c. Defendants, along with other cigarette manufacturers, spent billions of dollars hiring lawyers, fake scientists, and public relations firms to misdirect purported “objective” scientific research;
- d. Defendants discouraged meritorious litigation by engaging in “scorched earth” tactics – in fact in a previously secret 1988 document they commented “to paraphrase General

Patton, the way we won these cases was not by spending all of [their] money, but by making that other son of a bitch spend all of his;”

- e. Defendants suppressed and distorted evidence to protect its existence and profits
- f. Defendants designed, marketed, and sold “filtered” and “light” cigarettes despite knowing internally that such cigarettes were just as addictive, dangerous, and deadly as “regular” cigarettes.

152. Cigarette manufacturers, including Defendants herein, knew cigarettes were dangerous and addictive. It became their practice, purpose, and goal to question any scientific research which concluded cigarettes were dangerous. They did this through misleading media campaigns, mailings to doctors and other scientific professionals, and testimony before governmental bodies.

153. Defendants made multiple misrepresentations to SANDRA CAMACHO including misrepresentations and misleading statements in advertisements, news programs and articles, media reports, and press releases.

154. These misrepresentations and false statements include, but are not limited to, the aforementioned statements and conduct contained in the *Historical Allegations of Defendants Unlawful Conduct Giving Rise to the Lawsuit* section above.

155. These misrepresentations and false statements also include the following statements which were heard, read, and relied upon by Plaintiff, SANDRA CAMACHO, including but not limited to

- a. In 1953, Cigarette manufacturers, including Defendants herein, took out a full-page advertisement called the “Frank Statement to Cigarette Smokers” which falsely assured the public, the American government, and SANDRA CAMACHO, that the cigarette manufacturers, including Defendant herein, would purportedly “safeguard” the health

of smokers, support allegedly “disinterested” research into smoking and health, and reveal to the public the results of their alleged “objective” research

- b. Beginning in 1953 and continuing for decades, Cigarette manufacturers, including Defendants herein, falsely assured the public that TIRC/CTR was an “objective” research committee when internal company document reveal that TIRC/CTR functioned not for the promotion of scientific goals, but for public relations, politics, and positioning for litigation;
- c. In the 1950s and 1960s, Cigarette manufacturers, including Defendants herein, sponsored, were quoted in, and helped publish articles to mislead the public including but not limited to the following: “Smoke-Cancer Tie Termed Obscure” (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);
- d. In response to the 1964 Surgeon General Report which linked cigarette smoking to health, the cigarette industry falsely assured the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements;
- e. In the 1950s and 1960s, the Cigarette manufacturers, including Defendants herein, advertised and promoted cigarettes on television and radio as safe and glamorous, to the extent that cigarette advertising was the number one most heavily advertised product on television;

- f. Falsely advertised and promoted “filtered” and “light” cigarettes as “low tar” and “low nicotine” through print advertisements in magazines and newspapers throughout the 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- g. Knowingly made false and misleading statements to governmental entities, including in 1982 when the CEO of Defendant R.J. Reynolds, Edward Horrigan, disingenuously stated during a governmental hearing, “there is absolutely no proof that cigarettes are addictive;
- h. In 1984, continuing to purposefully target children yet openly in press releases falsely claim, “We don’t advertise to children . . . Some straight talk about smoking for young people;”
- i. In 1988, in response to the United States Surgeon General’s report that cigarettes are addictive and nicotine is the drug in tobacco that causes addiction, issuing a press release knowingly and disingenuously stating, “Claims that cigarettes are addictive is irresponsible and scare tactics;”
- j. Through representatives in the Tobacco Institute, making countless publicized appearances on television and radio disingenuously denying cigarettes were addictive and claimed smoking was a matter of free choice and smokers could quit smoking if they wanted to;
- k. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein, knowingly providing false and misleading testimony under oath before the United States Congress that it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die.

156. Defendants made intentional misrepresentations to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. The aforementioned representations were regarding material facts about cigarettes and were knowingly false;
- b. Defendants knew said representations were false at the time they made such statements;
- c. Defendants knew SANDRA CAMACHO did not hold sufficient information to understand or appreciate the dangers of cigarettes;
- d. Defendants intended to induce SANDRA CAMACHO, and did indeed induce SANDRA CAMACHO, to rely upon the aforementioned false representations/acts/statements;
- e. SANDRA CAMACHO was unaware of the falsity of Defendants' aforementioned false representations/acts/statements;
- f. CLEVELAND CALRK was justified in relying upon Defendants' misrepresentations because they were made by Defendants who possessed superior knowledge regarding the health hazards and addictive nature of cigarettes;
- g. As a direct and proximate and/or legal cause of Defendants' intentional misrepresentations, SANDRA CAMACHO became addicted to cigarettes and developed laryngeal cancer.

157. Furthermore, Defendants made false promises to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. Defendants made false promises to the public, including SANDRA CAMACHO to (i) cooperate with public health, including the Surgeon General, (ii) conduct allegedly "objective" research regarding the addictive nature and health hazards of cigarettes, (ii) remove any harmful elements to cigarettes, if there were any, (iv) form purported "objective" research committees dedicated to undertaking an interest in health as its

“basic responsibility paramount to every other consideration,” (v) falsely pledging to provide aid and assistance to research cigarette use and health and others;

- b. At all times material, Defendants did not intend to keep its promises;
- c. Defendants made its promises with the intent to induce Plaintiff to begin and continue smoking;
- d. Plaintiff was unaware of Defendants’ intention not to perform their promises;
- e. Plaintiff acted in reliance upon Defendants’ promises;
- f. Plaintiff was justified in relying upon Defendants’ promises;
- g. As a direct and proximate and/or legal cause of Defendants’ false promises, SANDRA CAMACHO became addicted to cigarettes and developed laryngeal cancer.

158. As a direct and proximate and/or legal cause of Defendants’ fraudulent acts and misrepresentations, SANDRA CAMACHO was injured. SANDRA CAMACHO thereby experienced great pain to her body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

159. As a further direct and proximate and/or legal cause of Defendants’ fraudulent acts and misrepresentations, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

160. As a further direct and proximate and/or legal cause of Defendants’ fraudulent acts and misrepresentations, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat, and care for her and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA

1 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
2 (\$15,000.00).

3 161. As a further direct and proximate and/or legal cause of Defendants' aforesaid
4 fraudulent acts and misrepresentations, Plaintiff, ANTHONY CAMACHO, as SANDRA
5 CAMACHO'S husband, has suffered and continues to suffer loss of companionship and care,
6 emotional and moral support and/or sexual intimacy and alleges he has suffered damages in excess of
7 Fifteen Thousand Dollars (\$15,000.00).
8

9 162. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

10 163. Defendants' conduct was despicable and so contemptible that it would be looked down
11 upon and despised by ordinary decent people and was carried on by Defendants with willful and
12 conscious disregard for the safety of SANDRA CAMACHO.
13

14 164. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
15 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
16 example of Defendants, and to deter similar conduct in the future.

17 165. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
18 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
19 agents, independent contractors, and/or servants, as set forth herein.
20

21 166. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
22 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
23 attorney fees and costs of suit.
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FIFTH CLAIM FOR RELIEF
(FRAUDULENT CONCEALMENT)

Sandra Camacho Against Defendants Philip Morris and Liggett

176. Plaintiffs repeat and re-allege each and every allegation as contained in paragraphs 1 through 87 and paragraphs 148-175 and incorporate the same herein by reference.

177. Beginning at an exact time unknown to SANDRA CAMACHO, and continuing today, cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out, a campaign designed to deceive the public, including SANDRA CAMACHO, physicians, the government, and others as to the true danger of cigarettes.

178. Cigarette manufacturers, including Defendants herein, carried out their plan by concealing and suppressing facts, information, and knowledge about the dangers of smoking, including addiction.

179. Defendants carried out its scheme by concealing its knowledge concerning the dangers of cigarettes and its addictive nature as set forth in the *Historical Allegations of Defendants Unlawful Conduct Giving Rise to the Lawsuit* allegations referenced above.

180. Defendants also carried out such scheme by concealing its knowledge concerning, but not limited to, the following:

- a. the highly addictive nature of nicotine cigarettes;
- b. the design of cigarettes to make them more addictive and easier to inhale;
- c. the manipulating and controlling of nicotine content of their products to create and perpetuate users' addiction to cigarettes;
- d. the manufacturing and engineering process of making cigarettes, including adding tar, carcinogens, arsenal, polonium-210, formaldehyde, nitrosamines, and other compounds;

- e. the deliberate use of ammonia technology and/or certain tobacco;
- f. blends to boost the pH of cigarette smoke to “free base” nicotine in cigarettes;
- g. its intentional use of tobacco high in nitrosamines—a potent carcinogen not found in natural, green tobacco leaf, but created during the tobacco curing process;
- h. its scheme to target and addict children to replace customers who were dying from smoking cigarettes;
- i. the true results of its research regarding the dangers posed by smoking cigarettes. For example, in response to the 1965 Surgeon General report that related cigarette smoking to lung cancer in men, the cigarette manufacturers, including Defendant herein, concealed their research, from the year prior, which concluded:

Moreover, nicotine is addictive. We are, then in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms ... But cigarettes - we assume the Surgeon General's Committee to say - despite the beneficent effect of nicotine, have certain unattractive side effects:

1. They cause, or predispose to, lung cancer.
 2. They contribute to certain cardiovascular disorders.
 3. They may well be truly causative in emphysema, etc.
- j. the risks of contracting cancer, including but not limited to laryngeal cancer, esophageal cancer, other head and neck cancers, oral cancer, emphysema, COPD, lung cancer, heart disease, strokes, bladder cancer, other forms of cancer;
 - k. filtered, low tar, low nicotine, and/or “light” cigarettes were not safe, safer, or less dangerous than “regular” cigarettes;
 - l. the Federal Trade Commission (“FTC”) method of measuring “tar & nicotine” levels underestimated and did not accurately reflect the levels of tar and nicotine delivered to a smoker.

181. Cigarette manufacturers, including Defendants herein, also concealed and/or made fraudulent statements and misrepresentations to the public, including SANDRA CAMACHO, through their actions, funding, and involvement with TIRC/CTR, including but not limited to the following:

- a. falsely concealing the true purpose of TIRC/CTR was public relations, politics, and positioning for litigation;
- b. falsely pledging to provide aid and assistance to research cigarette use and health;
- c. expressly undertaking a disingenuous interest in health as its “basic responsibility paramount to every other consideration;”
- d. affirmatively assumed a (broken) promise to truthfully disclose adverse information regarding the health hazards of smoking;
- e. purposely created the illusion that scientific research regarding the dangers of cigarettes was being conducted and the results of which would be made public;
- f. concealing information regarding the lack of bona fide research being conducted by TIRC/CTR and the lack of funds being provided for research;
- g. concealing that TIRC/CTR was nothing more than a “public relations” front and shield.

182. Defendants made false promises to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. Defendants assumed the responsibility to provide SANDRA CAMACHO, and the public, accurate and truthful information about their own products
- b. Defendants concealed and/or suppressed the aforementioned material facts about the dangers of cigarettes;
- c. Defendants were under a duty to disclose material facts about the dangers of cigarettes to Plaintiff;

- d. Defendants knew it was concealing material facts about the dangers of cigarettes from Plaintiff;
- e. Defendants intended to induce Plaintiff to smoke and become addicted to cigarettes;
- f. Plaintiff was unaware of the dangerous and addictive nature of cigarettes, and would not have begun or continued to smoke had he known the aforementioned concealed and/or suppressed information Defendants' possessed;
- g. Plaintiff was unaware of the danger of Defendants' cigarettes, the addictive nature of Defendants' cigarettes, and that low tar, low nicotine, "light," and/or filtered cigarettes were just as dangerous as unfiltered and "regular" cigarettes;
- h. Plaintiff justifiably relied upon Defendants to disseminate the superior knowledge and information it possessed regarding the dangers of cigarettes;
- i. The concealment and/or suppressed of material facts regarding the hazards of cigarettes caused Plaintiff to become addicted to cigarettes, and also caused her to develop laryngeal cancer.

183. As a direct and proximate and/or legal cause of Defendants' fraudulent concealment, SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

184. As a further direct and proximate and/or legal cause of Defendants' fraudulent concealment, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

185. As a further direct and proximate and/or legal cause of Defendants' fraudulent concealment, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other

1 health care providers to examine, treat, and care for her and did incur medical and incidental expenses
2 thereby. The exact amount of such expenses is unknown at this present time, but SANDRA
3 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
4 (\$15,000.00).

5
6 186. As a further direct and proximate and/or legal cause of Defendants' aforesaid
7 fraudulent concealment, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband,
8 has suffered and continues to suffer loss of companionship and care, emotional and moral support
9 and/or sexual intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars
10 (\$15,000.00).

11 187. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

12 188. Defendants' conduct was despicable and so contemptible that it would be looked down
13 upon and despised by ordinary decent people and was carried on by Defendants with willful and
14 conscious disregard for the safety of SANDRA CAMACHO.

15
16 189. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
17 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
18 example of Defendants, and to deter similar conduct in the future.

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20 190. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
21 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
22 agents, independent contractors, and/or servants, as set forth herein.

23 191. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
24 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
25 attorney fees and costs of suit.
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SIXTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

Sandra Camacho Against Defendants Philip Morris; R.J. Reynolds; and Liggett

192. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87, paragraphs 148 – 191 and incorporate the same herein by reference.

193. Defendants acted in concert to accomplish an unlawful objective for the purposes of harming Plaintiff, SANDRA CAMACHO. Defendants' actions include, but are not limited to the following:

- a. Defendants, along with other cigarette manufacturers, and CTR, TIRC, and TI, along with attorneys and law firms retained by Defendants, unlawfully agreed to conceal and/or omit, and did in fact conceal and/or omit, information regarding the health hazards of cigarettes and/or their addictive nature with the intention that smokers and the public would rely on this information to their detriment. Defendants agreed to execute their scheme by performing the abovementioned unlawful acts and/or by doing lawful acts by unlawful means;
- b. Defendants, along with other entities including TIRC, CTR, TI and persons including their in-house lawyers and outside retained counsel, entered into a conspiracy in 1953 to conceal the harms of smoking cigarettes;
- c. Defendants, through their executives, employees, agents, officers and representatives made numerous public statements from 1953 through 2000 directly denying the health hazards and addictive nature of smoking cigarettes.

194. After the year 2000, Defendants continued their conspiratorial acts in furtherance of their conspiracy related to the harms of smoking including but not limited to the following acts:

- a. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
- b. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- c. Marketing and/or advertising lights and ultra-light cigarettes as safer or less hazardous to health;
- d. Knowingly concealing from the public that filtered, low tar, lights, and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes;
- e. Adding “onserts” to packages of cigarettes even after the United States government banned marketing of “light” and “ultra-light” cigarettes;
- f. Opposing, and continuing to oppose proposed FDA regulations to reduce or eliminate levels of nicotine in cigarettes;
- g. Continuing to market and prey upon children and teenagers who are not able to understand or appreciate the risks and dangers associated with cigarette smoking.

195. Defendants’ actions, as they relate to their acts in furtherance of their conspiracy as alleged in this complaint, continues through the present.

196. Two or more of the cigarette manufacturers, including Defendants herein, by their aforementioned concerted actions, intended to accomplish, and did indeed accomplish, an unlawful objective of misleading and deceiving the public, for the purpose of harming Plaintiff.

197. As a direct proximate and/or legal cause of Defendants’ concerted actions, SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

198. As a further direct and proximate and/or legal cause of Defendants’ concerted actions, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future

1 medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of
2 Fifteen Thousand Dollars (\$15,000.00).

3 199. As a further direct and proximate and/or legal cause of Defendants' concerted actions,
4 SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care
5 providers to examine, treat, and care for her and did incur medical and incidental expenses thereby.
6 The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO
7 alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).
8

9 200. As a further direct and proximate and/or legal cause of Defendants' aforesaid concerted
10 actions, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered and
11 continues to suffer loss of companionship and care, emotional and moral support and/or sexual
12 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).
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14 201. Defendants' concerted actions were taken knowingly, wantonly, willfully, and/or
15 maliciously.

16 202. Defendants' conduct was despicable and so contemptible that it would be looked down
17 upon and despised by ordinary decent people and was carried on by Defendants with willful and
18 conscious disregard for the safety of SANDRA CAMACHO.

19 203. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
20 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
21 example of Defendants, and to deter similar conduct in the future.
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23 204. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
24 damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent
25 agents, independent contractors, and/or servants, as set forth herein.
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205. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SEVENTH CLAIM FOR RELIEF

(VIOLATION OF DECEPTIVE TRADE PRACTICES ACT – NRS 598.0903)

Sandra Camacho Against Defendants Philip Morris; R.J. Reynolds; And Liggett

206. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs herein and incorporate the same herein by reference.

207. At all times relevant herein, there was a statute in effect entitled Nevada Deceptive Trade Practices Act, NRS 598.0903 et. seq.

208. Defendants are subject to the provisions of the Nevada Deceptive Trade Practices Act, and Plaintiff is one of the persons the Act was enacted to protect.

209. Plaintiffs bring this claim pursuant to NRS 41.600, which entitles any person who is the victim of consumer fraud to bring an action. A deceptive trade practice as defined in NRS 598.0915 to 598.0925 constitutes consumer fraud.

210. NRS 598.0915 states that a person engages in a deceptive trade practice if, in the course of his or her business or occupation:

2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease.

3. Knowingly makes a false representation as to affiliation, connection, association with or certification by another person.

5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith.

7. Represents that goods or services for sale or lease are of a particular

standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model.

15. Knowingly makes any other false representation in a transaction.

211. Upon information and belief, Defendants knowingly violated NRS 598.0915 by making the following false and misleading statements and representations, including but not limited to:

212. Upon information and belief, Defendants knowingly violated NRS 598.0915 by making the following false and misleading statements and representations, including but not limited to:

- a. making countless publicized appearances on television and radio disingenuously denying cigarettes were addictive and claimed smoking was a matter of free choice and smokers could quit smoking if they wanted to;
- b. representing to the public that it was not known whether cigarettes were harmful or caused disease;
- c. falsely advertising and promoting cigarettes as safe, not dangerous, and not harmful;
- d. falsely advertising and promoting “filtered” and “light” cigarettes as “low tar” and “low nicotine” through print advertisements in magazines and newspapers throughout the 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- e. falsely representing that questions about smoking and health would be answered by an allegedly unbiased, trustworthy source;
- f. misrepresenting and confusing facts about health hazards of cigarettes and addiction;
- g. creating a made up “cigarette controversy;
- h. taking out a full page advertisement called the “Frank Statement to Cigarette Smokers”

1 which falsely assured the public, the American government, and SANDRA
2 CAMACHO, that would purportedly “safeguard” the health of smokers, support
3 allegedly “disinterested” research into smoking and health, and reveal to the public the
4 results of their alleged “objective” research;

- 5
- 6 i. falsely assuring the public that TIRC/CTR was an “objective” research committee
7 when internal company documents reveals that TIRC/CTR functioned not for the
8 promotion of scientific goals, but for public relations, politics, and positioning for
9 litigation;
- 10 j. sponsoring, being quoted in, and helping publish articles to mislead the public
11 including but not limited to the following: “Smoke-Cancer Tie Termed Obscure”
12 (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called
13 Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco
14 Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study”
15 (1962);
- 16 k. responding to the 1964 Surgeon General Report which linked cigarette smoking to
17 health, by falsely assuring the public that (i) cigarettes were not injurious to health, (ii)
18 the industry would cooperate with the Surgeon General, (iii) more research was needed,
19 and (iv) if there were any bad elements discovered in cigarettes, the cigarette
20 manufacturers would remove those elements;
- 21 l. advertising and promoting cigarettes on television and radio as safe and glamorous, to
22 the extent that cigarette advertising was the number one most heavily advertised
23 product on television;
- 24 m. making knowingly false and misleading statements during a governmental hearing,
25 including stating that, “there is absolutely no proof that cigarettes are addictive;”
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- 1 n. purposefully targeting children yet openly in press releases falsely claiming, “We don’t
2 advertise to children . . . Some straight talk about smoking for young people;”
3
4 o. responding the 1988 United States Surgeon General’s report that nicotine is the drug
5 in tobacco that causes addiction, by issuing press releases stating, “Claims that
6 cigarettes are addictive is irresponsible and scare tactics;”
7
8 p. lying under oath before the United States Congress in 1994 that it was their opinion
9 that it had not been proven that cigarettes were addictive, caused disease, or caused one
10 single person to die.

11 213. As a direct and proximate and/or legal cause of Defendants’ aforementioned acts,
12 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining
13 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

14 214. As a further direct and proximate and/or legal cause of Defendants’ aforementioned
15 acts, SANDRA CAMACHO has incurred damages, both general and special, including medical
16 expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for
17 future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess
18 of Fifteen Thousand Dollars (\$15,000.00).

19 215. As a further direct proximate and/or legal cause of Defendants’ aforementioned acts,
20 SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care
21 providers to examine, treat, and care for her and did incur medical and incidental expenses thereby.
22 The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO
23 alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

24 216. As a further direct and proximate and/or legal cause of Defendants’ aforementioned
25 acts, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO’S husband, has suffered and
26 continues to suffer loss of companionship and care, emotional and moral support and/or sexual
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intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

217. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

218. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people and was carried on by Defendants with willful and conscious disregard for the safety of SANDRA CAMACHO.

219. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future.

220. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent agents, independent contractors, and/or servants, as set forth herein.

221. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

EIGHTH CLAIM FOR RELIEF

(STRICT PRODUCT LIABILITY)

Sandra Camacho Against Defendant, ASM Nationwide Corporation d/b/a Silverado Smokes & Cigars and LV Singhs Inc. d/b/a Smokes & Vapors

222. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 and 87 and paragraphs 127 - 147 and incorporate the same herein by reference.

223. Defendants, SILVERADO and SMOKES & VAPORS, are in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

224. Defendants, SILVERADO and SMOKES & VAPORS' sold cigarettes to the public, including Plaintiff SANDRA CAMACHO.

225. The aforesaid products were distributed, sold and/or otherwise placed into the stream of

1 commerce by Defendants, SILVERADO and SMOKES & VAPORS.

2 226. Defendants, SILVERADO and SMOKES & VAPORS', defective and unreasonably
3 dangerous cigarettes reached SANDRA CAMACHO without substantial change from that in which
4 such products were when within the possession of Defendants.

5 227. Defendants, SILVERADO and SMOKES & VAPORS' cigarettes were dangerous
6 beyond the expectation of the ordinary user/consumer when used as intended or in a manner
7 reasonably foreseeable by Defendants.

8 228. The nature and degree of danger of Defendants, SILVERADO and SMOKES &
9 VAPORS' cigarettes were dangerous beyond the expectation of the ordinary consumer, including
10 SANDRA CAMACHO, when used as intended or in a reasonably foreseeable manner.

11 229. Defendants, SILVERADO and SMOKES & VAPORS' cigarettes were unreasonably
12 dangerous because a less dangerous design and/or modification was economically and scientifically
13 feasible.

14 230. As a direct and proximate and/or legal cause of the aforesaid defective and
15 unreasonably dangerous condition of cigarette products sold by Defendants, SILVERADO and
16 SMOKES & VAPORS, SANDRA CAMACHO was injured. SANDRA CAMACHO thereby
17 experienced great pain to her body and mind, and sustained injuries and damages in a sum in excess
18 of Fifteen Thousand Dollars (\$15,000.00).

19 231. As a further direct and proximate and/or legal cause of the defective and unreasonably
20 dangerous condition of Defendants' cigarettes, SANDRA CAMACHO has incurred damages, both
21 general and special, including medical expenses as a result of the necessary treatment of her injuries,
22 and will continue to incur damages for future medical treatment necessitated by smoking-related
23 injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

24 232. As a further direct and proximate and/or legal cause of the aforementioned defective
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1 and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was
2 required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,
3 and care for her and did incur medical and incidental expenses thereby. The exact amount of such
4 expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered
5 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).
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7 233. As a further direct and proximate and/or legal cause of Defendants' aforesaid defective
8 and unreasonably dangerous condition of Defendants' cigarettes, Plaintiff, ANTHONY CAMACHO,
9 as SANDRA CAMACHO'S husband, has suffered and continues to suffer loss of companionship and
10 care, emotional and moral support and/or sexual intimacy and alleges he has suffered damages in
11 excess of Fifteen Thousand Dollars (\$15,000.00).
12

13 234. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

14 235. Defendants' conduct was despicable and so contemptible that it would be looked down
15 upon and despised by ordinary decent people and was carried on by Defendants with willful and
16 conscious disregard for the safety of SANDRA CAMACHO.

17 236. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
18 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
19 example of Defendants, and to deter similar conduct in the future.
20

21 237. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
22 damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent
23 agents, independent contractors, and/or servants, as set forth herein.

24 238. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
25 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
26 attorney fees and costs of suit.

27 WHEREFORE, Plaintiffs, SANDRA CAMACHO and ANTHONY CAMACHO expressly
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1 reserving the right to amend this Complaint at the time of trial to include all items of damage not yet
2 ascertained, demand judgment against Defendants, PHILIP MORRIS USA, INC.; R.J. REYNOLDS
3 TOBACCO COMPANY, individually, and as successor-by-merger to LORILLARD TOBACCO
4 COMPANY and as successor-in-interest to the United States tobacco business of BROWN &
5 WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE
6 AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC.; ASM NATIONWIDE
7 CORPORATION d/b/a SILVERADO SMOKES & CIGARS; LV SINGHS INC. d/b/a SMOKES &
8 VAPORS; DOES I-X; and ROE BUSINESS ENTITIES XI-XX as follows:

10 1. For general damages in excess of Fifteen Thousand Dollars (\$15,000.00), to be set
11 forth and proven at the time of trial;

12 2. For special damages in excess of Fifteen Thousand Dollars (\$15,000.00), to be set forth
13 and proven at the time of trial;

14 3. For exemplary and punitive damages in excess of Fifteen Thousand Dollars
15 (\$15,000.00);

16 4. For reasonable attorneys' fees;

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EXHIBIT 3

EXHIBIT 3



MOT (CIV)

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R.J. REYNOLDS TOBACCO COMPANY

DISTRICT COURT

CLARK COUNTY, NEVADA

SANDRA CAMACHO, individually, and
ANTHONY CAMACHO, individually,

Plaintiffs,

vs.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation, individually,
and as successor-by-merger to LORILLARD
TOBACCO COMPANY and as successor-in-
interest to the United States tobacco business of
BROWN & WILLIAMSON TOBACCO
CORPORATION, which is the successor-by-
merger to THE AMERICAN TOBACCO
COMPANY; LIGGETT GROUP, LLC., a
foreign limited liability company; and ASM
NATIONWIDE CORPORATION d/b/a
SILVERADO SMOKES & CIGARS, a domestic
corporation; and LV SINGHS INC. d/b/a
SMOKES & VAPORS, a domestic corporation;
DOES 1-X; and ROE BUSINESS ENTITIES XI-
XX, inclusive,

Defendants.

Case No. A-19-807650-C

Dept. No. IV

(Hearing Requested)

**DEFENDANT R.J. REYNOLDS
TOBACCO COMPANY'S MOTION TO
DISMISS PLAINTIFFS' AMENDED
COMPLAINT UNDER NRCP 12(b)(5)**

**DEFENDANT R.J. REYNOLDS TOBACCO COMPANY’S MOTION TO DISMISS
PLAINTIFFS’ AMENDED COMPLAINT UNDER NRCP 12(b)(5)**

Pursuant to Nevada Rules of Civil Procedure 8(a), 9(b), and 12(b)(5), Defendant R.J. Reynolds Tobacco Company (“Reynolds”), by and through its undersigned counsel of record, hereby files this Motion to Dismiss Plaintiffs’ sixth claim for relief (civil conspiracy) and seventh claim for relief (violation of the Nevada Deceptive Trade Practices Act).

This Motion is made and based on the pleadings and papers on file here, the following Memorandum of Points and Authorities, and any oral argument allowed at the time of hearing on this matter.¹

DATED this 23rd day of March, 2020.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN

Attorneys for Defendant
R.J. REYNOLDS TOBACCO COMPANY

¹ Reynolds also adopts in full and incorporates by reference Defendants Philip Morris USA Inc. (“Philip Morris”), Liggett Group, LLC (“Liggett”) and ASM Nationwide Corporation’s (d/b/a Silverado Smokes & Cigars) Motion to Dismiss Plaintiffs’ Amended Complaint Under NRCP 12(b)(5) (filed contemporaneously herewith) (“Philip Morris and Liggett’s Motion to Dismiss”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a product liability action. Plaintiffs Sandra Camacho and Anthony Camacho (“Plaintiffs”) have sued three tobacco manufacturers and two retail smoke shops for injuries allegedly resulting from Sandra Camacho’s purchase and use of L&M, Marlboro, and Basic brand cigarettes.² Each and every claim for relief is based solely on the purchase and use of L&M, Marlboro, and Basic brand cigarettes. Yet based on Plaintiffs’ Amended Complaint, Reynolds never sold, distributed, nor manufactured L&M, Marlboro, and Basic brand cigarettes. In fact, based on Plaintiffs’ Amended Complaint, Reynolds never sold, distributed, nor manufactured any product that Mrs. Camacho purchased or used. Similarly, based on Plaintiffs’ Amended Complaint, Reynolds never sold, distributed, nor manufactured any product which caused Plaintiffs’ alleged injuries. Simply put, there is no relationship of any kind between Mrs. Camacho and Reynolds.

Despite the lack of any factual allegations indicating that Mrs. Camacho ever purchased or used Reynolds-brand cigarettes, Plaintiffs asserted two claims for relief against Reynolds—civil conspiracy and violation of the Nevada Deceptive Trade Practices Act (“NDTPA”). Although these are distinct claims under Nevada law, the Court is required to look beyond the label of the claim and instead toward its substance. In this instance, these are disguised product liability claims. These disguised claims (like all of Plaintiffs’ claims) center on an allegedly defective product: L&M, Marlboro, and Basic brand cigarettes. In Nevada, product use is a fundamental requirement in any product liability action, regardless of the label of the claim. *See Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF), 2009 WL 749532, at *4 (D. Nev. Mar. 20, 2009); *see also Baymiller v. Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302, 1309–11 (D. Nev. 2012). Product use is plainly lacking with respect to Reynolds. To permit Plaintiffs to pursue these claims against Reynolds, who undisputedly did not manufacture, distribute, or sell the product that allegedly harmed Mrs. Camacho, goes against the bedrock legal principles supporting product liability claims. For these

² Only Mrs. Camacho is alleged to have used the products at issue. Although the Amended Complaint is unclear, Plaintiff Anthony Camacho appears to have asserted only a loss of consortium claim.

1 reasons, all of Plaintiffs' claims for deceptive trade practices and civil conspiracy asserted against
2 Reynolds should be dismissed.

3 In addition, Plaintiffs' NDTPA claim as to Reynolds also fails as a matter of law and should
4 be dismissed for the independent reason that Plaintiffs cannot meet the essential element of causation
5 required for such a claim. Mrs. Camacho undisputedly never smoked cigarettes manufactured by
6 Reynolds. Again, without any product use, it is implausible to conclude that any of Reynolds'
7 actions could have caused or even contributed to Plaintiffs' alleged injuries, and Plaintiffs'
8 inconsistent factual allegations certainly do not indicate otherwise.

9 Finally, Philip Morris and Liggett moved to dismiss all of Plaintiffs' claims due to federal
10 preemption and noncompliance with N.R.C.P. 9(d), amongst other reasons. A civil conspiracy claim
11 requires some form of underlying wrong or unlawful objective, and to the extent this Court finds that
12 none of the claims against Philip Morris and Liggett are viable, there is no underlying basis for a
13 civil conspiracy claim against Reynolds.

14 For all of the above reasons, Plaintiffs' civil conspiracy and NDTPA claims against Reynolds
15 should be dismissed.

16 II. ARGUMENT

17 A. Standard of Review

18 A party may move to dismiss a pleading on the ground that it fails to state a claim upon
19 which relief may be granted. NRCP 12(b)(5). When considering a Rule 12(b)(5) motion, the "court
20 accepts the plaintiffs' factual allegations as true, but the allegations must be legally sufficient to
21 constitute the elements of the claim asserted." *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823,
22 221 P.3d 1276, 1280 (2009); *see also, e.g., Simpson v. Mars Inc.*, 113 Nev. 188, 192, 929 P.2d 966,
23 968 (1997) (affirming dismissal on the pleadings of all but one of plaintiff's claims). "The test for
24 determining whether the allegations of a cause of action are sufficient to assert a claim for relief is
25 whether the allegations give fair notice of the nature and basis of the claim and the relief requested."
26 *Ravera v. City of Reno*, 100 Nev. 68, 69, 675 P.2d 407, 408 (1984).

27 To survive a motion to dismiss for failure to state a claim, a plaintiff's complaint must allege
28 facts sufficient to establish all necessary elements of each cause of action on which recovery is

sought. *Danning v. Lum's, Inc.*, 86 Nev. 868, 870, 478 P.2d 166, 167 (1970). If it appears from the pleadings that plaintiff can prove no set of facts that can entitle him or her to relief, the complaint should be dismissed. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003) (citing *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985)).

B. Plaintiffs' Disguised Product Liability Claims Against Reynolds Fail Due To The Lack of Product Use.

The Nevada Supreme Court has consistently held that a claim must be analyzed “according to its substance, rather than its label.” *Otak Nev., LLC v. Dist. Ct.*, 129 Nev. 799, 809, 312 P.3d 491, 498 (2013); *accord Nev. Power Co. v. Dist. Ct.*, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004).

Although Plaintiffs labeled their claims against Reynolds as civil conspiracy and NDTPA claims, the allegations underlying those claims are rooted in product liability. They are all based on Mrs. Camacho's purchase and use of L&M, Marlboro, and Basic brand cigarettes and any injuries allegedly resulting therefrom.

Because this Court should analyze these claims pursuant to their substance and not their label, the Court should determine that these are disguised product liability claims—*i.e.*, an action to recover for injuries caused by a product (cigarettes). Product use is a fundamental requirement in a Nevada product liability action. *See Moretti*, No. 2:08-cv-00396-JCM-(GWF), 2009 WL 749532, at *4–5; *Baymiller*, 894 F. Supp. 2d at 1309–11. And it remains a fundamental requirement in an action for damages allegedly caused by a product “*regardless of whether Plaintiff[s] characterize[] [their] claims as misrepresentation/fraud or claims arising in product liability.*” *Moretti*, 2009 WL 749532, at *4 (emphasis added); *see also Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1487, 970 P.2d 98, 110–11 (1998) (“Dow Chemical had no duty to disclose to the Mahlums any superior knowledge it may have had regarding the safety of silicone products, however, because it was not directly involved in the transaction from which this lawsuit arose, or any other transaction with the Mahlums.”) (*abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001)). Because the claims asserted in this case relate to injuries caused by an allegedly defective product (*i.e.*, L&M, Marlboro, and Basic brand cigarettes), Nevada law requires a relationship between Mrs. Camacho and each Defendant. *See id.*

1 In *Baymiller*, plaintiffs brought a variety of claims against a brand-name manufacturer
2 (GlaxoSmithKline (“GSK”)) and other pharmaceutical manufacturers, including causes of action for
3 fraud. 894 F. Supp. 2d at 1303–05. There, similar to here, it was undisputed that the relevant
4 plaintiff had only purchased and used the generic medication, which was manufactured and sold by
5 GSK’s competitors—not by GSK itself. *Id.* at 1305 (“It is undisputed that [GSK] is the
6 manufacturer of the brand name medication . . . that [the relevant plaintiff] did **not** purchase or use.”
7 (emphasis in original)). The court granted summary judgment in favor of GSK on all of plaintiffs’
8 claims, each for the fundamental reason that the relevant plaintiff had neither purchased nor used a
9 GSK product. *Id.* at 1309–11. Unable to meet the essential burden of proving that the plaintiff had
10 purchased or used a GSK product (and therefore to prove that GSK could have caused the alleged
11 injuries), the claims against GSK failed as a matter of law. *See id.*

12 The court’s decision in *Moretti*, cited and relied on in *Baymiller*, similarly stands for the
13 proposition that, in a product liability action against multiple product manufacturers, only the
14 manufacturer of the product **that actually harmed the plaintiff** may be held liable. 2009 WL
15 749532, at *4 (“Among manufacturers of products, liability rests only with the manufacturer of the
16 product that actually caused the alleged injury because that manufacturer profited from sales of the
17 product and controlled its safety.”) (citing *Allison v. Merck & Co.*, 110 Nev. 762, 767–68, 878 P.2d
18 948, 952 (1994)). The court noted that the result was the same whether the actual claims were
19 framed as traditional product liability or as misrepresentation or fraud, because allegations of
20 misrepresentation are simply “an effort to recover for injuries caused by a product without meeting
21 the requirements the law imposes in products liability actions.” *Id.* (quoting *Foster v. Am. Home*
22 *Prod. Corp.*, 29 F.3d 165, 168 (4th Cir. 1994)). Because Plaintiffs’ Complaint does not allege any
23 connection between Mrs. Camacho and Reynolds, Plaintiffs have failed to state a claim against
24 Reynolds in this disguised product liability action.

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Moreover, any effort to re-plead would be futile as Reynolds does not—and has never—manufactured the cigarette brands that Mrs. Camacho smoked.³ Indeed, Plaintiffs concede this exact fact in their Amended Complaint.⁴ For this reason alone, all of Plaintiffs’ claims asserted against Reynolds should be dismissed with prejudice.

C. Plaintiffs’ NDTPA Claim Fails Under Nevada Law As To Reynolds Due To The Lack Of Causation.

Plaintiffs allege that Reynolds engaged in various levels of misconduct that constitute “deceptive trade practice” under Nevada law.⁵ NRS 41.600(1) provides that “[a]n action may be brought by any person who is a victim of consumer fraud.” A deceptive trade practices claim brought pursuant to NRS 41.600 requires proof that *the defendant committed* consumer fraud *causing damage to the plaintiff*. *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D. Nev. 2009); *see also* NRS 41.600(2)(e).

In this case, Plaintiffs do not allege that Mrs. Camacho ever purchased or smoked cigarettes manufactured by Reynolds. Indeed, Plaintiffs unambiguously pled that Mrs. Camacho’s alleged laryngeal cancer “was caused by smoking L&M brand cigarettes, Marlboro brand cigarettes, and Basic brand cigarettes to which she was addicted and smoked continuously from approximately 1964 until 2017.”⁶ Without Mrs. Camacho ever having purchased or smoked Reynolds-brand cigarettes, there is simply no connection between Reynolds’ alleged deceptive trade practices as they relate to the health risk of its particular products and Mrs. Camacho’s alleged laryngeal cancer. Further, Plaintiffs fail to explain when or how Mrs. Camacho was supposedly exposed to Reynolds’ so-called deceptive trade practices, and how they had any effect on her behavior.⁷ Considering that a

³ Am. Compl. ¶ 17 (“Plaintiff, SANDRA CAMACHO, was diagnosed on or about March of 2018 with laryngeal cancer, which was caused by smoking L&M brand cigarettes, Marlboro brand cigarettes, and Basic brand cigarettes, to which she was addicted and smoked continuously from approximately 1964 until 2017.”).

⁴ *Id.*, ¶ 18 (“At all times material, L&M cigarettes were designed, manufactured, and sold by Defendant, Liggett.”); *Id.*, ¶ 19 (“At all times material, Marlboro and Basic cigarettes were designed, manufactured, and sold by Defendant, Philip Morris USA, Inc.”).

⁵ *Id.*, ¶¶ 206-221.

⁶ *Id.*, ¶ 17.

⁷ There appears to be a significant disconnect between Defendants’ so-called fraudulent acts and Mrs. Camacho’s purchase and use of tobacco products. According to one allegation, Mrs. Camacho supposedly did not start smoking until 1964. (*Id.*, ¶ 17). In other allegations, Mrs. Camacho alleges that she heard *and relied upon* supposedly fraudulent

NDTPA claim is rooted in consumer fraud, it must comply with Rule 9(b), and Plaintiffs have failed to plead the requisite element of causation with any level of specificity. *Chattem v. BAC Home Loan Servicing LP*, Case No. 2:11-cv-1727-KJD-RJJ, 2012 U.S. Dist. LEXIS 78412, at *6 (D. Nev. June 5, 2012) (“A claim under the NDTPA ‘sounds in fraud and thus still must meet the particularity requirement of Rule 9(b).’”) (citation omitted). In other words, the necessary element of causation is entirely lacking based on the allegations (or lack thereof) in the Amended Complaint.

For these reasons, Plaintiffs have failed to state a claim against Reynolds for deceptive trade practices, and the Court should dismiss the claim with prejudice.

D. Plaintiffs’ Civil Conspiracy Claim Must Fail to the Extent the Underlying Claims Are Dismissed Against Philip Morris and Liggett.

“[A]n underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud.” *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 74–75, 110 P.3d 30, 51 (2005) (*overruled on other grounds*, 124 Nev. 224, 181 P.3d 670 (2008)). Further, to the extent a conspiracy claim is not based on fraud, it must be based on some other underlying wrong or unlawful objective.⁸ *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Rep. 15, 345 P.2d 1049, 1052 (2015).

Pursuant to footnote 1, Reynolds has adopted all of the arguments set forth in Defendants Philip Morris’ and Liggett’s Motion to Dismiss. If the underlying claims against Philip Morris and Liggett are dismissed for any of the reasons contained therein (*e.g.*, noncompliance with NRCP 9(b), federal preemption, etc.), there will not be any remaining underlying claims to support Plaintiffs’ civil conspiracy claim, and the conspiracy claim must fail as a matter of law.

statements that were made in the 1950s. (*Id.*, ¶¶ 155(a)-(c).) In fact, Mrs. Camacho specifically alleged that the 1953 “Frank Statement to Cigarette Smokers” was one of the deceptive trade practices targeted at her (*id.*, ¶ 212(h)), *yet Mrs. Camacho did not begin smoking until 11 years later*. The significant time lag between Reynolds’ alleged deceptive trade practices and Mr. Camacho’s decision to start smoking renders her causation allegations implausible.

⁸ Plaintiffs frame their conspiracy claim by alleging that the Defendants “intended to accomplish, and did indeed accomplish, an unlawful objective of misleading and deceiving the public, for the purpose of harming Plaintiff.” (Am. Compl., ¶ 196). Thus, Plaintiffs’ allegations certainly indicate that this is a conspiracy to defraud claim.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 23rd day of March, 2020, service of the foregoing **DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(b)(5)** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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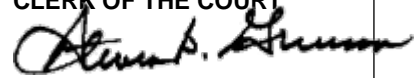
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EXHIBIT 4

EXHIBIT 4



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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 SANDRA CAMACHO, individually,
13 and ANTHONY CAMACHO, individually,

14 Plaintiffs,

15 v.

16 PHILIP MORRIS USA, INC., a foreign
17 corporation; R.J. REYNOLDS TOBACCO
18 COMPANY, a foreign corporation,
19 individually, and as successor-by-merger to
20 LORILLARD TOBACCO COMPANY and as
21 successor-in-interest to the United States
22 tobacco business of BROWN &
23 WILLIAMSON TOBACCO CORPORATION,
24 which is the successor-by-merger to THE
25 AMERICAN TOBACCO COMPANY;
26 LIGGETT GROUP, LLC., a foreign
27 corporation; and ASM NATIONWIDE
28 CORPORATION d/b/a SILVERADO
SMOKES & CIGARES, a domestic
corporation, and LV SINGHS INC. d/b/a
SMOKES & VAPORS, a domestic corporation;
DOES I-X; and ROE BUSINESS ENTITIES
XI-XX, inclusive,

Defendants.

CASE NO.: A-19-807650-C

DEPT. NO.: IV

PLAINTIFF'S OPPOSITION TO
DEFENDANT R.J. REYNOLDS'
MOTION TO DISMISS PLAINTIFFS'
AMENDED COMPLAINT UNDER NRCP
12(b)(5)

Hearing Date: April 30, 2020

Hearing Time: 09:00 am

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MEMORANDUM OF POINTS AND AUTHORITIES¹

I. INTRODUCTION

This case arises out of one of the most egregious, expensive, decades-long acts of fraud and conspiracy this country has ever seen. This sophisticated and complex conspiracy involved false and misleading claims regarding the health hazards and highly addictive nature of cigarettes and was perpetrated by the cigarette industry, including Defendant herein. Plaintiff, SANDRA CAMACHO, was one of the millions of Americans who was deceived by the cigarette industry. Mrs. Camacho began smoking cigarettes in approximately 1964 and continued to smoke until approximately 2017. In 2018 Mrs. Camacho developed laryngeal cancer as a result of smoking cigarettes manufactured by Defendants Philip Morris USA Inc. (“Philip Morris”) and Liggett Group LLC (“Liggett”). Mrs. Camacho purchased cigarettes from Defendants, ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARES (“Silverado”) and LV SINGHS INC. d/b/a SMOKES & VAPORS (“LV Singhs”) from the mid-2000s through 2017 in sufficient quantities to be a substantial contributing cause of her laryngeal cancer. Defendants, Philip Morris and Liggett, conspired with Defendant R.J. Reynolds Tobacco Company (“R.J. Reynolds”), and others, to conceal the true nature of the health hazards and deadly and addictive nature of cigarettes from the American public, including SANDRA CAMACHO.

Mrs. Camacho and her husband, ANTHONY CAMACHO, (collectively “Plaintiffs”) bring this action alleging claims of negligence and strict liability based on the Defendants’ manufacture and sale of cigarettes that it purposefully designed to be unreasonably dangerous, as well as counts of deceptive trade practice and civil conspiracy based on the decades-long campaign Defendants waged to deceive the public and smokers such as Mrs. Camacho. Contrary to Defendants’ arguments, as

¹ Plaintiffs hereby adopt and incorporate all arguments presented in Plaintiffs’ Opposition to Defendants’ Philip Morris and Liggett’s Motion to Dismiss filed contemporaneously with the filing of this pleading.

1 explained below, Plaintiffs have sufficiently pleaded each of their claims and thus Defendant's motion
2 should be denied in its entirety.

3 **II. BRIEF STATEMENT OF THE FACTS**

4 **a. Cigarette Industry's Two Hundred and Fifty Billion Dollar Conspiracy**

5 Defendants, R.J. Reynolds, Philip Morris, and Liggett, along with other cigarette
6 manufacturers, embarked on a nation-wide campaign, beginning in the 1950s, to deceive the American
7 public, including Plaintiff, SANDRA CAMACHO, about the true nature of cigarettes – e.g. the
8 corporations deliberate and intentional manipulation and manufacturing of cigarettes to, among other
9 things, increase the levels of pH and ammonia in cigarettes, make cigarettes easier to inhale, and
10 purposefully make them addictive, dangerous, and deadly. These corporations band together to
11 conceal their knowledge that cigarettes were dangerous, addictive, and caused lung cancer and death
12 all in the name of profit. This conspiracy has been described as the most-deadly conspiracy in the
13 history of this country – there has never been a conspiracy so broad in its scope, devious in its purpose,
14 and devastating in its results, still killing a half million people every year.

15 Defendants accomplished this goal through a highly complex, nation-wide, two-hundred-and-
16 fifty-billion-dollar marketing campaign which involved, among other things, television
17 advertisements (until the 1970s when these were banned), billboards, newspaper advertisements,
18 coupons, public relations companies, branded merchandise, free samples, fake scientists and fake
19 scientific organizations, sponsorship of sporting events, tobacco institute spokesmen and
20 spokeswomen, celebrity endorsements, and the list goes on. The cigarette manufacturers, who were
21 fierce competitors all vying for the same market-share of consumers – cigarette smokers – deliberately
22 linked arms to form an alliance to deceive the American public, including SANDRA CAMACHO.
23 This conspiracy would not have worked on the massive, nation-wide scale it did if it was not for the
24 cigarette industry's *joint efforts*.

25 **b. Defendants' Concerted Actions Harmed Sandra Camacho**

26 Defendants' concerted efforts and mass marketing campaign harmed Plaintiff, SANDRA
27 CAMACHO, who began smoking cigarettes in 1964 when she was 18 years old. Mrs. Camacho
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1 became addicted to nicotine in cigarettes and as a result developed laryngeal cancer. Mrs. Camacho's
2 continued smoking lead to her addiction, which ultimately lead to her laryngeal cancer. Mrs. Camacho
3 continued to smoke cigarettes for over 50 years was because, she, along with millions and millions of
4 Americans, did not know cigarettes were harmful, addictive, or could cause disease and death. And
5 when Mrs. Camacho finally learned about the true nature of cigarettes, she unfortunately was too
6 addicted to the powerful drug – nicotine – that she was not able to quit smoking.

7 Mrs. Camacho did not know about the true nature of cigarettes because R.J. Reynolds, Philip
8 Morris, and Liggett did not want Mrs. Camacho to know. The ongoing debate regarding whether
9 cigarettes were safe or whether they were not safe was not a one-off marketing campaign or a singular
10 advertisement or appearance on television. This was one of the largest, most expensive and wide-
11 spread marketing efforts this county has ever seen. Unlike Defendants imply in the motion to dismiss,
12 Philip Morris and Liggett did not act alone. They needed help and cooperation from R.J. Reynolds
13 and others, to perpetuate this very expensive, massive campaign. The conspiracy and the public
14 perception about cigarettes would never have flourished unless all of the cigarette manufacturers
15 worked together to spread the same message. Thus, as a result of the concerted efforts of R.J.
16 Reynolds, Philip Morris, and Liggett, Mrs. Camacho began smoking cigarettes, continued to smoke
17 for over 50 years, became addicted to nicotine in cigarettes, and ultimately developed laryngeal cancer
18 as a result of her smoking.

19 **c. This Identical Motion Was Denied by Judge Crocket Earlier This Month**

20 Just last month, on March 10, 2020, in the Eighth Judicial District Court, Judge Jim Crockett
21 ruled upon the identical issues raised in this Motion to Dismiss in the *Clark v. R.J. Reynolds et al.*,
22 Case No. A-19-802987 matter. The Complaint and the Motions to Dismiss in the *Clark* matter were
23 substantively the same, involving similar counts of Negligence, Strict Liability, Fraudulent
24 Concealment, Fraudulent Misrepresentation, Civil Conspiracy, and Deceptive Trade Practices. After
25 extensive briefings and a hearing before Judge Crockett, the Court denied both Defendant R.J.
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Reynolds's Motion to Dismiss as well as Defendants Philip Morris and Liggett's Motion to Dismiss.² Furthermore, similar motions to dismiss have likewise been denied in courts across the County including in Florida, Massachusetts, Portland, and others.³

III. LEGAL ARGUMENT

A. LEGAL STANDARD FOR MOTIONS TO DISMISS

NRCP 8 governs the general rules of pleading. NRCP 8(a) requires that a complaint "contain a short and plain statement of the claim showing that the pleader is entitled to relief." NRCP 8(a); *see also Crucil v. Carson City*, 95 Nev. 583, 585, 600 P. 2d 216, 217 (1979) (quoting NRCP 8(a)). A complaint need only "set forth sufficient facts to establish all necessary elements of a claim for relief so that the adverse party has adequate notice of the nature of the claim and relief sought." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (internal citations omitted); *see also Western States Const., Inc. v. Michoff* 108 Nev. 931 (Nev. 1992) (citing *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984) ("test for determining whether the allegations of a cause of action are sufficient to assert [a] claim is whether allegations give fair notice of nature and basis of claim and relief requested.")).

The pleading of a conclusion, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim. *Crucil*, 95 Nev. at 585, 600 P. 2d at 217 (1979) (citing *Taylor v. State and Univ.*, 73 Nev. 151, 152, 311 P. 2d 733, 734 (1957)). "Because Nevada is a notice-pleading jurisdiction, [its] courts liberally construe pleadings to place into issue matters which are

² In *Clark v. R.J. Reynolds et al.*, Judge Crockett granted a limited Motion for More Definite Statement regarding Plaintiffs' two fraud claims. The *Clark* Complaint did not contain a Gross Negligence count. *See* Order and Transcript **Exhibit 1**.

³ *See* Order Denying Defendants' Motion to Dismiss Second Amended Complaint, *Harcourt v Philip Morris et al.*, Case No. 17-20297, Seventeenth Judicial Circuit Court Florida, January 16, 2020; Order Denying in Part Motion to Dismiss, *Thorpe v. Philip Morris et al.*, Case No. 18VC36607, Circuit Court for the State of Oregon, February 20, 2019; Order Denying Defendant's Motion to Dismiss Counts II-VIII of Plaintiff's Complaint and in part Order Granting Defendants' Motion for More Definite Statement, *Gentile v. R.J. Reynolds et al.*, Case No. 50201CA540XXXXMB Fifteenth Judicial Circuit Court Florida, January 20, 2016.

1 fairly noticed to the adverse party.” *Hay*, 100 Nev. at 198, 678 P. 2d at 674 (citing *Chavez v. Robberson*
2 *Steel Co.*, 94 Nev. 597, 599, 584 P. 2d 159, 160 (1978)).

3 “A district court order granting a motion to dismiss is ‘**rigorously reviewed.**’” *Kahn v. Dodds*
4 *(In re AMERCO Derivative Litig.)*, 252 P.3d 681, 692 (Nev. 2011) (emphasis added) (quoting *Shoen*
5 *v. SAC Holding Corp.*, 122 Nev. 621, 634-35, 137 P.3d 1171, 1180 (2006)); *see also Holcomb Condo.*
6 *Homeowners’ Ass’n v. Stewart Venture, LLC*, 300 P.3d 124, 128 (Nev. 2013) (**stating that the**
7 **standard for dismissal under NRCP 12(b)(5) “is a rigorous standard”**) (emphasis added). To
8 survive a motion to dismiss under NRCP 12(b)(5), a complaint must contain some “set of facts which,
9 if true, would entitle the plaintiff to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,
10 228, 181 P.3d 670, 672 (2008). When reviewing a NRCP 12(b)(5) motion, all factual allegations in
11 the complaint must be regarded as true. *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).
12 In fact, the court “must accept as true the complaint’s allegations and draw all reasonable inferences
13 in [plaintiff’s] favor.” *Shoen*, 122 Nev. at 635, 137 P.3d at 1180; *Simpson v. Mars, Inc.*, 113 Nev. 188,
14 190, 929 P.2d 966, 967 (1997) (holding that the court must construe the pleadings liberally and draw
15 every fair inference in favor of the non-moving party); *Squires v. Sierra Nev. Educ. Found.*, 107 Nev.
16 902, 905, 823 P.2d 256, 257 (1991) (stating that the court must construe the pleadings liberally and
17 draw every fair inference in favor of the non-moving party). Therefore, dismissal is not proper unless
18 it appears beyond a reasonable doubt that the plaintiff could prove no set of facts, which, if true, would
19 entitle him to relief. *Hampe*, 118 Nev. at 408, 47 P.3d at 439.

22 **B. PLAINTIFFS’ CLAIMS DO NOT FAIL FOR LACK OF PRODUCT USE**

23 Defendants first allege Plaintiffs’ conspiracy and deceptive trade practice claims fail because
24 lack of “product use.” *Def. Mot. at pg. 5*. This theory is not supported by any statute or case law and
25 is a baseless, made-up requirement. Nevada Standard Jury Instructions lay out the specific elements a
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1 Plaintiff must prove in order to prevail on a claim for civil conspiracy. *There is no “product-use”*
2 *requirement in the standard jury instruction.*

3 To prove a claim of civil conspiracy, plaintiff has the burden of proving each of the
4 following:

- 5 1. Two or more persons or entities, who, by some concerted action, intended
6 to accomplish an unlawful objective for the purpose of harming plaintiff;
and
- 7 2. Plaintiff suffered damages as a result of this act or acts.

8 *Nevada Standard Jury Instruction 6.9. Likewise, there is no “product-use” requirement in a*
9 *deceptive trade practice claim either.* Under Nevada’s Deceptive Trade Practices Act, “[a]n action
10 may be brought by any person who is a victim of consumer fraud.” Nev. Rev. Stat. § 41.600(1). The
11 Nevada Supreme Court has not yet provided the elements for a claim under the NDTPA, nor has the
12 Court clarified whether or not a plaintiff must prove causation or reliance on to have a cognizable
13 cause of action. Nevada District Courts, however, have attempted to predict how the Nevada Supreme
14 Court would rule on this issue. *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657 (D. Nev. 2009)
15 (citing *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 872 (9th Cir. 2007)).

16 In *Picus*, the Nevada District Court held that to prevail under a NDTPA claim, a plaintiff must
17 show: (1) the defendant engaged in a consumer fraud of which the plaintiff was a victim, (2) causation,
18 and (3) the plaintiff sustained damages as a result. *Id.* As explained in Plaintiffs’ Opposition to
19 Defendants Philip Morris and Liggett’s Motion to Dismiss, Plaintiffs adequately plead sufficient facts
20 to prove each of these elements – i.e. how the cigarette industry’s efforts as a whole, including
21 Defendant R.J. Reynolds, caused or contributed to Mrs. Camacho’s beginning smoking, continuing
22 smoking, becoming addicted to cigarettes, and ultimately contributing to her development of laryngeal
23 cancer.

24 All of the case law Defendant relies upon to support its alleged “product-use” requirement deal
25 with causes of action for negligence, strict products liability, or fraud and misrepresentation. None of
26 its cases address its alleged position that “product-use” is a necessary and required element for civil
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1 conspiracy and deceptive trade practice claims. For example, in supporting their proposition,
2 Defendant relies on two ***non-binding Federal trial judge orders: Baymiller v. Ranbaxy***
3 ***Pharmaceuticals***, 894 F. Supp. 2d 1302 (U.S. District Court Nevada 2012) and ***Moretti v. Wyeth***, 2009
4 WL 49532 (U.S. District Court Nevada 2009).

5 Defendant clearly and blatantly misstates the law and the holdings in *Baymiller* which is, in
6 fact, a completely unrelated and unhelpful case. First of all, the court in *Baymiller* was deciding a
7 Motion for Summary Judgment, not a NRCP 12(b)(5) Motion to Dismiss. Secondly, the facts of
8 *Baymiller* are lightyears apart from the facts in Mrs. Camacho's case. In *Baymiller* the disputed issues
9 involved one pharmaceutical company manufacturing one drug -- opposed to the entire cigarette
10 industry spending two-hundred-and-fifty-billion dollars for over 50 years engineering a massive
11 campaign to deceive the American public, including Mrs. Camacho. Furthermore, the defendant in
12 *Baymiller*, Glaxo, argued that Plaintiff's negligence, strict products liability, fraud and negligent
13 misrepresentation, and elder abuse claims fail because Glaxo did not manufacture or sell the product
14 to Plaintiff. ***Nowhere in Baymiller does the court address any civil conspiracy or deceptive trade***
15 ***practice claim.*** *Id.* at 1306-1307 ("The issue in this case is whether Nevada law recognizes negligent
16 misrepresentation/fraud claims against brand-name manufacturers who did not manufacture or sell the
17 generic drug that allegedly caused Plaintiff's injuries."). In fact, the words "conspiracy" and
18 "deceptive trade practice" are nowhere to be found in the entire *Baymiller* opinion. Importantly, Mrs.
19 Camacho is ***only*** alleging civil conspiracy and deceptive trade practice against R.J. Reynolds-- and has
20 not pleaded any of the claims *Baymiller* actually addresses! Thus, any reliance on *Baymiller* is
21 misguided and should not be considered.

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25 Next, Defendant inappropriate relies on *Moretti* to support its position. Again, the court in
26 *Moretti* is addressing a Motion for Summary Judgment and not a NRCP 12(b)(5) Motion to Dismiss.
27 Furthermore, this is a ***Federal trial judge interpreting Minnesota deceptive trade practice law.***
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1 Additionally, like *Baymiller*, the core issue in *Moretti* dealt with Plaintiff's misrepresentation and
2 fraud claims, not whether there was a "product-use" requirement necessary for the deceptive trade
3 practice claims. *Moretti* at *2. ("The sole legal issue presented is whether Nevada law recognizes
4 Plaintiff's misrepresentation/fraud claims against Wyeth and Scharz, both brand name drug
5 manufacturers who did not manufacture or sell the generic drug that allegedly caused Plaintiff's
6 injuries."). Thus, it is clear these cases do not stand for the proposition that there is a "product-use"
7 requirement in Nevada for civil conspiracy or deceptive trade practice claims. As Plaintiffs explain
8 below, and in their Response to Defendants Philip Morris and Liggett's Motion to Dismiss, Mrs.
9 Camacho plead more than sufficient elements to satisfy the pleading requirements for these claims
10 and thus R.J. Reynolds' motion should be denied.

11
12 **C. PLAINTIFFS' CLAIMS FOR DECEPTIVE TRADE PRACTICES DO NOT FAIL**

13 Next, Defendant alleges Plaintiffs NDTPA claim fails because there is no "causation" between
14 R.J. Reynolds actions and Mrs. Camacho. As discussed above and throughout Plaintiffs' Amended
15 Complaint, R. J. Reynolds acted through concerted actions with Philip Morris, Liggett, and others to
16 device the American public, including Mrs. Camacho. But for all of the cigarette manufacturers, acting
17 in unison with one single message, the massive conspiracy and public deception would never have
18 worked. But for the billions of dollars the cigarette industry spent, the mass marketing campaign would
19 never have been as successful as it was. It was the Defendants' *combined actions* that caused the
20 public, including Mrs. Camacho, to continue to smoke cigarettes which, unbeknownst to her, were
21 specifically manufactured and designed to be highly addictive, dangerous, and deadly, and eventually
22 caused her to develop laryngeal cancer. Thus, it would be contrary to public policy if this Court were
23 to hold that co-conspirator R.J. Reynolds could effectively escape liability for its role in this massive,
24 nation-wide conspiracy.
25
26
27
28

1 This is comparable to a drag racing scenario where two cars are involved in a race. Car A
2 crashes into a pedestrian and kills him. Car B never touches the pedestrian. According to R.J.
3 Reynolds' logic, Car B can completely escape liability and never be held responsible for causing the
4 pedestrian's death. This drag racing scenario is a miniscule microcosm of the scenario in Plaintiffs'
5 Amended Complaint – a two-hundred and fifty billion dollar conspiracy spanning over half a century
6 involving the most sophisticated, powerful corporations in our country. R.J. Reynolds actions and
7 participation in this conspiracy was directly involved in Mrs. Camacho beginning to smoke cigarettes,
8 continuing to smoke cigarettes for over 50 years, becoming addicted to cigarettes, and eventually
9 developing laryngeal cancer. Thus, Defendant's motion should be denied.
10

11 **D. PLAINTIFFS' UNDERLYING CONSPIRACY CLAIMS WERE PLEAD PROPERLY**

12 Finally, Defendant alleges Plaintiffs' civil conspiracy claims fail because their underlying
13 claims against Philip Morris and Liggett Fail. As explained in detail in Plaintiffs' Opposition to
14 Defendant Philip Morris and Liggett's Motion to Dismiss, filed contemporaneously with this motion,
15 this argument likewise fails.
16

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28

IV. CONCLUSION

Thus, based on the foregoing, none of Plaintiffs' have far exceeded the pleading requirements under Nevada law and have alleged *prima facie* elements for all of their claims. Therefore, Plaintiffs respectfully request the Court deny Defendant's Motion in its entirety.

DATED this 6th day of April, 2020.

CLAGGETT & SYKES LAW FIRM

/s/ Sean Claggett

Sean K. Claggett, Esq.
Nevada Bar No. 008407
Matthew S. Granda, Esq.
Nevada Bar No. 012753
Micah S. Echols, Esq.
Nevada Bar. No. 008437
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 6th day of April, 2020, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(B)(5)** is served on the following person(s) by electronic service pursuant to NRCP 5(b) and NEFCR 9:

VIA E-SERVICE ONLY:

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Phillip N. Smith, Jr., Esq.
Daniela LaBounty, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite
Attorneys for Defendants, Phillip Morris USA, Inc. and ASM Nationwide Corporation

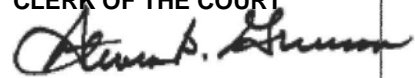
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An Employee of CLAGGETT & SYKES LAW FIRM

Exhibit 1



ORDR (CIV)

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JOHN'S SMOKE SHOP, and SURJIT SINGH
a/k/a RICKY SINGH, INDIVIDUALLY AND AS
EXECUTOR OF THE ESTATE OF HARJINDER
S. HIRA d/b/a JOHN'S SMOKE SHOP & GIFT
SHOP

DISTRICT COURT

CLARK COUNTY, NEVADA

CLEVELAND CLARK, individually, and
YVONNE CLARK, individually,

Plaintiffs,

vs.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation, individually,
and as successor-by-merger to LORILLARD

Case No. A-19-802987-C
Dept. No. XXIV

**ORDER: (1) DENYING R.J. REYNOLDS
TOBACCO COMPANY'S MOTION TO
DISMISS; and (2) GRANTING IN PART
R.J. REYNOLDS TOBACCO
COMPANY'S MOTION FOR MORE
DEFINITE STATEMENT**

TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; LAKHVIR HIRA d/b/a JOHN'S SMOKE SHOP; SURJIT SINGH a/k/a RICKY SINGH, individually and as Executor of the Estate of HARJINDER S. HIRA d/b/a JOHN SMOKE SHOP & GIFT SHOP; and M J SMOKE SHOP +, LLC, a domestic limited liability corporation, d/b/a SMOKE SHOP +,

Defendants.

On January 21, 2020, the Court heard Defendant R.J. Reynolds' Motion to Dismiss Plaintiffs' Complaint. Sean K. Claggett, Esq., Matthew S. Granda, Esq., Micah S. Echols, Robert W. Kelley, Esq., and Kimberly L. Wald, Esq. appeared on behalf of Plaintiff; Val Leppert, Esq. and Dennis L. Kennedy, Esq. appeared on behalf of R.J. Reynolds Tobacco Company, Lakhvir Hira d/b/a John's Smoke Shop, Surjit Singh a/k/a Ricky Singh as Executor of the Estate of Harjinder S. Hira d/b/a John's Smoke Ship & Gift Shop, and M J Smoke Shop + LLC; Lee Roberts Esq., appeared on behalf of Philip Morris USA Inc.; and Kelly A. Luther appeared on behalf of Liggett Group LLC. The Court, having considered Defendant's Motion, the Joinders, the Opposition, and Reply thereto, and arguments of counsel, hereby finds as follows:

IT IS HEREBY ORDERED that Defendant R.J. Reynolds' Tobacco Company's Motion to Dismiss is **DENIED**.

THE COURT HEREBY FURTHER FINDS that to the extent Defendant's Motion seeks a more definite statement on certain factual allegations, the Court will treat the Motion to Dismiss as a Motion for More Definite Statement in regard to Paragraphs 130-160 of the Complaint.

IT IS HEREBY ORDERED that Defendant's Motion for More Definite Statement is **GRANTED IN PART** as to paragraphs 130-160 in Plaintiffs' Complaint. Therefore, Plaintiff shall file a more definite statement as to paragraphs 130-160 within 14 days of the date of this order.

IT IS HEREBY FURTHER ORDERED that Defendants Lakhvir Hira d/b/a John's Smoke Shop, Surjit Singh a/k/a Ricky Singh as Executor of the Estate of Harjinder S. Hira d/b/a John's

Smoke Ship & Gift Shop, M J Smoke Shop + LLC, Philip Morris USA Inc., and Liggett Group
 LLC's Joinder motions are also hereby **DENIED**.

DATED this 9th day of February, 2020.


 DISTRICT COURT JUDGE
 (MS)

Submitted by:

BAILEY ♦ KENNEDY

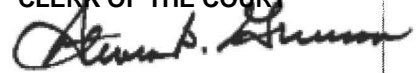
Senior Judge J. Charles Thompson
 for Judge Jim Crockett

By: 

DENNIS L. KENNEDY
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 M J SMOKE SHOP + LLC, LAKHVIR HIRA
 d/b/a JOHN'S SMOKE SHOP, and SURJIT
 SINGH a/k/a RICKY SINGH, INDIVIDUALLY
 AND AS EXECUTOR OF THE ESTATE OF
 HARJINDER S. HIRA d/b/a JOHN'S SMOKE
 SHOP & GIFT SHOP



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

CLEVELAND CLARK, individually, and
YVONNE CLARK, individually,

Plaintiffs,

vs.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation, individually,
and as successor-by-merger to LORILLARD
TOBACCO COMPANY and as successor-in-
interest to the United States tobacco business of
BROWN & WILLIAMSON TOBACCO
CORPORATION, which is the successor-by-
merger to THE AMERICAN TOBACCO
COMPANY; LIGGETT GROUP, LLC., a
foreign corporation; LAKHVIR HIRA d/b/a
JOHN'S SMOKE SHOP; SURJIT SINGH a/k/a
RICKY SINGH individually and as Executor of
the Estate of HARJINDER S. HIRA d/b/a JOHN
SMOKE SHOP & GIFT SHOP; and M J
SMOKE SHOP +, LLC, a domestic limited
liability corporation, d/b/a SMOKE SHOP +

Defendants.

Case No. A-19-802987-C
Dept No.: 24

ORDER



1 On January 21, 2020, the Court heard Defendant, Philip Morris USA Inc. and Liggett
2 Group, LLC's Motion to Dismiss Plaintiffs' Complaint. Sean K. Claggett, Esq., Matthew S.
3 Granda, Esq., Micah S. Echols, Robert W. Kelley, Esq. and Kimberly L. Wald, Esq. appeared
4 on behalf of Plaintiff; Val Leppert, Esq. and Dennis L. Kennedy, Esq. appearing on behalf of
5 R.J. Reynolds Tobacco Company, Lakhvir Hira d/b/a John's Smoke Shop, Ricky Singh d/b/a
6 John Smoke Ship & Gift Shop, and M J Smoke Shop + LLC; Lee Roberts Esq., appeared on
7 behalf of Philip Morris USA Inc., and Kelly A. Luther appeared on behalf of Liggett Group
8 LLC. The Court, having considered Defendant's Motion, the Opposition, and Reply thereto,
9 and arguments of counsel:

11 IT IS HEREBY ORDERED that Defendants Philip Morris USA Inc. and Liggett Group,
12 LLC's Motion to Dismiss Plaintiffs' Complaint Under NRCP 12(b)(5) is **DENIED**.

13 THE COURT HEREBY FURTHER FINDS that to the extent Defendant's Motion seeks
14 a more definite statement on certain factual allegations, the Court will treat the Motion to
15 Dismiss as a Motion for More Definite Statement in regard to Paragraphs 130-160 of the
16 Complaint.

17 IT IS HEREBY ORDERED that Defendant's Motion for More Definite Statement is
18 **GRANTED IN PART** as to paragraphs 130-160 in Plaintiffs' Complaint. Therefore, Plaintiff
19 shall file a more definite statement as to paragraphs 130-160 within 14 days of the date of this
20 order.
21

22 Dated this 13 day of February, 2020.

23 
24 District Court Judge

25 Submitted by:

26 WEINBERG, WHEELER HUGHINS,
27 GUNN & DIAL, LLC


28 D. Lee Roberts, Jr., Esq.

Attorney for Defendant Philip Morris USA Inc.

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLEVELAND CLARK,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO.
)	
PHILIP MORRIS USA, INC.,)	A-19-802987
et al.)	
)	DEPT. NO. 24
Defendants.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JIM CROCKETT

TUESDAY, JANUARY 21, 2020

APPEARANCES:

For the Plaintiffs:

MICAH ECHOLS, ESQ.
SEAN K. CLAGGETT, ESQ.
MATTHEW GRANDA, ESQ.

For the Defendants as named in the body of the transcript:

D. LEE ROBERTS, JR., ESQ.
VALENTIN LEPPERT, ESQ.
DENNIS KENNEDY, ESQ.
MARIA RUIZ, ESQ.
KELLY LUTHER, ESQ.
CHRIS JORGENSEN, ESQ.
PHILLIP SMITH, ESQ.
DANIELA LABOUNTY, ESQ.

REPORTED BY: DANA J. TAVAGLIONE, RPR, CCR No. 841

1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 21, 2020

2 * * * * *

3

4 THE CLERK: Cleveland Clark vs. Philip
5 Morris, A-802987.

6 THE COURT: While you're assembling here,
7 before you all check in, I was going to suggest that
8 we advance all the motions to associate counsel and
9 I grant them because everything I read -- it's not
10 scheduled until February 4th or something.

11 But everything I read indicated to me that
12 nobody has any objection to the various associations
13 of counsel that have been proposed, and I think that
14 would facilitate the individuals making oral
15 argument today if they were allowed to associate.

16 Does anybody have any objection to that?

17 MR. CLAGGETT: No, Your Honor.

18 MR. ECHOLS: No, Your Honor.

19 MR. ROBERTS: No, Your Honor.

20 THE COURT: I hear no objections voiced.

21 So the motions to associate counsel are
22 advanced to this morning, and they are granted.

23 And so when you announce your appearance,
24 for the record, please also tell us whether or not
25 you are duly associated counsel and whether or not

1 you will be arguing on behalf of your client.

2 we'll just start left to right.

3 Mr. Claggett.

4 MR. CLAGGETT: Sean Claggett for the
5 plaintiff. I'm not going to be arguing this
6 morning.

7 MR. GRANDA: Matthew Granda, G-R-A-N-D-A,
8 for the plaintiff. I will not be arguing.

9 MS. WALD: Kimberly Wald. We will
10 associated counsel. I'm not arguing.

11 MR. KELLEY: Good morning, Your Honor. My
12 name is Bob Kelley. I'm from Fort Lauderdale. I
13 had a pending Pro Hac, and I may be arguing this
14 morning.

15 THE COURT: Okay.

16 MS. RUIZ: Maria Ruiz, R-U-I-Z. I
17 represent Liggett as associated counsel. I do not
18 expect to be arguing this morning.

19 MR. ECHOLS: Good morning, Your Honor.
20 Micah Echols. I'm Nevada counsel, and I will be
21 arguing. Claggett & Sykes.

22 MS. LUTHER: Good morning, Your Honor.
23 Kelly Luther, on behalf of Liggett Group, LLC.

24 And I was just admitted. I do not
25 anticipate arguing, but it's a possibility.

1 THE COURT: Okay.

2 MR. JORGENSEN: Good morning, Your Honor.
3 Chris Jorgensen, from Lewis & Rocha, on behalf of
4 Liggett. And I will not be arguing.

5 MR. ROBERTS: Good morning, Your Honor.
6 Lee Roberts for Philip Morris USA, Nevada counsel.

7 With me in the box are my partners,
8 Phillip Smith and Daniela LaBounty. I am not
9 planning to argue this morning on behalf of
10 Philip Morris, Your Honor.

11 THE COURT: Okay.

12 MR. KENNEDY: Dennis Kennedy on behalf of
13 R.J. Reynolds and others.

14 I will not be arguing. I'm co-counsel with
15 Mr. Leppert, who will be arguing and who was
16 admitted Pro Hac this morning.

17 THE COURT: Okay.

18 MR. LEPPERT: Good morning, Your Honor.

19 Val Leppert, and I'm from Atlanta, Georgia,
20 was just admitted into the case. I will be arguing
21 on behalf of R.J. Reynolds Tobacco Company.

22 THE COURT: All right. Well, if you guys
23 can find a seat, I was going to tell you what my
24 thoughts were after having read your briefs.

25 All right. So the first motion in my notes

1 is a Motion to Dismiss by Defendants Philip Morris,
2 USA, and the Liggett Group.

3 These defendants seek to dismiss the
4 plaintiff's case since the plaintiff claims he
5 always smoked Kool brand cigarettes, K-O-O-L. And
6 the defendant says: 'We never manufactured Kool
7 brand cigarettes. So the plaintiff can't show use
8 of our product. So no claim can be pursued
9 against us.'

10 Plaintiff opposes, saying: 'We sued you
11 not because you manufactured Kool cigarettes but
12 because of your involvement in a conspiracy of
13 tobacco manufacturers to defraud and mislead
14 consumers to use tobacco products manufactured by
15 your coconspirators, leaving you exposed to claims
16 for fraud, conspiracy, deceptive trade practices,
17 et cetera.

18 So having read that Motion to Dismiss and
19 the Opposition and Reply, my inclination is to deny
20 the Motion to Dismiss. But I'm happy to hear any
21 supplemental points that counsel wish to make by way
22 of oral argument.

23 Mr. Roberts.

24 MR. ROBERTS: Thank you, Your Honor.

25 I would like to focus the Court's attention

1 to the requirement of duty, which is a fundamental
2 element of any tort action. So the question before
3 this Court is: Have they adequately alleged a duty?
4 And in a product defect case, the duty typically
5 flows from the product use. Where there is no
6 product use, there is no duty, and the claim must
7 fail. And we've cited the Court to several federal
8 decisions from the District Court of Nevada.

9 THE COURT: I read those.

10 MR. ROBERTS: Who have interpreted Nevada
11 law.

12 THE COURT: I read those. But I have a
13 question for you.

14 MR. ROBERTS: Yes, sir.

15 THE COURT: Does that mean that somebody
16 who didn't manufacture a product could, with
17 impunity, join in to help another defendant in the
18 same industry conspire to defraud and mislead
19 consumers into using the product?

20 MR. ROBERTS: I believe that it would
21 determine -- it would rest on the facts alleged.
22 But under Nevada law, and I would cite the Court to
23 "Dow Chemical," which is 114 Nevada 1468, which is
24 cited in our brief. And there you had Dow Chemical,
25 who had performed testing and made public

1 representations about the safety and the inert
2 nature of silicone used in implants. And then you
3 had a different "Dow," who was found who actually
4 sold the implants.

5 The jury found that Dow Chemical was guilty
6 and was acting in concert. The Court explained that
7 acting in concert really had the same standard as a
8 civil conspiracy. And they reversed the jury
9 verdict against Dow Chemical; and in reversing, they
10 said the duty to disclose requires, at a minimum,
11 some form of relationship between the parties.

12 They also discussed the requirement for
13 actual cause and proximate cause as the element of
14 any tort. And actual cause was proven in that case
15 by the implant. The jury found that the implant had
16 caused harm, and that was enough to sustain the
17 verdict against the Dow, who was in privity with the
18 consumer and the plaintiff.

19 But Dow Chemical had published these things
20 to the public saying it's inert. They subsequently
21 knew it wasn't inert, and they said "You had a duty.
22 This is negligence." well, it was a fraudulent
23 concealment of their new funds. And the Court
24 simply said that's too far. Because proximate
25 causation, unlike "actual causation," is a policy

1 decision to only hold people liable for certain
2 things that are reasonably foreseeable and have a
3 reasonably close nexus to the action.

4 Here, Mr. Clark started smoking Kools
5 sometime in the 2000s. Most of these conspiracy
6 allegations began in 1954 and predate the 2000s,
7 when he began smoking Kools. They must plead fraud
8 with specificity. And in this case, merely having
9 these general allegations that we conspired to
10 defraud the public as a whole in believing that
11 cigarettes aren't dangerous, long before Mr. Clark
12 made his decision to start smoking Kools, that's
13 just too remote under these facts. There's no
14 relationship.

15 And the facts that must be pled with
16 specificity under Rule 9(b), because a civil
17 conspiracy to defraud is like fraud pled with
18 specificity, simply aren't there. I would challenge
19 the plaintiffs, when they stand up and respond, to
20 point to the paragraph where they specifically
21 allege not just generally defendants, but that this
22 defendant, Philip Morris, did something which caused
23 Mr. Clark to start smoking Kools in the mid-2000s
24 because it's simply not there, Your Honor.

25 And while I could conceive that there could

1 be a conspiracy --

2 THE COURT: Except, except when two or more
3 people act in concert, each of them becomes
4 responsible for the result. The simplest example is
5 you've got two people in cars drag racing. And the
6 person in Car No. A gets way out of ahead of
7 Car No. B and strikes and kills a pedestrian who's
8 lawfully in a crosswalk. Driver B did not have any
9 contact with the pedestrian whatsoever -- in fact,
10 was remote in distance in my hypothetical -- and yet
11 he will be held co-responsible for the injury as a
12 single indivisible result proximately caused by the
13 actions in concert of two people.

14 The argument you were making sounds to me
15 like the argument you would be making to the jury in
16 this case on the proximate cause jury instructions,
17 and it may be a very effective one too. But I don't
18 think this is a case where, as a matter of law, I
19 can say that Philip Morris and Liggett Group are
20 immune from suit if, in fact, they engaged in fraud
21 and deceit in an effort to bolster the tobacco using
22 market, not for their immediate benefit on Kool
23 brand cigarettes, but in their overall benefit for
24 tobacco users.

25 MR. ROBERTS: And acknowledging, for the

1 purposes of argument, that it's possible to allege a
2 civil conspiracy against a nonproduct manufacturer
3 under Nevada law, I don't believe it was done here.
4 If you look at the --

5 THE COURT: Okay. So that's important
6 there. You acknowledge that it is possible to
7 allege a conspiracy and you're just saying that they
8 didn't did do it correctly here.

9 MR. ROBERTS: Yes. And I will acknowledge
10 the law about the drag racing, and one commentator
11 pointed out that that type of extreme liability
12 seems to be limited to the actions of teenagers in
13 rural areas because it has been so closely
14 circumscribed by the Court.

15 But in looking at what it takes to allege a
16 conspiracy under Nevada law --

17 THE COURT: You know, if you think about
18 that though, and I'm just talking about allegations;
19 I have no idea what the evidence is going to show.
20 But what is more egregious, an industry misleading
21 the public, actively encouraging them to smoke and
22 use tobacco products when they know that, in fact,
23 they're harmful and addictive -- or two yahoos in a
24 rural area having a drag race involving an injury to
25 a single person.

1 And I'm not saying one is better or worse
2 than the other. I'm just saying can we really put
3 those on a spectrum and say that the drag racing
4 youngsters are corrupt and terrible, but the
5 industry that would engage in this kind of conduct
6 gets a pass.

7 MR. ROBERTS: And I'm not going to argue
8 that point with you, assuming your facts are true.

9 But, again, bringing the Court back to this
10 Complaint, in this case, and the requirements of
11 Nevada law under "Dow Chemical," which stated that
12 proof of an agreement alone is not sufficient,
13 however, because it is essential that the conduct of
14 each tortfeasor be in itself tortious.

15 So now the allegations here, he started
16 smoking Kool brand cigarettes, another product, in
17 the 2000s. If the Court will look at page 72 of
18 the -- paragraph 72, page 17 of 54: "The defendants
19 continue to publicly deny the addictive nature and
20 health hazards of smoking cigarettes until the year
21 2000, and other paragraphs allege that we admitted
22 the addictive nature and health hazards of
23 cigarettes in the year 2000.

24 So despite all the wrongful conduct alleged
25 beginning in 1954, if Philip Morris admitted the

1 health hazards of smoking cigarettes in the year
2 2000 and Mr. Clark began smoking cigarettes sometime
3 in the 2000s that he alleged caused his harm, how
4 could he have reasonably relied on any
5 representations made prior to Philip Morris
6 admitting the addictive nature and health hazards of
7 the cigarettes?

8 THE COURT: It's the magic word you just
9 used, the "addictive nature." To encourage people
10 to become addicted to the product, you've now
11 created a totally different monster. This is not
12 just a product they're using; this is a product
13 they've become addicted to.

14 MR. ROBERTS: I understand, Your Honor.

15 THE COURT: Okay.

16 MR. ROBERTS: With regard to the second
17 cause of action, though, Your Honor, under the
18 Nevada Deceptive Trade Practices Act, under Nevada
19 case law we've cited to the Court, that's clearly a
20 fraud claim with all the elements of a fraud claim.
21 The only difference is that under the statutory
22 claim, the burden of proof is relaxed from clear and
23 convincing to a preponderance of the evidence.

24 we haven't even been named. Philip Morris
25 has not even been named in the fraud count that's

1 pled against R.J. Reynolds, the product use
2 defendant. I would suggest that even if the Court
3 keeps Philip Morris in under the conspiracy
4 allegations, it's proper to dismiss the Deceptive
5 Trade Practices Act because of the lack of
6 causation, specific product causation as to
7 Philip Morris.

8 THE COURT: Okay. Thank you, Mr. Roberts.

9 MR. ROBERTS: Thank you, Your Honor.

10 THE COURT: Does the plaintiff wish to
11 respond?

12 MR. KELLEY: Yes. Just briefly,
13 Your Honor. First of all, just as a --

14 (Reporter request.)

15 MR. KELLEY: I'm sorry. I apologize. My
16 name is Bob Kelley, and I represent the plaintiff in
17 this action, along with Sean and his law firm.

18 So just to start off, Your Honor, with a
19 point of clarification, Mr. Roberts misspoke when he
20 said our client began smoking in the mid-2000s.
21 Actually at close reading of the Complaint, it says
22 throughout the Complaint that our client began
23 smoking in 1964, began smoking Kool cigarettes back
24 in 1964. And so as a result of that, he was
25 subjected to the nationwide conspiracy that was

1 perpetrated by the entire tobacco industry on the
2 American public and on the government of the
3 United States, that conspiracy of which
4 Philip Morris and Reynolds and Liggett are all part,
5 has been described by, I think Judge -- or actually
6 David Kessler, who was a former FDA commissioner, as
7 the most deadly conspiracy in the history of this
8 country.

9 There has never been a conspiracy so broad
10 in its scope, devious in its purpose, and
11 devastating in its results, still killing a half
12 million people every year. We think that in our
13 Complaint, we have set forth more than enough
14 specific facts and allegations about that conspiracy,
15 where it started, at the Plaza Hotel in New York, in
16 December of 1953, and carried on through right up
17 until the end of the last millennium. So we think
18 we have stated a cause of action.

19 Obviously there's going to be more details,
20 more facts as we go further into this case, and
21 Your Honor would become more educated on what has
22 happened and what the conspiracy actually consisted
23 of. But we think, for purposes of pleading, we have
24 stated a cause of action. So we would ask that
25 their motion be denied.

1 THE COURT: What about the Deceptive Trade
2 Practices argument Mr. Roberts made?

3 MR. KELLEY: I'm going to defer to my local
4 counsel on that because he's the specialist on
5 Nevada law.

6 THE COURT: Okay. And just so you don't
7 brand yourself as a lawyer from another --

8 MR. KELLEY: Oh, "Nevada"?

9 THE COURT: -- it's "Nevada"

10 MR. KELLEY: Let me restate that. He's the
11 specialist in "Nevada" law.

12 THE COURT: You will see lay people on the
13 jury cringe when they hear "Nevada" come out, even
14 though that's probably the correct pronunciation.

15 MR. KELLEY: Thank you, Your Honor.

16 MR. ECHOLS: Good morning, Your Honor.
17 Micah Echols from Claggett & Sykes.

18 So I think the case that counsel is talking
19 about, the deceptive trade practices is the
20 "Metzinger vs. D.R. Horton" case, and I don't read
21 "Metzinger" the same way the defense does. I read
22 "Metzinger" saying you have a fraud claim under
23 common law; you have a deceptive trade practices
24 claim under the statute, and the only thing the
25 Supreme Court did, that I can see in the opinion, is

1 they said: well, under the common law, it's clear
2 and convincing standard of proof. Under the
3 statute, since it doesn't say that, it's not a
4 directive from the legislature, we're going to just
5 make it a preponderance. But they didn't say "And
6 all the elements have to be proven." They didn't
7 engraft the entire common law into the statute. And
8 so that's my reading of it.

9 THE COURT: Yeah. The way I see that,
10 Mr. Roberts, is it's kind of like getting
11 instructions on wrongful death and loss of a chance,
12 you know. For the jury to decide whether or not you
13 proved wrongful death as opposed to loss of a
14 chance. You could pursue both theories but perhaps
15 only recover on one.

16 And the difference in this case, if it goes
17 as it currently is, would be that the jury would be
18 instructed that, if you're going to find under one
19 instruction for fraud, it would have to be clear and
20 convincing evidence; if it's deceptive trade
21 practices, it would be preponderance of the
22 evidence, and that's the distinction.

23 And, of course, that could be confounding
24 for not just a jury but for the lawyers and the
25 judge. But I think that's correct.

1 Mr. Roberts, anything you wanted to add in
2 rebuttal or reply?

3 MR. ROBERTS: Yes. First, I apologize. I
4 did take one allegation out of context. I see the
5 allegation that he began smoking earlier than that,
6 and I apologize to the Court.

7 with regard to deceptive trade practices, I
8 think that the issue there is that a conspiracy
9 claim is the alternative theory to avoid the
10 requirement of proving product use. The Deceptive
11 Trade Practices Act is a fraud-based action which
12 falls squarely within the two District Court
13 decisions that we've cited, which say that you can't
14 plead fraud as an alternative around proving
15 specific product causation under Nevada law.

16 Conspiracy gives them a theory which allows
17 them to avoid that under the way they've argued the
18 cases. But there simply is no reasonable argument
19 that would allow them to pursue a fraud claim, which
20 is what a Deceptive Trade Practices Act claim is in
21 the absence of specific product causation. Because,
22 without specific product causation, you cannot prove
23 the statutory elements of the claim.

24 THE COURT: Okay. But I don't think that
25 fraud and deceptive trade practices are synonymous

1 or entirely overlapping, and I think that's
2 evidenced by the different standard of proof that's
3 required. So I disagree with that.

4 So on the Motion to Dismiss, I am going to
5 deny the Motion to Dismiss for the reasons that I've
6 articulated this morning. In preparing the order
7 denying the Motion to Dismiss, do you feel that you
8 need the transcript of today's hearing in order to
9 guide you?

10 (No audible response.)

11 THE COURT: Okay. If not, I need that
12 order within ten days, in accordance with
13 Eighth District Court Rule 7.21.

14 Okay. And the joinders to that Motion to
15 Dismiss are, of course, also necessarily denied.

16 So the next Motion to Dismiss I have is
17 R.J. Reynolds Tobacco's Motion to Dismiss.

18 This defendant moves to dismiss the first
19 six claims for relief in plaintiff's Complaint.
20 Claims for relief seven and eight are for strict
21 product liability against Defendant, John Smoke Shop
22 and DMJ Smoke Shop.

23 Defendant RJ&R claims that plaintiff's
24 claims for negligence and strict product liability
25 are preempted by federal law. Plaintiff says

1 federal law only preempts claims based upon failure
2 to warn, and we have pleaded no such claims. And
3 plaintiff says: 'Courts have held that claims of a
4 design defect are not preempted by the Doctrine of
5 Conflict Preemption. The 2007 case of
6 'Liggett Group vs. Davis' says this is the
7 prevailing view.

8 I've reviewed the defendant and plaintiff's
9 citations to authority on this issue, and I'm of the
10 opinion that the more enlightened view is that the
11 plaintiff's claims for negligence and strict product
12 liability, as pleaded in this Complaint, are not
13 preempted by the federal law or otherwise foreclosed
14 by federal law. With regard to the fraud-based
15 claims, the Court is satisfied that the plaintiff
16 has adequately pleaded these claims with the
17 required specificity to withstand this Motion to
18 Dismiss.

19 with regard to the claim for civil
20 conspiracy, I believe this is sufficiently pleaded
21 also to survive this Motion to Dismiss. With regard
22 to plaintiff's claims for violation of the Deceptive
23 Trade Practices Act, I think this is an appropriate
24 application of this consumer protection law and
25 survives the Defendant's Motion to Dismiss.

1 So my inclination is to deny the Motion to
2 Dismiss and the joinders, in all respects, being
3 persuaded by the reasoning of plaintiffs' brief in
4 opposition. But I'm happy to hear from counsel.

5 MR. LEPPERT: Thank you, Your Honor. May
6 it please the Court. Val Leppert, on behalf of
7 R.J. Reynolds. With the Court's permission, I would
8 like to focus my argument on Count 3, which is the
9 fraudulent misrepresentation claim.

10 Your Honor, you have a copy of the
11 Complaint with you?

12 THE COURT: Not out here, but I reviewed it.

13 MR. LEPPERT: Okay. So I have a copy here
14 in case it's helpful. Basically, Rule 9 governs
15 that claim, and we have to have specificity of what
16 did we say, when did we say it, who said it, and
17 then we have to tie it to Mr. Cleveland Clark. You
18 cannot just say at a \$35,000 (phonetic) foot level
19 that tobacco companies have said bad things, have
20 all this misconduct that is alleged in this
21 Complaint. That is not sufficient to tie it
22 together.

23 I'll point the Court to the Ninth Circuit's
24 opinion in "Rivera," applying Nevada law where the
25 Court held Nevada does not allow a fraud claim that

1 is based on this pervasiveness of tobacco,
2 advertising tobacco messages, but instead the
3 plaintiff will have to prove reliance on specific
4 statements from the defendant that matters, and
5 that's important because we can get lost here a
6 little bit.

7 THE COURT: Well, "have to prove" is one
8 thing. But let's talk about whether the allegations
9 are specific under Rule 9.

10 MR. LEPPERT: Exactly. And that's with
11 respect to reliance, the reliance element, they're
12 anything but specific. They're in page -- excuse
13 me -- paragraph 136, which is on page 32 out of 54.
14 And it says right here: "We intended to induce
15 Cleveland Clark and did induce Cleveland Clark to
16 rely upon the aforementioned false statements and
17 representations."

18 There's nothing particular about that.
19 That is boilerplate language that comes out of a
20 law school outline that will not get credit because
21 there's no fact law application. There is no
22 specification as to how he relied, specifically the
23 type of evidence that the Ninth Circuit was looking
24 at. Here, at this juncture, they only need to say
25 it, and Your Honor will take it as true.

1 But there needs to be -- below that, there
2 needs to be facts that say what did he hear; why did
3 he start smoking; why did he continue to start
4 smoking; did he ever even try to quit smoking; how
5 was he deceived; what were his beliefs about smoking
6 and health? All they have on reliance is this
7 boilerplate paragraph.

8 And I think then there's another one,
9 another boilerplate paragraph, that's (F), 136(F),
10 that he was "justified in relying upon the
11 misrepresentations because they were made by
12 defendants who possessed superior knowledge."
13 Again, boilerplate language.

14 We have to plead facts, certainly when
15 we're under Rule 9(b), facts as to how that's a
16 plausible claim on the law here. Different than
17 "Rivera," which is summary judgment case, but the
18 allegations are not even here as to how it relates
19 to Mr. Cleveland Clark at this particular point.

20 If we take it one step and we look at the
21 allegations of statements that we made, they are in
22 paragraph 135. They have to be pled with
23 particularity. There is one statement here that is
24 pled with particularity, and that's from 1953.
25 That's in 135(a), the so-called "Frank Statement."

1 That is pled with particularity.

2 But Mr. Clark didn't even start smoking
3 until much later, until 1964. There's no allegation
4 heard that Frank Statement or with any specificity
5 that he would have been impacted by. He was
6 probably a little kid, at that point in time, when
7 that statement was made.

8 THE COURT: And little kids wouldn't be
9 impressionable, would they?

10 MR. LEPPERT: Pardon?

11 THE COURT: I said, "Little kids wouldn't
12 be impressionable, would they?"

13 MR. LEPPERT: They may be impressionable,
14 Judge, but that would be nice to plead. If you're
15 going to meet Rule 9(b), plead it. Tell us.
16 There's lots of allegations in here that we targeted
17 minorities. There's no allegation that this man is
18 a minority. There's that we targeted woman.
19 There's no allegation that he is a woman.

20 These are irrelevant. There are
21 allegations about light cigarettes, right, with
22 respect to lights and low-tar cigarettes. That is
23 135(F). No allegation that this man ever touched a
24 light cigarette. So that's the disconnect here,
25 that whatever is pled with particularity, they

1 cannot tie to Mr. Cleveland Clark in the
2 allegations, and that's all they have to do here,
3 but they're not doing it.

4 (B) talks about we continue to make
5 statements from 1953, for decades, through the TIRC.
6 No particularity in that statement. And when we
7 look at that, Your Honor, what's important to
8 remember is R.J. Reynolds is the only use defendant
9 in this case. The only product that's been alleged
10 are Kool cigarettes. They were manufactured by a
11 company called Brown & Williamson Tobacco
12 Corporation until 2003. That is when my client
13 purchased the company or acquired the assets of the
14 company and now has successor liability.

15 But there is not a single statement from
16 Brown & Williamson Tobacco Corporation that predates
17 2003, 2004. Remember, the allegation is he started
18 in '64. It is attributed to Brown & Williamson. It
19 says on this date, they made X-statement, and he
20 heard it, and he relied on it. That statement just
21 isn't there. Instead, you have studies from the
22 1950s and '60s. No allegations that he read those
23 studies, that he was misled by them, much less that
24 they came from Brown & Williamson. Then in '64 --

25 THE COURT: Does he claim that he read or

1 relied upon the studies or that, armed with the
2 knowledge of the tobacco history he had on the
3 studies, they shouldn't have made the
4 representations they were making?

5 which way does that go?

6 MR. LEPPERT: So this particular allegation
7 says that the articles itself misled the public; in
8 other words, that they were false and misleading.
9 Again, cites to studies, they're from the 1950s,
10 from the early 1960s, and there's no allegation that
11 he read it.

12 In other words, then you have the response
13 to the certain general support in 1964. Again, it
14 doesn't say who made what statement, at what point
15 in time. Was it Brown & Williamson? It doesn't say
16 that he heard it, that he relied on it, and there's
17 the light cigarette allegation, which we know is off
18 target; right?

19 Then there's a 1982 statement, with
20 particularity from Ed Horrigan, CEO of R.J. Reynolds
21 from '82. Again, at that point, they're not owning
22 the Kool brand. They're separate companies at that
23 point in time, but that won't qualify. But, also,
24 there's no allegation that, in 1982, he's watching
25 Night Line Television and he hears Ed Horrigan say

1 this and, because of that, he continues smoking. He
2 started smoking.

3 Then there's something in the statement
4 regarding: "We don't advertise to children."
5 Again, it's not attributed to Brown & Williamson,
6 the actual defendant. Again, how does that relate
7 to him? That's the kind of evidence that the
8 "Rivera" court was looking for, and they haven't
9 pled it. In 1984, he's been smoking for 20 years.
10 What does a statement whether we advertise to
11 children have anything to do with him? At this
12 point, he's not anywhere a youth anymore. At that
13 point in time, he's a grown man at that point.

14 So that's basically the reason why this
15 Complaint does not satisfy Rule 9 and that it's just
16 basically -- you have to, at least allege it, with
17 particularity, the statements from Brown &
18 Williamson that he relied on and that he -- how it
19 affected him is not pled with particularity.

20 Unless the Court has questions about
21 Count 3, I would like an opportunity to talk about
22 Count 4 for a minute, which is concealment.

23 THE COURT: Sure. Go right ahead.

24 MR. LEPPERT: Thank you, Your Honor.

25 So concealment, there are two issues with

1 this. Again, this is both. This is Count 4, which
2 is also subject to Rule 9 under Nevada law, and
3 there are two issues: One really is a question of
4 law for the Court to address. The second is very
5 similar to what I just addressed, a failure to plead
6 the connection to Mr. Clark with specificity,
7 particularity.

8 So let me lay out the first one first, and
9 that is the concept with duty to disclose, and it is
10 pled in this Complaint in boilerplate language. It
11 simply says, 152: That we affirmatively assumed a
12 broken promise to truthfully disclose adverse
13 information, that we had a duty to disclose
14 information -- "duty," of course, being an element
15 of concealment of a claim; right?

16 Under Nevada law, if we laid out in the
17 "Davenport" case, for example, or in the American,
18 "Ace American Insurance" case, there is no duty to
19 disclose under the law of fraud unless there is a
20 fiduciary relationship, which we don't have here.
21 It's not alleged here; or some kind of what they
22 call a "special relationship," a confidential
23 relationship.

24 All of the cases we've cited to you, we
25 don't have tobacco case from the Nevada Supreme

1 Court on this particular issue. But that is a very
2 narrow doctrine that has never been imposed between
3 the manufacturer of a product -- sits in North
4 Carolina, or Brown & Williamson was in Louisville,
5 Kentucky -- and the end consumer. I mean, obviously
6 it goes through a chain of retailers. That kind of
7 confidential special relationship is something like
8 the accountant, the lawyer, or something like that,
9 to that nature. That's usually what it means.

10 In the tobacco context, that special
11 relationship theory of a duty to disclose is
12 rejected. Cited to Your Honor the Third Circuit's
13 opinion in "Jeter." Cited to you the Tenth Circuit
14 decision in "Burton." In Florida, we just had it
15 rejected by the First District Court of Appeals in
16 "Whitmire" that basically that kind of special
17 relationship does not exist between the manufacturer
18 on one end and the end consumer on the other.

19 So there's no duty to -- in other words,
20 this boilerplate allegation doesn't get them there
21 because it doesn't explain how that duty would have
22 arisen under Nevada law for us to disclose. The
23 only theory that they give us in response is they
24 say, "well, special relationship," and they read
25 American -- the "Ace American Insurance" case a lot

1 differently than I do, respectfully. Because what
2 the court then goes on to say is: We have refused
3 to impose such a duty, for example, on an insurer
4 with the insured.

5 That relationship is a lot closer between
6 the insurer and the insured than the tobacco
7 manufacturer and the end consumer. To the extent
8 they're trying to create a duty because we have
9 entered the debate, the tobacco companies have
10 talked about the issues; correct? I mean, they do
11 allege that. They do allege the tobacco companies
12 went out and talked about smoking health issues.
13 I've not read a Nevada case that creates a duty
14 based on that itself.

15 I have read Florida cases that do create a
16 duty based on that. But, again, that duty requires
17 that Mr. Cleveland Clark heard us make one of those
18 statements, right, and that he relied on that. Now
19 he's justified in relying on us to provide him
20 information because we would have assumed such a
21 duty.

22 Again, the only statement that I know that
23 would create such a duty, at best, would be that
24 Frank Statement from 1953. The statement where the
25 companies are saying "we're hiring research

1 scientists; we're going to look at this, at this
2 question." Again, there's no allegation that, in
3 1953, he heard that statement, that created a duty.
4 And I'm unaware of a case under Nevada law that even
5 would recognize a duty that's created in that
6 fashion.

7 Now, I just want to be clear. A
8 manufacturer has a duty under a failure to warn
9 theory, which is the negligence and strict liability
10 theory. I'm not trying to say the manufacturer has
11 never any obligation to tell anything to the
12 customers. Of course it does, but that's negligence
13 and strict liability and so on.

14 But so that's the duty part, and that's
15 really a question of law, Your Honor. I guess it's
16 a fact-law question because I don't think they can
17 survive under Rule 9 by simply saying "They had a
18 duty and they didn't fulfill that duty." That's not
19 Rule 9.

20 Second element is -- and this, again, goes
21 back to the "Rivera" case -- when they address in
22 the court there, under Nevada law, addresses the
23 concealment claim, it says: The plaintiff must
24 prove that, but for the concealment, Mr. Clark -- or
25 in that case, it was Rivera, but here Mr. Clark --

1 would have acted differently, would have not started
2 smoking and/or would have quit smoking.

3 And, again, here, we're at the pleading
4 stage, but we're under Rule 9, that has to be pled
5 with particularity. And when we look at that
6 particular allegation, it's, again, boilerplate.
7 It's 153(F). And it says: "Plaintiff was unaware
8 of the dangerous and addictive nature of cigarettes
9 and would not have begun or continued to smoke had
10 he known the aforementioned concealed and suppressed
11 facts."

12 That is boilerplate language. It simply
13 repeats the element. If that's sufficient, then
14 there's no distinction between Rule 8 and Rule 9.
15 There has to be a difference. You have to tell us
16 how and why, and that's when the "Rivera" court goes
17 to -- again, that's at the summary judgment
18 proceedings, but they go through the type of
19 evidence that would have to be produced here.

20 And here, what's missing -- and that's, I
21 guess, the overall theme as to why we object to this
22 Complaint. You have to tie it to Mr. Cleveland
23 Clark. The only thing they've alleged about this
24 gentleman is that he started smoking in 1964, and he
25 smoked kool cigarettes through 2017. There's no

1 allegation that he ever even tried to quit, that
2 this man ever made any effort to quit.

3 So the idea -- so based on the four corners
4 of this Complaint that Your Honor has in front of
5 the Court, this man did not react to oust that
6 information. Even when all the healthers (phonetic)
7 were disclosed to him, and that's alleged here that,
8 in 2000, the companies told everybody: Here's what
9 we believe. And there were warnings on the pack,
10 beginning in 1966. They were strengthened in '69.
11 They were strengthened again in '85. All of those
12 things did not make one bit of difference according
13 to the four corners of this Complaint.

14 And we wish we had more information about
15 it. But if all you can see, all you can view from
16 this Complaint is that, for Cleveland Clark, it
17 didn't make one bit of difference because there is
18 no allegation that he ever quit. The story that's
19 alleged here is '64 Kool cigarettes all the way
20 until 2017. You have to allege something particular
21 about Cleveland Clark as to how this would have made
22 a difference; otherwise, it just doesn't satisfy
23 Rule 9.

24 That's all I have on the fraud counts, and
25 I know it's a lot. I have arguments on the other

1 counts. But I don't know if you want to hear from
2 other opposing counsel first or what the Court's
3 preference is.

4 THE COURT: Well, what are your other
5 arguments?

6 MR. LEPPERT: The other arguments pertain
7 to the product liability counts, which are
8 negligence and strict liability counts.

9 Do you want me start with those now?

10 THE COURT: You can, but I think I've
11 addressed those.

12 MR. LEPPERT: Okay. If the Court is not --
13 if it's not helping the Court, I won't do that.

14 THE COURT: Okay. All right.

15 MR. LEPPERT: Thank you.

16 THE COURT: Does the plaintiff wish to
17 respond?

18 MR. ECHOLS: Yes, Your Honor. So I think
19 a lot of our argument was conceded by counsel today.
20 The "Rivera" case mentioned, it's a Ninth Circuit
21 case, at a summary judgment stage. Here we're at
22 the pleading stage, Your Honor. And there's a lot
23 of cases cited in the briefs. But really the best
24 one is "Buzz Stew vs. City of North Las Vegas."
25 It's a 2015 case.

1 THE COURT: Can you spell that for the
2 court reporter.

3 MR. ECHOLS: Yes, Your Honor. B-U-Z-Z.
4 And then "Stew" is S-T-E-W.

5 "Buzz Stew" changed the standard for
6 motions to dismiss. It made it a much higher
7 standard to a beyond-doubt standard, and in the
8 process of doing that, the Supreme Court overruled a
9 bunch of cases that used the old standard that says:
10 Hey, from now forward, we have to use this
11 beyond-doubt standard. They haven't done that,
12 Your Honor.

13 With regard to the Rule 9 particularity,
14 here's what Rule 9(B) says: "In alleging fraud or
15 mistake, a party must state with particularity the
16 circumstances constituting fraud or mistake.
17 Malice, intent, knowledge, and other conditions of a
18 person's mind may be alleged generally."

19 There's another factor here at play,
20 Your Honor. So counsel just conceded to this Court
21 today that the Frank Statement may create a duty;
22 although, the assumption is that it's a factual
23 issue. Now, we've put a lot of information in our
24 Complaint, and there's a lot more information that's
25 going to come out in discovery, Your Honor.

1 Some of the more particular information
2 that we will get is in the possession of the
3 defendants, and that's what we all, a lot of times
4 call "Rocker discovery" because it's based upon the
5 "Rocker" case. And I have citation for that. It's
6 "Rocker" R-O-C-K-E-R, vs. KPMG, and it's 122 Nevada
7 1185. It's a 2006 case.

8 THE COURT: All right. But I have a
9 question. Counsel raised the point that the
10 Complaint alleges targeting women and targeting
11 minorities, and we're assuming that Cleveland Clark
12 is not a woman.

13 MR. ECHOLS: Uh-huh.

14 THE COURT: I think that's correct, and we
15 don't know whether or not Mr. Clark is minority.
16 But I agree with counsel that talking about the
17 targeting of women and minorities may be relevant in
18 certain situations, but I don't know that it would
19 be relevant to Mr. Clark's case. And so what I'm
20 wondering is, as I was listening to --

21 Is it "Leppert"? Mr. Leppert?

22 MR. LEPPERT: Yes, Your Honor.

23 THE COURT: As I was listening to
24 Mr. Leppert, I thought, well, everything he's
25 talking about sounds like it could be remedied by

1 amending some of those paragraphs between
2 paragraph 132 and 160 to address the specificity,
3 and then it becomes a nonissue.

4 I do agree with you that the "Buzz Stew"
5 case says the standard for Motion to Dismiss is,
6 without a doubt, no set of circumstances could ever
7 be proven that would support claim as alleged. I
8 agree with that completely.

9 But I think some of the criticism
10 Mr. Leppert leveled at the allegations are
11 legitimate. And while I'm not shocked by boilerplate
12 language, because I see it in both pleadings and I
13 see it all the time, I can understand why they may
14 wish to have the Complaint focus their attention
15 more narrowly on the specifics of the fraud in this
16 case, at least to the extent articulated by
17 Mr. Leppert this morning.

18 So would you be able to amend those
19 paragraphs to address the Court's concerns he's
20 articulated today, including removal of allegations
21 regarding targeting women and, if Mr. Clark is not a
22 minority, targeting minorities?

23 MR. ECHOLS: Yes, Your Honor. Certainly.

24 And that's an important point I think the
25 Court makes. The remedy is not dismissal, but it's

1 just a more particular statement, and we're happy to
2 do that.

3 THE COURT: Okay. All right. Anything
4 else for me to decide?

5 MR. ROBERTS: Yes, Your Honor. Philip
6 Morris joined in R.J. Reynolds' motion, and to the
7 extent that the R.J. Reynolds' fraud forms part of
8 the basis of the conspiracy alleged against
9 Philip Morris, we'd request that the Court's order
10 for a more specific statement also apply to
11 Philip Morris.

12 THE COURT: Okay. Fair enough.

13 MR. ROBERTS: Thank you, Your Honor.

14 THE COURT: Yes, ma'am.

15 MS. LUTHER: Your Honor, Kelly Luther on
16 behalf of Liggett Group. We also joined in
17 Reynolds' motion and would request the same relief.

18 One point that I would like to raise with
19 the Court, and it's contained within the pleadings,
20 to the extent that the parties are taking the
21 position that the Frank Statement may have set up a
22 duty to disclose, Liggett was not a participant in
23 that Frank Statement.

24 THE COURT: I don't know that the
25 plaintiffs alleged that that created the basis for

1 the duty. I think that counsel -- sorry.

2 MS. KELLY: Mr. Leppert.

3 THE COURT: Mr. Leppert --

4 MR. LEPPERT: Just like the animal.

5 THE COURT: All right. Mr. Leppert
6 suggested in this argument that, to the extent that
7 the Frank Statement is considered, it might be
8 relevant to the issue of duty. But I don't think
9 that he was saying that's what the plaintiffs
10 alleged. So here's --

11 MS. KELLY: Understood. Thank you.

12 THE COURT: So my inclination here is to
13 deny the Motion to Dismiss as a Motion to Dismiss
14 and, instead, treat it as a Motion for More Definite
15 Statement, focusing attention on the paragraphs
16 numbered 130 through 160. It sounds like that
17 brackets the paragraphs that were being referenced
18 by Mr. Leppert.

19 If I'm incorrect, please let me know, and
20 we'll fix that.

21 MR. LEPPERT: Sounds correct, Your Honor.

22 THE COURT: Okay. All right. So the
23 plaintiff is given leave to amend the Complaint in
24 terms of those paragraphs 130 to 160 to provide more
25 particularity and specificity to address the issues

1 of fraud and active concealment.

2 I'm not prohibiting the use of boilerplate
3 assertions, but they must be augmented with
4 specifics and particularity that address the
5 concerns voiced here this morning.

6 Also, I think that it would be appropriate
7 to remove allegations talking about targeting of
8 women and, if Mr. Clark is not a member of a
9 minority, targeting minorities.

10 So that's my ruling. Is there anything
11 else anybody wants to add or seek clarification on?

12 And, necessarily, any joinders are part of
13 that same decision. All right?

14 All right. I think that that's all I have
15 in front of me this morning.

16 Was there anything else?

17 MR. LEPPERT: No, Your Honor.

18 MR. ECHOLS: No, Your Honor.

19 THE COURT: Okay. I need the orders within
20 ten days, per EDCR 7.21. If, after you leave court,
21 you decide that you do want to have the transcript
22 to assist you in preparing any of these orders, let
23 me know, and the requirement will be that I need the
24 order in my office within ten days after you receive
25 the transcript.

1 MR. ECHOLS: Thank you, Your Honor.

2 THE CLERK: Counsel, I need all of your
3 Bar numbers.

4 MR. CLAGGETT: Sean Claggett, 8407.

5 MR. ECHOLS: Micah Echols 8437.

6 MR. ROBERTS: Lee Roberts, 8877.

7 MR. KENNEDY: Dennis Kennedy, 1462.

8 MR. JORGENSEN: Chris Jorgensen, 5382.

9 MR. GRANDA: Matthew Granda, 12753.

10 THE CLERK: Thank you.

11 MR. CLAGGETT: Your Honor, for purposes of
12 the transcript for ordering it, can we just talk
13 to --

14 THE COURT: Of course.

15 MR. CLAGGETT: The court reporter will
16 provide that to us. You can just send that to us.
17 Sean Claggett. Claggett & Sykes.

18 THE REPORTER: I'll contact you.

19 THE COURT: She's going to contact you
20 because she'll want to know whether you want
21 expedited or ordinary course.

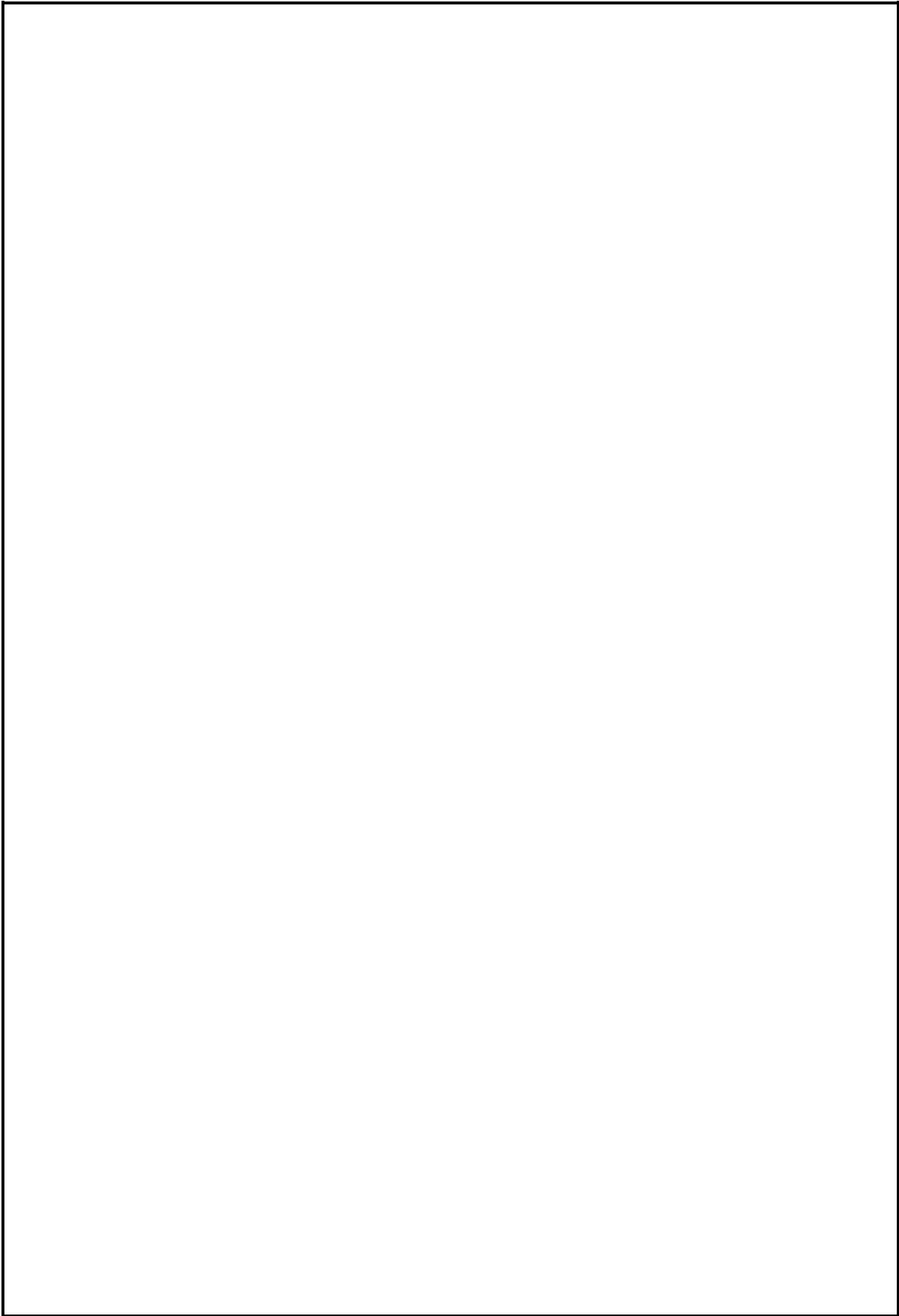
22 MR. CLAGGETT: Thank you.

23

24 (The proceedings concluded at 10:01 a.m.)

25 -000-

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Dana J. Tavaglione, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the proceedings had in the above-entitled matter at the place and date indicated.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said proceedings is a complete, true and accurate transcription of said shorthand notes.

IN WITNESS WHEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 31st day of January 2020.

/s/ Dana J. Tavaglione

DANA J. TAVAGLIONE, RPR, CCR NO. 841

EXHIBIT 5

EXHIBIT 5



RIS (CIV)

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Attorneys for Defendant

R.J. REYNOLDS TOBACCO COMPANY

DISTRICT COURT

CLARK COUNTY, NEVADA

SANDRA CAMACHO, individually, and
ANTHONY CAMACHO, individually,

Plaintiffs,

vs.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation, individually,
and as successor-by-merger to LORILLARD
TOBACCO COMPANY and as successor-in-
interest to the United States tobacco business of
BROWN & WILLIAMSON TOBACCO
CORPORATION, which is the successor-by-
merger to THE AMERICAN TOBACCO
COMPANY; LIGGETT GROUP, LLC., a
foreign limited liability company; and ASM
NATIONWIDE CORPORATION d/b/a
SILVERADO SMOKES & CIGARS, a domestic
corporation; and LV SINGHS INC. d/b/a
SMOKES & VAPORS, a domestic corporation;
DOES 1-X; and ROE BUSINESS ENTITIES
XI-XX, inclusive,

Defendants.

Case No. A-19-807650-C
Dept. No. IV

**DEFENDANT R.J. REYNOLDS
TOBACCO COMPANY'S REPLY TO
PLAINTIFFS' OPPOSITION TO ITS
MOTION TO DISMISS PLAINTIFFS'
AMENDED COMPLAINT UNDER
NRCP 12(b)(5)**

Hearing Date: April 30, 2020
Hearing Time: 9:00 A.M.

Defendant R.J. Reynolds Tobacco Company (“Reynolds”), by and through its counsel of record, hereby files this Reply to Plaintiffs’ Opposition to Defendant R.J. Reynolds Tobacco Company’s Motion to Dismiss Plaintiffs’ Amended Complaint Under NRCP 12(b)(5).

This Reply is made and based on the pleadings and papers on file herein, the following Memorandum of Points and Authorities, and any oral argument allowed at the time of hearing on this matter.

I. INTRODUCTION

Sandra Camacho readily admits that she has never used a Reynolds tobacco product. However, despite making no allegations of ever smoking—or even purchasing a Reynolds-brand cigarette—Mrs. Camacho nevertheless seeks to hold Reynolds liable for alleged injuries caused by decades of smoking cigarettes manufactured by other companies. (Am. Compl. ¶ 17). Indeed, each of Plaintiffs’ claims is directly related to Mrs. Camacho’s purchase and use of L&M brand cigarettes, Marlboro brand cigarettes, and Basic brand cigarettes, which she alleges caused her to develop laryngeal cancer. Put otherwise, these claims are based on products liability. Plaintiffs’ attempt to slap on the labels of civil conspiracy and violation of the Nevada Deceptive Trade Practices Act (“NDTPA”) do not change the fact that these claims are premised upon an allegedly defective product that Reynolds did not design, manufacture or sell.

Further, Plaintiffs cannot show the causation necessary to proceed on a NDTPA claim. Without any use of Reynolds’ products, Plaintiffs cannot link Reynolds’ allegedly deceptive trade practices to Mrs. Camacho’s claimed injuries, or demonstrate any justifiable reliance on Reynolds’ representations. Moreover, Plaintiffs’ conclusory allegations fail to meet the requirements of N.R.C.P. 9(b).

II. ARGUMENT

A. Plaintiffs’ Claims are Nothing More than Disguised Claims for Products Liability, and Without Product Use Those Claims Must Fail.

Plaintiffs implore the Court to ignore the fundamental tenet of products liability law that “[a]mong manufacturers of products, *liability rests only with the manufacturer of the product that actually caused the alleged injury because that manufacturer profited from the sales of the*

1 **product and controlled its safety.”** *Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF), 2009
2 U.S. Dist. LEXIS 29550, at *4 (D. Nev. Mar. 20, 2009) (emphasis added) (citing *Allison v. Merck &*
3 *Co.*, 110 Nev. 762, 767, 878 P.2d 948, 952 (1994)). In doing so, Plaintiffs seek to hold Reynolds
4 liable for products that it neither manufactured, distributed, nor sold to Mrs. Camacho. The law does
5 not permit Plaintiffs to avoid the essential requirement of product use through creative styling of
6 their claims. The Nevada Supreme Court has made clear that a claim must be analyzed “according
7 to its substance, rather than its label,” *Otak Nev., LLC v. Dist. Ct.*, 129 Nev. 799, 809, 312 P.3d 491,
8 498 (2013), and that “changing the language of the allegations [does] not change the substance of the
9 claims.” *Aliante Master Ass’n v. Prem. Deferred Trust*, No. 71026, 2018 Nev. Unpub. LEXIS 136,
10 at *9, 414 P.3d 300 (Nev. Feb. 23, 2018); *accord Nev. Power Co. v. Dist. Ct.*, 120 Nev. 948, 960,
11 102 P.3d 578, 586 (2004); *see also Crabb v. Harmon Enters.*, No. 60634, 2014 Nev. Unpub. LEXIS
12 208, at *2 (Nev. Feb. 10, 2014) (holding that “all of [the plaintiff’s] claims were for personal injuries
13 despite how they were styled in the complaint or described in later briefing”).

14 This was the point made by the courts in both *Baymiller* and *Moretti*. *See Baymiller Ranbaxy*
15 *Pharms., Inc.*, 894 F. Supp. 2d 1302, 1306 (D. Nev. 2012) (“Plaintiffs argue that their claims are not
16 product liability claims but rather misrepresentation claims that allege that Glaxo’s
17 misrepresentations caused the harm.”); *Moretti*, 2009 U.S. Dist. LEXIS 29550, at *6 (“The sole legal
18 issue presented is whether Nevada law recognizes Plaintiff’s misrepresentation/fraud claims
19 against... drug manufacturers who did not manufacture or sell the generic drug that allegedly caused
20 Plaintiff’s injuries.”). In each of these cases, the court noted that the allegations of fraud and
21 negligent misrepresentation were nothing more than “an effort to recover for injuries caused by a
22 product without meeting the requirements the law imposes in products liability actions.” *See, e.g.,*
23 *Moretti*, 2009 U.S. Dist. LEXIS 29550, at *9 (quoting *Foster v. American Home Prods. Corp.*, 29
24 F.3d 165, 168 (4th Cir. 1994)).

25 Plaintiffs’ argument that *Moretti*¹ and *Baymiller* do not involve the exact claims raised here

26 ¹ Plaintiffs mistakenly read *Moretti* as “a Federal trial judge interpreting Minnesota deceptive trade practice law.”
27 *Opp.*, 8:27. While the plaintiff in *Moretti* did try to raise claims under Minnesota’s consumer protection laws, the court
28 held that the claims failed because Plaintiff was “a Nevada resident with no apparent nexus to Minnesota, [who] lacks
standing to bring claims under Minnesota’s consumer protection statutes.” *Moretti*, 2009 U.S. Dist. LEXIS 29550, at
*15. Instead, the court found that “[t]he sole legal issue presented is whether *Nevada law* recognizes Plaintiff’s

(i.e., civil conspiracy and deceptive trade practices) ignores that Nevada law only permits the manufacturer of the product that allegedly harmed the plaintiff to be held liable. Plaintiffs' attempt to distinguish the *Moretti* and *Baymiller* cases misses the central point made: regardless of the manner in which a party styles its claim, *the court looks to the substance of the claim*. Thus, where products liability is implicated, product use is necessary.

Here, Plaintiffs' claims arise from Mrs. Camacho's alleged use of specific products (i.e. L&M brand cigarettes, Marlboro brand cigarettes, and Basic brand cigarettes), and Mrs. Camacho's injuries allegedly resulting from the use of those products. Therefore, this is clearly a products liability claim, and absent a relationship between Plaintiffs and Reynolds—which Plaintiffs have failed to allege—the claims against Reynolds must be dismissed.

B. Plaintiffs' Claims for Violations of the NDTPA Fail Due to Lack of Causation.

Plaintiffs further attempt to evade Nevada products liability law by claiming that Reynolds engaged in "deceptive trade practices" under the Nevada Deceptive Trade Practices Act. Although Plaintiffs claim the NDTPA does not contain a requirement of product use, "[w]here a statute is unambiguous, the Court does not look beyond the statute's plain language." *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657 (D. Nev. 2009). Under the plain language of NRS 41.600(1), claims may only be brought by a "person who is a *victim of consumer fraud*." NRS 41.600(1) (emphasis added). And in order to be a "victim," the plaintiff must establish that "(1) an act of consumer fraud by the defendant (2) caused (3) damage to the plaintiff." *Picus*, 256 F.R.D. at 658.

Plaintiffs fail to cite to *a single case* where the NDTPA was applied against a manufacturer whose products were *not* purchased by the consumer bringing the claim. This omission is likely due to most jurisdictions' clear mandate that "the goods or services purchased must form the basis of the plaintiff's [Deceptive Trade Practices] complaint." *Boales v. Brighton Builders, Inc.*, 29 S.W.3d 159, 169 (Tex. App. 2000) (applying the Texas equivalent of the NDTPA). Likewise, courts refuse to find for plaintiffs bringing consumer fraud claims (the common law equivalent of the NDTPA) where a buyer-seller relationship does not exist. *See, e.g., Guarino v. Wyeth*, 719 F.3d 1245, 1253

misrepresentation/fraud claims against ... manufacturers who did not manufacture or sell the generic drug that allegedly caused Plaintiff's injuries." *Id.*, at *6 (emphasis added).

1 (11th Cir. 2003) (refusing to apply fraud claims against a manufacturer whose product the plaintiff
2 had not purchased); *see also Johannsen v. Zimmer, Inc.*, No. 3:00CV2270 (DJS), 2005 U.S. Dist.
3 LEXIS 534, at *30 (D. Conn. Mar. 31, 2005) (“Plaintiff’s fraud claim is explicitly one arising out of
4 his personal injuries as allegedly caused by inaccurate or fraudulent marketing, packaging or
5 labeling.”).

6 However, Plaintiffs ask the Court to give the NDTPA an unprecedented interpretation that
7 would remove any requirement of product use. This, of course, cannot be, as product use is essential
8 to showing causation.

9 Here, Plaintiffs raise no allegations that satisfy the causation requirement, and therefore
10 cannot qualify as “victims” under the NDTPA.

11 First, Plaintiffs fail to allege any product use that would link Reynolds’ alleged deceptive
12 practices to Mrs. Camacho’s alleged injuries. Plaintiffs do not claim that Mrs. Camacho’s laryngeal
13 cancer was caused by smoking cigarettes in general—they claim that her cancer “was caused by
14 smoking L&M brand cigarettes, Marlboro brand cigarettes, and Basic brand cigarettes.” (Am.
15 Compl. ¶ 17). Nowhere in the Amended Complaint do Plaintiffs claim that Mrs. Camacho
16 smoked—or even purchased—Reynolds’ cigarettes. Without product usage, there can be no
17 causation.

18 Even assuming, *arguendo*, that Reynolds had made statements that violated the NDTPA,
19 Plaintiffs do not allege that Reynolds made any representations about L&M brand cigarettes,
20 Marlboro brand cigarettes, and Basic brand cigarettes—the only products Mrs. Camacho claims
21 contributed to her laryngeal cancer. Without smoking or purchasing any brand of cigarettes actually
22 manufactured by *Reynolds*, Mrs. Camacho could not have been a victim of any alleged knowing
23 misrepresentations made by Reynolds about its own products.

24 Second, Plaintiffs cannot establish the reliance element necessary to allege causation.
25 Although Plaintiffs proffer a list of purported misrepresentations generally attributable to Reynolds,
26 “misrepresentations standing alone have little legal significance.” *Poulos v. Caesars World, Inc.*,
27 379 F.3d 654, 665 (9th Cir. 2004). Instead, Plaintiffs must “connect the dots between the bare
28 allegations and the injury.” *Id.*

1 However, Plaintiffs fail to make any allegation as to how Reynolds’ alleged
2 misrepresentations induced Mrs. Camacho to rely on anything. *See, e.g., Copper Sands*
3 *Homeowners Ass’n v. Copper Sands Realty*, No. 2:10-cv-00510-GMN-NJK, 2013 U.S. Dist. LEXIS
4 90551, at *40 (D. Nev. June 26, 2013) (“[B]ecause Plaintiffs are basing their consumer fraud claim
5 on an alleged false representation, Plaintiffs can prove the causation element only by demonstrating
6 their reliance on the alleged false representations.”); *see also Picus*, 256 F.R.D. at 658 (“[T]he Court
7 concludes causation includes reliance in this [NDPTA] case”). Instead, Plaintiffs attempt to use
8 broad strokes to paint a picture of Reynolds’ allegedly fraudulent behavior, but fail to fill in the
9 details as to how this behavior actually affected Mrs. Camacho’s conduct, or how Mrs. Camacho
10 would have behaved differently absent Reynolds’ alleged misrepresentations. The result is a
11 complete failure to allege any facts necessary to satisfy the element of causation, which is fatal to
12 their NDPTA claim.

13 Finally, Plaintiffs’ NDPTA claim must be dismissed due to their failure to satisfy the
14 pleading requirements of N.R.C.P. (9)(b). “NRC P 9(b) provides, in relevant part, that ‘the
15 circumstances constituting fraud . . . shall be stated with particularity.’ ‘The circumstances that must
16 be detailed include averments to the time, the place, the identity of the parties involved, and the
17 nature of the fraud’” *Davenport v. GMAC Mortg.*, No. 56697, 2013 Nev. Unpub. LEXIS, at *5
18 (Nev. Sept. 25, 2013) (quoting *Brown v. Kellar*, 97 Nev. 582, 583–84, 636 P.2d 874, 874 (1981)).

19 Here, Plaintiffs’ general assertions regarding Reynolds’ conduct fall far short of N.R.C.P.
20 9(b)’s requirements. (*See generally* Am. Compl. ¶¶ 207–221). Indeed, Plaintiffs provide zero
21 factual support for their allegations that Mrs. Camacho was ever exposed to Reynolds’ allegedly
22 fraudulent conduct, nor do they provide any details as to how such conduct had any impact on Mrs.
23 Camacho. These conclusory allegations fail to provide Reynolds with the notice required under
24 N.R.C.P. 9(b), and they fail to establish the causation necessary for Plaintiffs’ NDPTA claim to
25 survive this Motion to Dismiss.

26 Without alleging any product usage, or detrimental and justifiable reliance, there can be no
27 causation. Plaintiffs’ NDTPA claim must therefore be dismissed.

C. **Plaintiffs' Claim for Civil Conspiracy to Defraud Must Likewise Fail Due to Plaintiffs' Failure to Plead an Underlying Fraud.**

Under Nevada law, a plaintiff pleading civil conspiracy to defraud must plead “an underlying cause of action for fraud [as] a necessary predicate to a cause of action for conspiracy to defraud.” *Jordan v. State ex rel. DMV & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008).

Plaintiffs contend that their NDTPA claim—without more—serves as the predicate cause of action necessary to support the claim of civil conspiracy. However, Plaintiffs' NDTPA claim is doomed without any showing of causation. As discussed above, Plaintiffs make no claim of purchasing or smoking any brand of cigarettes manufactured by Reynolds, and thus cannot make a showing of causation sufficient to survive a motion to dismiss. Plaintiffs' NDTPA claim fails as a matter of law, and, without an underlying cause of action for fraud, Plaintiffs' claim for civil conspiracy must also fail.

III. CONCLUSION

For the reasons stated above, as well as the reasons set forth in R.J. Reynolds' Motion to Dismiss Plaintiffs' sixth and seventh claim for relief (civil conspiracy and violation of the Nevada Deceptive Trade Practices Act) under N.R.C.P. 12(b)(5), R.J. Reynolds respectfully requests that the Court enter an order dismissing Plaintiffs' Amended Complaint as to each of them.

DATED this 23rd day of April, 2020.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN

Attorneys for Defendant
R.J. REYNOLDS TOBACCO COMPANY

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 23rd day of April, 2020, service of the foregoing **DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S REPLY TO PLAINTIFFS' OPPOSITION TO ITS MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(b)(5)** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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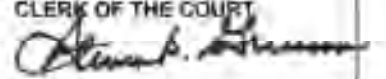
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EXHIBIT 6

EXHIBIT 6



1 TRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 * * * * *

5
6 SANDRA CAMACHO, ANTHONY
7 CAMACHO,

8 Plaintiffs,

9 vs.

10 PHILIP MORRIS USA, INC., ET
11 AL.,

12 Defendants.

CASE NO. A-19-807650-C

DEPT. NO. IV

Transcript of Proceedings

13 BEFORE THE HONORABLE KERRY EARLEY, DISTRICT COURT JUDGE
14 DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

15 THURSDAY, JUNE 11, 2020

16 APPEARANCES: (ALL VIA VIDEO CONFERENCE)

17 For the Plaintiff: MICAH S. ECHOLS, ESQ.
18 SEAN K. CLAGGETT, ESQ.
19 KIMBERLY WALD, ESQ.

20 For the Defendants: J. CHRISTOPHER JORGENSEN, ESQ.
21 KELLY A. LUTHER, ESQ.
22 DENNIS L. KENNEDY, ESQ.
23 D. LEE ROBERTS, JR., ESQ.
24 JENNIFER B. KENYON, ESQ.

25 RECORDED BY: REBECA GOMEZ, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LONKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 THURSDAY, JUNE 11, 2020 AT 9:46 A.M.

2

3 THE CLERK: A807650-C.

4 THE COURT: Okay. And we have two Motions to
5 Dismiss, one by defendant, R.J. Reynolds Tobacco Company,
6 and that's Mr. Kennedy. Correct?

7 MR. KENNEDY: Yes, Your Honor. Dennis Kennedy
8 here.

9 THE COURT: Okay. It's like roll call in grade
10 school. Right? No, I don't mean it.

11 Okay. Is there anybody else on behalf of R.J.
12 Reynolds? Anybody out of state? Okay. Just Mr. Kennedy.

13 And, then, for defendant Philip Morris, Liggett
14 Group, and ASM Nationwide, is that all Mr. Roberts? Is
15 that all you Mr. Roberts or is there somebody else for that
16 Philip Morris's Motion?

17 MR. ROBERTS: Good morning, Judge. Lee Roberts
18 for Philip Morris USA and ASM Nationwide, the retailer.

19 THE COURT: Okay.

20 MR. ROBERTS: I am not appearing for the Liggett
21 Group, although we did file a Joint Response.

22 THE COURT: Okay.

23 MR. JORGENSEN: Good morning, Your Honor. This is
24 Chris --

25 THE COURT: Hi.

1 MR. JORGENSEN: This is Chris Jorgensen. I am
2 here representing Liggett Group and I have with me Kelly
3 Luther, who is out of state.

4 THE COURT: Okay. So you're for the Liggett
5 Group?

6 MR. JORGENSEN: Yes.

7 THE COURT: Okay. I'm sorry. It's just so hard
8 to hear. Okay. And you have counsel from out of state?

9 MS. LUTHER: Good morning, Your Honor.

10 THE COURT: And who is here for --

11 MS. LUTHER: That's me.

12 THE COURT: -- Mr. Claggett? I thought I saw --

13 MS. LUTHER: Kelly Luther --

14 THE COURT: -- Mr. Claggett -- okay. I'm sorry.
15 Oh, you're the one for --

16 MS. LUTHER: Kelly --

17 THE COURT: -- Liggett?

18 MS. LUTHER: That's correct, Your Honor.

19 THE COURT: And your name is -- all I can see is
20 Kelly. The icons are on top of it. What's your last name?

21 MS. LUTHER: The last -- Luther, L- --

22 THE COURT: Okay.

23 MS. LUTHER: -- U-T-H-E-R.

24 THE COURT: Okay. Thank you. Okay. Thank you so
25 much. And plaintiffs?

1 MS. KENYON: Good morning, Your Honor. This is -
2 - also, this sis -- sorry to interrupt. This is Jennifer
3 Kenyon on behalf of Philip Morris and I am out of state.

4 THE COURT: Okay. Okay. On behalf of Philip
5 Morris. Okay. All right. And who else is here?

6 MR. ECHOLS: Good morning, Your Honor. This is
7 Micah Echols for plaintiffs.

8 THE COURT: Hi, Mr. Echols. Nice to see you.
9 We're not in trial. Hi. Good morning.

10 MR. ECHOLS: Yeah. Good morning, Your Honor.

11 THE COURT: All right. And somebody else here? I
12 thought I saw Claggett. Did he leave?

13 MR. CLAGGETT: Yes. Good morning, Your Honor.
14 Sean Claggett as well.

15 THE COURT: Okay. I thought maybe you got bored,
16 Mr. Claggett. Okay.

17 MR. CLAGGETT: No. I had it on mute and I was
18 talking to you but I was realizing I was on mute.

19 THE COURT: Okay. And is there -- I thought I saw
20 another face?

21 MS. WALD: Yes. Kimberly Wald. I'm also here for
22 plaintiff and I'm out of state.

23 THE COURT: Okay. What's now?

24 THE CLERK: I'm going to need her bar number for
25 now.

1 THE COURT: Okay. She's from out of state.
2 THE CLERK: Oh. Okay.
3 THE COURT: So she doesn't -- you associated in,
4 right, Kimberly?
5 MS. WALD: Yes. I believe I am pro haced in.
6 THE COURT: Okay.
7 THE CLERK: Mr. Echols.
8 THE COURT: Mr. Echols is -- do you want his bar
9 number?
10 THE CLERK: Yes, please.
11 THE COURT: Micah, Mr. Echols, the Clerk needs
12 your bar number.
13 MR. ECHOLS: It's 8437, Your Honor.
14 THE COURT: 8437. I know you've been in this
15 courtroom, so I -- okay. All right.
16 Mr. Kennedy, do you -- I kind of started with
17 defendant, R.J. Reynolds's Motion to Dismiss. Do you want
18 to start?
19 MR. KENNEDY: Well, Your Honor, if I could suggest
20 that Philip Morris go first?
21 THE COURT: Sure.
22 MR. KENNEDY: Theirs is the larger of the Motions
23 to Dismiss --
24 THE COURT: Right. And theirs is under 12(b)(5).
25 MR. KENNEDY: -- as to most claims.

1 THE COURT: I agree because you picked out
2 portions, they did the whole thing.
3 MR. KENNEDY: That's right. And I think Mr.
4 Roberts would agree with me on that one.
5 THE COURT: okay. Mr. Roberts, do you agree the
6 Court looked --
7 MR. ROBERTS: I --
8 THE COURT: -- at it right? You want the whole
9 12(b)(5), everything?
10 MR. ROBERTS: I do, Your Honor, and --
11 THE COURT: Okay.
12 MR. ROBERTS: -- I will be addressing -- the
13 defendants have agreed that I should go first since ours is
14 the most comprehensive and then since --
15 THE COURT: I have --
16 MR. ROBERTS: -- Liggett -- as Liggett joined with
17 us in our Motion, they will probably go --
18 THE COURT: Okay. So, you have a Joinder. Okay.
19 MR. ROBERTS: They would probably go next, and
20 then Mr. Kennedy with his more limited basis.
21 THE COURT: Okay. Okay. That's fine. Okay. So,
22 Mr. Roberts, you're going first -- I'm sorry? Are we okay?
23 THE CLERK: Yes.
24 THE COURT: Okay. I'm sorry. This is not easy.
25 Okay. Mr. Roberts, you're up on your Motion to Dismiss for

1 Defendant Philip Morris USA, Inc., and ASM -- or Liggett
2 and ASM with the Joinder. Okay. I'm ready.

3 MR. ROBERTS: Thank you, Your Honor.

4 THE COURT: As best I can be.

5 MR. ROBERTS: Good to be back in your courtroom,
6 Your Honor.

7 THE COURT: Yeah. It's nice to see everybody.
8 This is just -- technology is great, but it is just not as
9 efficient. Can you tell the way I -- I don't know. I'm an
10 old litigator. I like people in front of me and explain
11 things better, but okay. Mr. Roberts. Deal with what
12 we've got.

13 MR. ROBERTS: Okay, Your Honor.

14 Your Honor, I know that we've addressed many of
15 the issues in our briefing and our briefings are long.
16 These --

17 THE COURT: Yeah.

18 MR. ROBERTS: -- are complex legal issues and what
19 I would like to do to start out with is try to provide a
20 framework through which our Motion to Dismiss might make
21 more sense and through the lens of which it can be viewed
22 by the Court.

23 THE COURT: Okay.

24 MR. ROBERTS: And that framework begins, I
25 believe, with the fact that, first and foremost, this is a

1 product liability lawsuit.

2 THE COURT: I --

3 MR. ROBERTS: The plaintiff claims that she was
4 injured by smoking our products.

5 So, if you want to view it, at least the product
6 liability aspect of it, which is overwhelming majority of
7 it, you have to go back to the policy reasons of why we
8 have strict product liability in Nevada. And this goes all
9 the way back to *Shony* [phonetic], but if you look at the
10 *Allison v. Merck* case, just for the basic principles of
11 product liability from 1994, what the Supreme Court said is
12 that the principles supporting our product liability cases
13 arises out of Section 402A of the Restatement, Comment C.
14 And that is that public policy demands that the burden of
15 accidental injuries caused by products intended for
16 consumption [indiscernible] those who market them and be
17 treated as a cost of production against which liability
18 insurance could be obtained and that the consumer of such
19 products is entitled to maximum protection at the hands of
20 someone and proper persons to afford it to those who market
21 the product.

22 THE COURT: It was basically a public policy type
23 argument: Who should bear the risk or the loss? Yeah.

24 MR. ROBERTS: It was.

25 THE COURT: Yeah.

1 MR. ROBERTS: No negligence involved.

2 THE COURT: No.

3 MR. ROBERTS: As a matter of public policy, if you
4 manufacture, market, sell a product and you're the one
5 making the profits from the sale of that product and the
6 product damages someone, that should come out of the
7 profits and be treated as a cost of production. And, so,
8 in that *Allison v. Merck* case, the Court then went on to
9 say that if the Merck product did, in fact, cause Thomas's
10 overwhelming misfortune, it must bear the burden of the
11 accidental injuries caused by the product.

12 So, this is the framework for strict product
13 liability. And, because of this framework, additional law,
14 which I'm going to talk about, requires that in order to
15 recover on strict product liability against a manufacturer,
16 you have to prove that your damages were caused by that
17 manufacturer's product. You have to prove which product
18 caused the injury. If the Merck product caused the injury,
19 it had to pay. If a Philip Morris product caused the
20 injury, then we are potentially liable under strict
21 liability.

22 But in order to state an adequate claim, a
23 plaintiff has to plead, and then subsequently prove, that a
24 product we manufactured and profited from the sale of
25 caused the injuries alleged. And, fundamentally, this is

1 our problem with the Complaint as it is drafted currently,
2 Your Honor.

3 THE COURT: Okay.

4 MR. ROBERTS: To put some meat on the bones in the
5 context of additional causes of action, you know, we
6 understand that they don't just allege direct product
7 liability. There's a whole shotgun full of alleged state
8 law claims, most based on fraud, and misrepresentation,
9 failure to disclose, superior knowledge, but, once again,
10 the common thread between the strict liability claim and
11 all of the other claims is that plaintiffs must plead and
12 subsequently prove --

13 THE COURT: The damages.

14 MR. ROBERTS: -- causation.

15 THE COURT: Yeah.

16 MR. ROBERTS: What -- not just damage -- there's
17 something in between damages. Even if a product is
18 defective, they have to prove that the defect in the
19 product --

20 THE COURT: Caused.

21 MR. ROBERTS: -- caused their damages.

22 THE COURT: Yeah. I get it's a three-part: duty,
23 breach, and causation. And then damages. Okay.

24 MR. ROBERTS: Right.

25 THE COURT: I figured that's where you all -- the

1 gist of the argument. Okay.

2 MR. ROBERTS: So, now I'd like to emphasize one of
3 the cases that we cited in our brief, *Rivera v. Philip*
4 *Morris*, the Supreme Court --

5 THE COURT: What's the case? I'm sorry.

6 MR. ROBERTS: -- of Nevada case --

7 THE COURT: Mr. Roberts, just give me the name
8 again, because I read so much. I'm trying to keep my notes
9 -- it's --

10 MR. ROBERTS: *Rivera*, R-I-V-E-R-A.

11 THE COURT: Okay.

12 MR. ROBERTS: *V. Philip Morris*.

13 THE COURT: *Morris*. Okay.

14 MR. ROBERTS: And that's 125 Nevada 185.

15 THE COURT: Okay.

16 MR. ROBERTS: A case from 2009.

17 THE COURT: Okay.

18 MR. ROBERTS: And, again, dealing with causation,
19 what this case says is that in Nevada, when bringing a
20 strict product liability failure to warn case, plaintiff
21 carries the burden of proving, in part, that the inadequate
22 warning caused his injuries. So, again, you have to have
23 causation.

24 Going to Headnote 7, 8, 9, and 10 from this case,
25 the Court gets more specific. In a strict product

1 liability case, the plaintiff carries both the burden of
2 production and the burden of persuasion. To successfully
3 prove a failure to warn case, a plaintiff must produce
4 evidence demonstrating the same elements as any other case,
5 that the product had a defect rendering it unreasonably
6 dangerous, defect existed when it left the manufacturer,
7 and [indiscernible] that the defect caused the plaintiff's
8 injury.

9 Going to the failure to warn, in particular,
10 Rivera, the plaintiff in that case, urged our Supreme Court
11 to adopt a heeding presumption. A heeding presumption
12 removes the plaintiff's responsibility to carry the initial
13 burden of production as to the element of causation. And
14 it shifts the burden to the manufacturer who must then
15 rebut the presumption by proving the plaintiff would not
16 have heeded a different warning.

17 Our Supreme Court rejected that argument and
18 stated that in Nevada a plaintiff must always prove the
19 element of causation and that adopting a heeding warning
20 would inappropriately shift the burden. Therefore, in a
21 product liability case like this, when you allege a failure
22 to warn as one of the reasons the product is defective, a
23 plaintiff has to prove that they would have heeded a
24 different warning; that a failure to have a warning is what
25 caused them to keep smoking.

1 This case is then built upon in a Ninth Circuit
2 case, once again, *Rivera v. Philip Morris*. This is at 395
3 F.3d 1142. And in that case, the Ninth Circuit affirmed a
4 dismissal of the case against Philip Morris, Headnote 17,
5 because the record contained no admissible evidence
6 identifying what statements attributable to Philip Morris
7 the decedent actually saw, heard, or read and relied upon
8 to support her decision to start and continue smoking. The
9 plaintiff in that case admitted during discovery that he
10 was unable to point to the specific statement in any
11 advertisement or public communication which influenced Mrs.
12 Rivera's decision to start, continue, or failed to quit
13 smoking.

14 This is the fundamental problem with the
15 Complaint, Your Honor. If the Court has read the
16 Complaint, it's extremely long, but it's --

17 THE COURT: I've read it.

18 MR. ROBERTS: -- [indiscernible]. It just about
19 matches all the other Complaints that have been filed,
20 regardless of whose brand of cigarettes the decedent has
21 claimed to have smoked and that has allegedly caused their
22 injury. It is a diatribe about every alleged bad act the
23 cigarette companies have committed since 1954, for the last
24 66 years. But under this well-established Nevada
25 precedent, was affirmed by the Ninth Circuit, none of those

1 statements can state a cause of action against any one of
2 these manufacturers without proof that there was a
3 particular false representation, ad, or public statement
4 which this smoker relied upon for their decision to start
5 smoking or not to stop smoking.

6 And, Your Honor, ultimately, if that is part of
7 the element of the cause of action, if that is what they
8 ultimately must prove, then they certainly have to plead
9 that in the Complaint. They have to plead which statement
10 was it, by which manufacturer when, which this plaintiff --
11 which this smoker allegedly relied upon to start or
12 continue smoking. And that they have simply failed to do.

13 One thing that they claim in their Opposition
14 brief, Your Honor, is that there is so many statements and
15 they're so pervasive that certainly if these things are
16 targeted to the public they can just talk about how
17 persuasive -- pervasive the message is and they don't have
18 to point to a particular statement that she relied upon.
19 And, going further, that if not for that statement she
20 would have stopped, because they bear the burden of
21 production on heeding.

22 Well, the Ninth Circuit rejected this argument
23 specifically. What the Ninth Circuit held was -- Rivera
24 argues that the pervasiveness of Philip Morris's
25 advertisements creates an issue of material fact as to

1 whether his late wife saw those advertisements and relied
2 upon them. The mere pervasiveness of the advertisements is
3 insufficient to counter the plaintiff's testimony and the
4 plaintiff's testimony was testimony that Rivera could not
5 identify any misrepresentation by Philip Morris that his
6 late wife saw or relied upon in deciding to smoke in
7 general Marlboro cigarettes, in particular. And because
8 reliance is an essential element of a misrepresentation
9 claim, summary judgment was appropriate.

10 While we are not at the summary judgment stage, if
11 this is a --

12 [Outside noise]

13 THE CLERK: Somebody has to mute themselves.

14 THE COURT: Somebody needs to mute themselves.

15 Mr. Roberts, not you.

16 MR. ROBERTS: Yes. Mr. Peterson, I believe you --
17 you're not muted.

18 [Colloquy from attorneys on video conference not on mute]

19 UNIDENTIFIED SPEAKER: Lee, I think that was your
20 queue to stop talking.

21 MR. ROBERTS: I guess I've bored Mr. Peterson,
22 Your Honor.

23 THE COURT: I'm sorry. You've got to find humor
24 in some of this. Okay. And I was really getting into this
25 reliance element, Mr. Roberts.

1 MR. ROBERTS: Thank you, Your Honor. And our
2 point on this Motion to Dismiss, --

3 THE COURT: Yes.

4 MR. ROBERTS: -- we acknowledge we're not at a
5 summary judgment stage.

6 THE COURT: Yeah. Obviously. Yes.

7 MR. ROBERTS: But still the key elements, which
8 the courts have found plaintiffs must establish, have to at
9 least be plead. And we have to be put on adequate notice
10 of what their claim is, of what they allegedly relied upon.
11 And this is especially true for their fraud-related claims
12 where 9(b) requires them to plead the who, what, when, and
13 where with absolute specificity.

14 So, we're not asking for a dismissal with
15 prejudice, Your Honor. Plaintiffs may very well be able to
16 plead an adequate Complaint against Philip Morris or
17 another manufacturer, but the current Complaint does not
18 put us on notice and does not even allege key elements of
19 their cause of action under Nevada law.

20 THE COURT: Okay.

21 MR. ROBERTS: To highlight the detriment and the
22 lack of notice, I would point out to the Court that there's
23 a very bare allegation as to the smoking habits and conduct
24 of the smoker at issue in this case.

25 THE COURT: Okay.

1 MR. ROBERTS: And that is that she smoked basic
2 Marlboro and L & M cigarettes from what? 1964 to when she
3 was diagnosed and the -- look at the -- let me get that
4 citation for the Court.

5 If the Court would look at paragraphs 19, 20, 21,
6 we see that they're alleging that -- excuse me. Starting
7 at 18. That L & M cigarettes were designed and
8 manufactured, and sold by defendant Liggett; that Marlboro
9 and Basic were designed, manufactured, and sold by
10 defendant Philip Morris; and that Ms. Camacho purchased L &
11 M, Marlboro, and Basic cigarettes from Silverados
12 insufficient quantities to be a substantial contributing
13 cause of her cancer.

14 The -- and this isn't going to where the plaintiff
15 bought her cigarettes. I'm not addressing that in this
16 argument right now, Your Honor. But I'm just addressing
17 how general the allegations are because it matters what
18 brand she smoked and when. So, if under the *Rivera* cases
19 that I've cited they have to prove that there was a
20 specific representation by a specific manufacturer that
21 they relied upon, if they have to prove what product caused
22 their damages, and they have to prove reliance on something
23 to smoke someone's product, then we need to know more about
24 the time frames in which this plaintiff allegedly smoked
25 products manufactured by Philip Morris. There's a bare

1 allegation of the general time frame that the plaintiff
2 smoked and there's an allegation that Basic was one of the
3 cigarettes that she smoked.

4 The problem is, Your Honor, and I'm not asking the
5 Court to rely upon my statement as supporting this proof,
6 but the problem is, for example, Basic cigarettes were not
7 manufactured, marketed, and sold by Philip Morris until 19
8 -- late 1970s. So, obviously, an advertisement for Basic
9 cigarettes, marketed as a discount brand, could not have
10 caused plaintiff to smoke between 1964 and 1969. There
11 could be no causation.

12 THE COURT: But isn't that --

13 MR. ROBERTS: Here's the only --

14 THE COURT: -- more something a question of fact?
15 I mean, you're kind of getting in -- okay. That's fine.
16 Do you see where I'm going, Mr. -- I'm concerned that now
17 we're adding questions of fact from Philip Morris. Right?

18 MR. ROBERTS: I --

19 THE COURT: Okay. It's okay.

20 MR. ROBERTS: Well, what -- and what I'm --

21 THE COURT: I under --

22 MR. ROBERTS: As to the fraud claims, Your Honor,
23 --

24 THE COURT: Yes.

25 MR. ROBERTS: -- they do have to plead facts with

1 specificity --

2 THE COURT: Right.

3 MR. ROBERTS: -- and they failed to do that.

4 As to the product case, they at least have to
5 plead product use.

6 THE COURT: Yeah. I --

7 MR. ROBERTS: And they've got a specific
8 allegation that -- you know, they know that the failure to
9 warn plaintiff is different pre-1969, once federal
10 requirements required specific warnings.

11 THE COURT: Right.

12 MR. ROBERTS: And, so, they used a pre-1969
13 failure to warn claim between 1964, when this plaintiff
14 started smoking, and 1969. Don't they at least have to
15 plead that they smoked a brand of cigarettes manufactured
16 by Philip Morris from 1964 to 1969 in order to adequately
17 plead that claim? If the only brand they smoked was L & M,
18 manufactured by Liggett, they would have no pre-1969 claim
19 against Philip Morris. And we're entitled to know what the
20 allegation is. And even if they don't plead specific facts
21 on the product defect, they at least have to plead that she
22 saw specific advertisements and that she would have never
23 started to smoke or she would have stopped smoking had a
24 different warning been given. They plead that nowhere in
25 the Complaint and, therefore, they don't state an adequate

1 cause of action.

2 THE COURT: Okay.

3 MR. ROBERTS: They -- there are claims in the
4 Complaint that we marketed to minors, to youth, but they
5 allege that this plaintiff had reached the age of majority,
6 18 years old, when she started smoking. So how could that
7 possibly allege a causal relationship establishing the
8 cause of action under Nevada law? They claim that we
9 improperly marketed light and ultra-light cigarettes as
10 less dangerous when they weren't, but there's no allegation
11 that this plaintiff ever smoked a light or a ultra-light
12 cigarette.

13 So, just as Judge Crockett did, Your Honor, and
14 when it comes to allegations such as that, they've either
15 got to plead that she smoked an ultra-light cigarette
16 because of her reliance on those advertisements and she
17 would had not smoked had it not been for the advertisements
18 or they have to drop it because they're simply not entitled
19 to plead every single bad act that has no relationship to
20 the damages in this case. And the manufacturer should not
21 have to defend and be subjected to discovery about every
22 single bad act where that bad act is not alleged to have
23 any causal relationship.

24 They allege -- the 1954 statement, so if she was
25 18 in 1964, she was eight years old and getting out the

1 paper and reading the frank statement from the
2 manufacturers in 1954 and relied upon that 10 years later
3 to decide to start smoking? Your Honor, it's just not
4 credible, which is why these claims have to be plead with
5 specificity to give us some sort of adequate notice what it
6 is specifically. What specific statements are they which
7 they claim were fraudulent and which they relied upon to
8 their detriment? For the product case, that they would
9 have heeded an instruction or warning that was different
10 than the ones we actually --

11 THE COURT: Right.

12 MR. ROBERTS: -- gave --

13 THE COURT: Okay.

14 MR. ROBERTS: Yeah. And, so, Your Honor, we're
15 asking for this to be dismissed with leave to amend --

16 THE COURT: Yeah.

17 MR. ROBERTS: -- and that the plaintiffs be
18 required to see if they can plead this with specificity and
19 make any extraneous allegations, which they know they have
20 no proof and ability to prove were actually a cause and a
21 factor and a damage to their client, that those be dropped
22 from the Complaint so that we can tailor this lawsuit to
23 what is actually in dispute.

24 THE COURT: Okay.

25 MR. ROBERTS: The -- Your Honor, if I could just

1 close with the exception of that, I believe is the gross
2 negligence claim. And we would ask that the gross
3 negligence claim be dismissed with prejudice because it is
4 completely redundant of the negligence claim.

5 And we've addressed this in the brief, but if the
6 Court will look at every case on gross negligence where the
7 Nevada Supreme Court has addressed and analyzed whether a
8 defendant acted with gross negligence, it's only been in
9 the limited circumstance where gross negligence is a
10 specific element of a claim or defense. You know, for
11 example -- for a police officer, may have limited immunity
12 unless they can plead gross negligence. Well, the problem
13 here is gross negligence is not a specific element to any
14 claim or defense at issue in this litigation.

15 And, in addition, the Supreme Court -- the Nevada
16 Supreme Court has held that gross negligence is not enough
17 to establish punitive damages. So, if it's not an element
18 of their cause of action, if it does not entitle plaintiffs
19 to different or additional damages, if it's not enough,
20 even if proven, to establish entitlement to punitive
21 damages, or to allow them to go to a jury, then it's
22 completely unnecessary and duplicative and it will simply
23 encourage prejudicial arguments likely to enflame and
24 confuse the jury where they're arguing both negligence and
25 gross negligence, even though to the jury it makes no

1 difference as to liability or damages.

2 So, we are asking that the gross negligence claim
3 be dismissed.

4 THE COURT: Okay.

5 MR. ROBERTS: The final thing, Your Honor, to --
6 you know, we've alleged preemption and even though they're
7 entitled to try to plead an adequate state law claim that
8 avoids the preemption arguments that we've made, the
9 plaintiffs have made a key admission. In their Opposition
10 at page 9, where they state:

11 Plaintiffs do not attempt to hold Philip Morris
12 and Liggett liable simply because they sold cigarettes
13 or because their cigarettes are dangerous products.

14 Therefore, regardless of the Court's decision on
15 any of the other arguments we're making here today and in
16 our papers, we believe that the Court should dismiss any
17 claims made expressly or impliedly in the Complaint that we
18 are liable to them simply because we sell cigarettes or
19 because cigarettes are dangerous products because the
20 allegations in the Complaint, frankly, Your Honor, many of
21 the allegations could be read just that way, that they are
22 seeking to hold Philip Morris and Liggett liable simply for
23 selling cigarettes that this plaintiff allegedly smoked
24 over a number of years.

25 And, with that, Your Honor, I will turn it over to

1 Liggett to see if they have anything to add to their
2 Joinder to --

3 THE COURT: You know, and your argument, Mr.
4 Roberts, when I went through all this, I'm trying to
5 decide: Is it a Motion to dismiss and let them amend? Is
6 it more a Motion to Strike certain paragraphs? And your
7 last argument -- I, honestly, Mr. -- you can see, I kind of
8 went back and forth trying to figure out which way to go or
9 what is it -- I always look at: What do you want the Court
10 to do? And I tried to actually do a sheet to figure out
11 what allegations you want stricken or which you think is --
12 your last argument, does that make sense why I felt that
13 way also?

14 I've got -- what -- we're kind of balancing a
15 Motion to Strike certain -- and I appreciate that you're
16 trying to clean up the Complaint so you know how to do this
17 litigation, know where to go. I understand that
18 completely. But those are just my comments. So, what you
19 just said kind of fits in the way I was kind of thinking
20 when I went through this because it's -- to say it's an
21 extensive Complaint, I understand. Okay. Those were my
22 thoughts from your last discussion. Okay.

23 MR. ROBERTS: Thank you.

24 THE COURT: Does that make sense --

25 MR. ROBERTS: And I appreciate your patience --

1 THE COURT: -- the way I --
2 MR. ROBERTS: -- in letting me --
3 THE COURT: No.
4 MR. ROBERTS: -- go on for a while.
5 THE COURT: No. Believe me, I get it. I get it
6 just going through it. Okay.
7 Now, counsel for -- do you want to do it -- do you
8 want to finish up with Liggett and Philip Morris before
9 because we now have plaintiff. Do you want -- how do you
10 want to do the opposition? I -- do you want to -- let's do
11 Philip Morris and Liggett together since they're in one
12 Motion and then let the plaintiff respond? I don't know.
13 You -- I see your face, so I don't know if you spoke or why
14 you're up. I'm not sure how this -- I'm trying to get this
15 Blue Jeans. Is it okay if we go ahead and listen to the
16 counsel for Liggett to see what she wants to add to what
17 Mr. Roberts said? Is that okay with plaintiffs?
18 MR. ECHOLS: That's fine with plaintiffs, Your
19 Honor.
20 THE COURT: Okay. I just wanted to make sure
21 since you're not here -- so I can't see everybody's face to
22 see how they want the flow to go. Okay. So, now we're
23 going to do counsel for Liggett. Correct?
24 MS. LUTHER: Your Honor, this is Kelly Luther on
25 behalf --

1 THE COURT: Okay.

2 MS. LUTHER: -- of Liggett.

3 THE COURT: Okay.

4 MS. LUTHER: And I'm going to make this very easy.

5 We have nothing to add to Mr. Roberts's argument.

6 THE COURT: Okay. Can I say God bless you?

7 That's probably not right. Okay. Okay.

8 MR. KENNEDY: Your Honor, next, this is Dennis

9 Kennedy on behalf of --

10 THE COURT: Yes.

11 MR. KENNEDY: -- Reynolds.

12 THE COURT: R.J. Reynolds.

13 MR. KENNEDY: I think it makes sense, I think, for

14 me to argue our Motion, because it follows-up and

15 incorporates Philip Morris's Motion, and then hear the

16 Opposition. I'd ask the plaintiffs if that makes sense to

17 them?

18 MR. ECHOLS: That's fine with us, Your Honor.

19 THE COURT: It makes sense to me, Mr. Kennedy,

20 because there was so much overlap because many of the

21 things Mr. Roberts said I have down in my notes that came

22 from your briefing, Mr. Kennedy, because I started out with

23 yours. So, honestly, the Court -- at least how I viewed

24 it, I'm -- I think that is an appropriate way to do it.

25 MR. KENNEDY: Yeah. I do, too.

1 THE COURT: Okay.

2 MR. KENNEDY: And, for the record, Dennis --

3 THE COURT: And it will go with my notes or how I
4 tried to -- when I went through this on my own.

5 MR. KENNEDY: Okay.

6 THE COURT: Okay. Okay.

7 MR. KENNEDY: For the record, Dennis Kennedy for
8 defendant, R.J. Reynolds Tobacco Company. This is
9 Reynolds's Motion to Dismiss and we are asking that the
10 Complaint against Reynolds be dismissed with prejudice.

11 THE COURT: Right.

12 MR. KENNEDY: Because there is no prospect that
13 any amendment is going to save this based upon the contents
14 of the Complaint.

15 First off, we incorporate, as the Court noted, and
16 adopt the arguments that have been made by Philip Morris
17 and by Liggett. And I'll focus on the sixth and seventh
18 claims, because those are the claims contained in the
19 Amended Complaint that are made --

20 THE COURT: Right. I got that.

21 MR. KENNEDY: -- against R.J. Reynolds.

22 THE COURT: I've got 6, civil conspiracy, and, 7,
23 violation of deceptive trade practices. Right?

24 MR. KENNEDY: Yes, Your Honor. That is correct.

25 THE COURT: Okay.

1 MR. KENNEDY: The most important thing to note
2 from the Amended Complaint you can find in Paragraph 17,
3 18, and 19. That is where the plaintiff says: I smoked L
4 & M, which is a Liggett product, Marlboro, which is a
5 Philip Morris product, and Basic, which is also a Philip
6 Morris product. Most importantly, out of that, the Court
7 can see the plaintiff never purchased, never used any
8 product manufactured or sold by R.J. Reynolds. That is a
9 flat-out, undeniable admission made by the plaintiff. This
10 makes Reynolds's argument in this regard separate and
11 distinct from the argument that the Court heard from Philip
12 Morris.

13 The Court said: Well, aren't there some fact
14 issues here? But that may or may not be correct. With --

15 THE COURT: Okay.

16 MR. KENNEDY: -- Philip Morris, there are no fact
17 issues here with respect to R.J. Reynolds. The plaintiff
18 says: I never bought it. I never used it. I never smoked
19 it if it was made by R.J. Reynolds.

20 Let's get to the claims then following that deadly
21 admission that the plaintiff makes against R.J. Reynolds.
22 The plaintiff says in the Deceptive Trade Practices --

23 THE COURT: Count 7.

24 MR. KENNEDY: -- Act claim: Well, the Deceptive
25 Trade Practices Act pertains to the sale of goods. Someone

1 is damaged in a transaction arising out of the sale of
2 goods or services, but there's no services in this case.
3 Sale of goods. And Chapter 598A has all kinds of instances
4 where someone who buys goods or contracts to buy goods who
5 is deceived has a cause of action. The problem is this
6 plaintiff admits that she never bought or used anything
7 manufactured or sold by R.J. Reynolds. That is fatal to
8 the Deceptive Trade Practices Act claim. You can't sue
9 somebody for deceiving you with respect to the purchase of
10 a good if you never bought the good and that's what we've
11 got here. And this is what the plaintiff admits in the
12 Complaint. The Deceptive Trade Practices Act is dead on
13 arrival at this point because you have -- you can't
14 possibly have causation because you have no purchase of the
15 good at all, which the plaintiff admits.

16 Secondly, the conspiracy claim, --

17 THE COURT: Okay.

18 MR. KENNEDY: -- well, we start out knowing that
19 the plaintiff never bought or used an R.J. Reynolds
20 product. But the plaintiff says: Well, you've conspired
21 to harm me. And the first undeniable point is: Well, how
22 did we conspire to harm you? You never bought or used our
23 product. So, I mean, you know, you -- there is no
24 underlying wrongful act.

25 And all they have, the plaintiff, is a series of

1 general allegations saying: Well, you concealed the truth
2 about smoking and about your product. And we've said:
3 Well, look, you never bought our product. So what is it
4 that we might have said that you relied on in purchasing
5 our product? And the answer has to be: Nothing because
6 you never purchased our product.

7 The first part of the conspiracy allegations, and
8 Mr. Roberts covered these, which are absolutely
9 implausible. The Amended Complaint actually says, with
10 respect to events occurring in 1953, that -- and this is in
11 Paragraph 155 of the Amended Complaint, the plaintiff says:
12 I heard, read, and relied upon these things. Well, in
13 1953, the plaintiff appears to have been 7 years old. And
14 the plaintiff says: When I was 7 years old, I heard these
15 things and you know what? Seven or eight years later,
16 based on what I heard when I -- in 1953 -- no, 11 years
17 later, I decided to start smoking. Well, that's somewhat
18 implausible, but that's what the Complaint says.

19 However, -- and then to go on to the argument that
20 Mr. Roberts made. That -- those allegations are completely
21 implausible as against R.J. Reynolds. But, to take the
22 next step, you say, okay, let's give the plaintiff the
23 benefit of the doubt as to plausibility and say: Okay.
24 Maybe what you did here when you were seven caused you to
25 start smoking when you were 14. What is it that R.J.

1 Reynolds said that you relied on not to buy a Reynolds
2 product, which you admit you never did, but what did R.J.
3 Reynolds say or do that caused you to start using a
4 different product? And the answer is: Well, the Amended
5 Complaint has nothing about that and the fact is it can't
6 because R.J. Reynolds never said anything about a Philip
7 Morris or a Liggett product.

8 And, so, what you have is you have a series of
9 general, undifferentiated statements that the plaintiff
10 says: Well, look at all these things that are out there.
11 I'm going to sue R.J. Reynolds but I never used an R.J.
12 Reynolds product. Okay. Where's the hook between those
13 two things? Well, there is none. There can't be. And I'm
14 not dumping on Philip Morris. I'm just saying you never
15 used our product. How did we trick you or deceive you into
16 using our product, which you admit you never used?

17 So, -- and the Rivera case is a good case. We
18 cite at page 5 of our Reply another case, the *Poulos* case
19 from the Ninth Circuit, which is also a good case. It's
20 not a tobacco case. It's a gaming case.

21 THE COURT: It's a gaming case. Right?

22 MR. KENNEDY: Yeah.

23 THE COURT: Yes.

24 MR. KENNEDY: And I know it well because I
25 defended the casinos in that case and the allegation in

1 that case was a fraud case saying: You know what? You've
2 deceived us into gambling. In essence, you didn't tell us
3 we might lose. And, you know, the Ninth Circuit -- the
4 trial court and the Ninth Circuit said: Well, come on now,
5 you've got to point to something specific that was said
6 that --

7 [Pause in proceedings]

8 THE COURT: What happened? Hold on. He is
9 holding on. He froze. What happened?

10 THE CLERK: It might have been something with his
11 -- on his side.

12 THE COURT: We lost Mr. Kennedy.

13 MS. LUTHER: We did.

14 THE COURT: Okay. You -- you all are still here
15 but we lost Mr. Kennedy. Okay. Maybe something on his
16 end? Yes. My court staff -- he's not here to defend
17 himself, so it's him. Isn't that how it works? I don't
18 know. Can we try to call him or --

19 MR. ECHOLS: I think we can wait for a minute,
20 Your Honor.

21 THE COURT: Okay.

22 MR. ECHOLS: He's probably aware that he's been
23 cut off and maybe he's trying to log back in.

24 THE COURT: Okay. He's probably log -- okay. My
25 law clerk says that's probably what's happened. Okay.

1 I'm more than --
2 [Pause in proceedings]
3 [Colloquy in another case]
4 [Recess taken at 10:30 a.m.]
5 [Hearing resumed at 10:33 a.m.]
6 MR. KENNEDY: Your Honor, it's Mr. Kennedy back.
7 Our connection was vanished. So, with the Court's
8 permission --
9 THE COURT: It's fine. You all of a sudden
10 stopped.
11 MR. KENNEDY: -- I'll continue.
12 THE COURT: Mr. Kennedy, I tried to get Mr.
13 Roberts to dye his hair and change his tie but he wouldn't
14 do it. So we're good.
15 MR. KENNEDY: No. Anyway, --
16 THE COURT: I left off with the Ninth Circuit case
17 that you talked about you have to plead something specific.
18 It's on page 5 of your Reply were my last notes. Does that
19 help?
20 MR. KENNEDY: That's right. That's the *Poulos*
21 case.
22 THE COURT: Okay. Yeah, do -- spell the first
23 word again, the gambling case.
24 MR. KENNEDY: Yeah. It's *Poulos*, P-O-L-O-U -- P-
25 O-U-L-O-S *versus* *Caesars*.

1 THE COURT: Okay. I knew it was Caesars. I
2 didn't recognize --
3 MR. KENNEDY: And that case --
4 THE COURT: Sometimes I do the defendant. Okay.
5 Thank you. I thought that was that case. Okay. So, --
6 MR. KENNEDY: Yeah.
7 THE COURT: -- welcome back.
8 MR. KENNEDY: And that's 379 F.3d 654. It's a
9 2004 case.
10 THE COURT: Okay. Yeah.
11 MR. KENNEDY: And that essentially says: Look,
12 you can't just stack up a whole bunch of general ads and
13 promotions and things and say: Well, you know, the people
14 saying those things actually knew other things that they
15 weren't telling us. The Ninth Circuit said: Look, you've
16 got to connect the dots here. And I think that's the
17 language of the Circuit.
18 THE COURT: It is. I put that down.
19 MR. KENNEDY: Yeah. You've got to show what you
20 saw, what you heard, and what you relied on. And, in this
21 case, under -- the conspiracy claim, it's impossible
22 because the plaintiff says: Yeah, R.J. Reynolds, gosh,
23 look at the things you said, of course, I never used your
24 product, but I'm going to sue you because you said these
25 things. Well, you don't have an underlying claim. The

1 only underlying claim they put in was the deceptive trade
2 practices claim, but that fails as a matter of law because
3 it requires product use and purchase of product, which they
4 never did.

5 So, bottom line, once you admit in a products
6 case, like we have here, that you never bought the product,
7 you never used it, well, you don't have a products
8 liability claim. Mr. Roberts argued that at length and we
9 incorporate that. That's why these two claims, the
10 Deceptive Trade Practices Act claim and the conspiracy
11 claim, against R.J. Reynolds fail as a matter of law based
12 on that admission that I -- that the plaintiff never
13 bought, never used the product. And you can't make out a
14 products claims against somebody if you never bought and
15 never used the product.

16 The conspiracy claim fails for the same reason and
17 that reason is that there's no underlying claim, there's no
18 underlying object of the conspiracy if you sue R.J.
19 Reynolds and say: Look what you said, look what you did.
20 And R.J. Reynolds says: Yes, and what was the result? Oh,
21 well, I never bought your product. I never used your
22 product. Okay. That claim is dead.

23 That's why we are asking not only that these
24 claims against RJ Reynolds be dismissed, but they should be
25 dismissed with prejudice because based on the plaintiffs'

1 own admission, there is nothing that the plaintiff can do
2 to re-plead and re-allege these claims because the
3 plaintiff admits: I never bought the product, I never used
4 the product.

5 THE COURT: Okay.

6 MR. KENNEDY: And that's R.J. Reynolds's position
7 simply stated.

8 THE COURT: All right.

9 MR. KENNEDY: If the Court has no questions, I'm
10 done.

11 THE COURT: No. I have my little outline here and
12 I -- I got it. I understood what you said --

13 MR. KENNEDY: Okay.

14 THE COURT: -- because I actually -- that's why --
15 I outlined everything to try to make sure I could follow
16 the argument. Okay.

17 MR. KENNEDY: Okay.

18 THE COURT: I have no questions --

19 MR. KENNEDY: Sorry I stepped out for a minute. I
20 have no explanation --

21 THE COURT: That's okay.

22 MR. KENNEDY: -- for what happened.

23 THE COURT: Once again, it's just what happens
24 with -- as you and I know, with technology. But we've got
25 to deal with what we can. Okay.

1 MR. KENNEDY: Yes, Your Honor.

2 THE COURT: Okay. So now anybody else that's here
3 for a defendant wants to be heard before I switch to the
4 plaintiff?

5 Okay. Hearing nothing, I'm gonna then go to --
6 Micah -- Mr. Echols, are you going to do it? I'm not sure.
7 Who is going to do it for the plaintiff?

8 MR. ECHOLS: I am going to argue, Your Honor.

9 THE COURT: Okay. Welcome. Good to see you.
10 Okay.

11 MR. ECHOLS: Thank you, Your Honor. Nice to see
12 you, too. Micah Echols for the plaintiffs.

13 THE COURT: Okay.

14 MR. ECHOLS: So, it was interesting what Mr.
15 Roberts talked about. He gave a little bit of background,
16 a little bit of history, and I appreciate that. And,
17 during his discussion, during Mr. Kennedy's discussion as
18 well, there was a lot spoken of beyond the pleadings. Now,
19 of course, there was a lot spoken of what was in the
20 pleadings, but there was a lot spoken of beyond the
21 pleadings. And what I mean by that is Mr. Roberts said:
22 Your Honor, first the plaintiffs have to plead and then
23 they have to prove. And so his entire argument talked
24 about not only pleading, because we're at the pleading
25 stage here, --

1 THE COURT: Yeah.

2 MR. ECHOLS: -- but also what we have to prove
3 down the road. But all we have to do in a 12(b)(5) Motion
4 to Dismiss standard, Your Honor, is show that we have a
5 legally cognizable claim and the facts have to be accepted
6 as true. And the defendants, in order for their Motions to
7 be granted, they have to prove beyond a doubt that there is
8 no legal cognizable claim.

9 So, that's the first thing I want to point out,
10 Your Honor, is there are some factual issues that they
11 raise with respect to causation and some different things
12 and we're at the pleading standard here. So, what I wanted
13 to do, Your Honor, is I wanted to go through the -- the
14 same order we have the arguments on opposition and then
15 I'll try to clean up any of the additional issues that were
16 raised by both counsel today.

17 THE COURT: Okay.

18 MR. ECHOLS: So, the first thing I want to talk
19 about is the preemption argument. So, there's the Federal
20 Cigarette Labeling and Advertising Act, which we call the
21 Labeling Act, and what we point out in our Opposition is
22 that the Labeling Act does not preempt the failure to warn
23 claims, which are embedded within some of the other causes
24 of action, prior to July 1, 1969. And we all agree on that
25 opinion, based upon some of the comments here today.

1 We haven't plead any failure to warn after July 1,
2 1969. So, the Labeling Act really doesn't apply here, Your
3 Honor, and it doesn't preempt. And I can give you the --
4 the Court the paragraphs. It's Paragraph 92 of the Amended
5 Complaint, Subsections A through E, and then Paragraph 115,
6 Subsections letter N, as in Nancy, through R, as in Ronald.

7 THE COURT: N through R. Okay.

8 MR. ECHOLS: The -- in the -- there's some
9 discussion about, hey, we have field preemption, we have
10 conflict preemption, and so really the Supreme Court -- the
11 U. S. Supreme Court came out and said there's no preemption
12 of state law fraud claims and these are the couple of cases
13 that we cited in our -- among the several in our
14 Opposition, the *Altieri Group versus Good*, which is a U.S.
15 Supreme Court at 555 U.S. 70 and that's a 2008 case. And,
16 then, *Cipollone versus Liggett Group* is another U.S.
17 Supreme Court case, which is 505 U.S. and then 504. And
18 that's a 1992 case. And, so, there's no conflict
19 preemption, there's no field preemption on our state law
20 fraud claims.

21 If you move along to our -- the -- our negligence
22 and strict liability causes of action, there's a little bit
23 of argument from the defense here, Your Honor, of arguing
24 that our claims are something that they're really not.
25 It's not the way they were plead. And as the plaintiff, we

1 are entitled to artfully plead our Complaint.

2 The main case that the defense relies upon is this
3 *FDA versus Brown & Williamson Tobacco Corp.* They discuss
4 it in their brief. We discuss it in our brief. All the
5 *FDA* case really says is that cigarettes are a legal product
6 and can be manufactured. We're not saying they can't
7 manufacture this. But what we do say is that what they've
8 put out is in -- is an unreasonably dangerous and defective
9 product. And, so, that's where the strict liability cause
10 of action comes from. And, so, *FDA* really is an inapposite
11 case. It doesn't bring up anything.

12 There was some discussion about what Judge
13 Crockett has done in this case --

14 THE COURT: Yeah. I apologize. I don't know what
15 Judge Crockett did. I didn't even know he had a case. I
16 just take my cases, so I --

17 MR. ECHOLS: Okay.

18 THE COURT: -- wasn't -- I don't know what Judge
19 Crockett did, but did he decide something?

20 MR. ECHOLS: And I understand that, Your Honor,
21 and -- I understand that, Your Honor, and I know that's
22 your position that whatever somebody else is doing it
23 doesn't matter to Your Honor because you're going to look
24 at things with fresh eyes. I mean, there's no deference to
25 any other judge. The one point --

1 THE COURT: I think you and I have had that
2 history, didn't we, in the -- we went through that. Didn't
3 we? I mean, not that I don't want to hear what other
4 judges, I just -- maybe it's just -- I just look at
5 everything with fresh eyes. I don't know if he ruled -- I
6 didn't even know he had the case, but did he have
7 something, this kind of case recently? Obviously.

8 MR. ECHOLS: He did, Your Honor, and there's some
9 Orders attached to our Opposition that outline what he did.

10 THE COURT: Okay. I didn't even --

11 MR. ECHOLS: But all Judge Crockett did --

12 THE COURT: -- look. I apologize. I didn't --

13 MR. ECHOLS: And there was a hearing transcript,
14 but all Judge Crockett did is he said: Hey, in the fraud
15 claims, which I'm going to require there to be
16 particularity under Rule 9(b), he selected a certain few
17 paragraphs only and said give me some more clarification on
18 those paragraphs.

19 THE COURT: Oh, I read that.

20 MR. ECHOLS: But what we have --

21 THE COURT: I read that. I thought you meant a
22 bigger thing. I read that part. That's just under NRCP 9,
23 that he wanted -- okay. I did read that. I thought he had
24 made broader decisions than that. Okay. No, I was aware
25 of that. I'll be -- and that's kind of -- you know, what

1 is more particularity to one judge, as you and I know,
2 that's kind of subjective in some respects. But okay. Oh,
3 no. I was aware of that. I got the inference that maybe
4 he made broader decisions. Okay. Well -- all right. I'm
5 on the same page then. I gotcha.

6 MR. ECHOLS: All right. Thank you, Your Honor.
7 Because there was some suggestions that he had done
8 something more, but he didn't. He didn't dismiss any
9 claims. He didn't do anything else.

10 THE COURT: Okay. That's why I wanted it
11 clarified. Because I didn't say that they did it, I just
12 didn't know. I knew about the particularity, which, you
13 know, that's pretty subjective to a judge. Okay. Perfect.
14 We're back on the same page. Thank you.

15 MR. ECHOLS: So, there's this next argument in the
16 briefs, the common knowledge argument, and the *Rivera* case
17 that was cited, the Ninth Circuit case, 395 F.3d 1142,
18 talks about the common knowledge argument. Basically, the
19 common knowledge argument is: Hey, everybody knows that
20 smoking is bad, so, you know, if you want to engage in
21 that, you knew that, you know what you're doing, so too
22 bad. Common knowledge argument in the *Rivera* case, the
23 Court says -- and to characterize it as a consumer
24 expectation test.

25 Now, here is where the rub comes in. Our

1 allegations in the Complaint, which have to be accepted as
2 true, are that the defendants concealed information that
3 created a public health crisis and that they actively
4 misrepresented the dangers of smoking. There was the frank
5 statement, there were various others that I'll get to in my
6 discussion here. But all throughout the historical
7 allegations in the Complaint, how are we -- how is -- I'll
8 take that back.

9 How is the public supposed to know? How is a
10 consumer of a cigarette supposed to know the danger if it's
11 concealed? And that's the point of -- and what this Ninth
12 Circuit ruled at the summary judgment stage, Your Honor,
13 and we're not there yet, in *Rivera*, the 2005 Ninth Circuit
14 case, is that it was a factual issue. And, so, certainly,
15 that's not an issue that's ripe at the pleading stage.

16 One other point we made besides the frank
17 statement in our Opposition to Motion to Dismiss was Howard
18 Coleman on CBS News saying that bad elements from the
19 cigarettes would be removed. And, of course, they never
20 were.

21 Let me address the gross negligence argument that
22 Mr. Roberts made. He said: Hey, you know, what's the
23 difference really between negligence and gross negligence?
24 And here's the reason why we included it. It's to put the
25 defendants on notice, which is notice pleading, it's not a

1 particularity claim. It's just negligence. That we
2 believe that it's something more than negligence and it
3 might even exceed gross negligence because, as defense
4 acknowledged, once we exceed gross negligence under
5 *Countrywide Home Loans versus Thitchener*, they went to
6 punitive damages. We haven't done all of the discovery
7 yet, Your Honor. We don't know all the statements. We
8 don't know all of the concealed documents. We don't have
9 all of their background studies yet in this case and we are
10 allowed to plead in the alternative.

11 Now, if we get through discovery and say: Hey,
12 you know, you discovered everything you wanted and we gave
13 you a mountain of documents and we don't think you found
14 anything that was either gross negligence or exceeded gross
15 negligence, then they can file a Motion for Summary
16 Judgment on that and say take out gross negligence and kick
17 up punitive damages. But, at this point, it's just the
18 pleading stage, Your Honor, and we are allowed to plead in
19 the alternative.

20 THE COURT: You --

21 MR. ECHOLS: The particularity --

22 THE COURT: I'm sorry. On the gross negligence,
23 I've always wondered because I get motions to dismiss all
24 the time on gross negligence as a separate cause of action
25 and I looked at it and every time I've read it I've looked

1 because the claim is either statutory where the -- you
2 know, the -- it requires gross negligence as opposed to
3 just the reasonable person standard or there's something
4 specific that has required it. So, I -- and I've -- maybe
5 you can -- I can never find caselaw that said gross
6 negligence is a separate cause of action as opposed to
7 negligence. It's a way you can prove a negligence
8 standard, which is beyond what you need. But have you
9 found any caselaw that says -- not that it's a part of a
10 statute or something -- you know, a separate cause of
11 action. Anything that just, in the general pattern
12 situation, you can have a claim for negligence and a
13 separate claim for gross negligence?

14 I'll be honest. I've never had a good answer on
15 that. Do you know of any caselaw or anything that says --
16 because that's basically what Mr. Roberts argued to me and
17 I've -- I have not struggled, but I have addressed this
18 situation. Do you know of any -- or that the Supreme Court
19 or anyone says that you can plead them separately?

20 And I understand the standard you have to do on
21 punitives. You -- we all know that. But as a separate
22 cause of action to get to punitives.

23 MR. ECHOLS: I haven't seen any specific caselaw -
24 -

25 THE COURT: Okay.

1 MR. ECHOLS: -- on that, Your Honor.

2 THE COURT: Okay. I'm just making it too
3 intellectual, I guess. Okay.

4 MR. ECHOLS: Yeah. And --

5 THE COURT: I just wondered because it confuses
6 me. Okay.

7 MR. ECHOLS: And I guess maybe the debate that is
8 something similar to the punitive damages --

9 THE COURT: Yeah.

10 MR. ECHOLS: -- issue. Punitive damages is a
11 remedy, but sometimes we allege punitive damages as a claim
12 just so we can put people on notice: Hey, this is a
13 punitive damages case. We think that there's enough
14 evidence out there that punitive damages and we're just
15 telling you right out of the gate or as soon as we --
16 sometimes when we hold back and say: Okay, we found some
17 evidence of punitive damages in discovery, we'll come back
18 and we do a Motion to Amend our Complaint to add a claim
19 for punitive damages, the defense will say: Well, it's not
20 a claim. It's just a remedy, so you don't need to plead
21 it. And that's kind of -- maybe it falls in that same
22 category.

23 THE COURT: You know what? It does. At least in
24 my brain, it falls in that exact -- and I don't know an
25 answer to it, but it falls in that category because I have

1 those same things. It's a remedy. It's damages. But also
2 people want to know because the -- okay. I think you did a
3 great analogy and I can see why I struggle with it. Okay.
4 Thanks.

5 MR. ECHOLS: The --

6 THE COURT: Okay.

7 MR. ECHOLS: -- particularity for fraud under NRCP
8 9(b), there's a couple of arguments that go along with that
9 and -- on the plaintiffs' side. So, the first one is
10 *Rocker versus KPMG*.

11 THE COURT: Right.

12 MR. ECHOLS: This is a Nevada Supreme Court. It's
13 122 Nevada 1185. It's a 2006 --

14 THE COURT: Yeah.

15 MR. ECHOLS: -- case. And it's what we always
16 call the *Rocker* discovery.

17 THE COURT: Yes.

18 MR. ECHOLS: Basically --

19 THE COURT: I'm aware of that case.

20 MR. ECHOLS: Basically, at a motion to dismiss
21 stage, if we're alleging fraud but we don't have all of the
22 information in our possession, we're allowed to allege
23 fraud a little bit more generally until we have the
24 discovery. And I think that's important in reading the
25 actual language of Rule 9(b) because there's two sentence

1 in Rule 9(b) and I like the second sentence particularly
2 because -- to combat or to respond to some of what the
3 defense has said.

4 So, it says: In alleging fraud or mistake, a
5 party must state with particularity the circumstances
6 constituting fraud or mistake.

7 And then the second sentence says: Malice,
8 intent, knowledge, and other conditions of a person's
9 mind may be alleged generally.

10 And, so, there's been some discussion here today
11 of: Hey, we need to have all of this information that we
12 don't have, which is true for fraud in general under 9(b).
13 Not true for any of the other claims. But, then, if you
14 notice the carve-out in 9(b), it just says a person. It
15 doesn't say which person. It doesn't say the defendant,
16 the plaintiff, the person making the allegation, the person
17 receiving the allegation.

18 And, so, I think everything that we've alleged in
19 our Complaint in terms of fraud is sufficient, Your Honor,
20 and I'll point the Court to some paragraphs that I've
21 written down that were also noted in the Opposition. The
22 Amended Complaint is Paragraph 92 and then it's letters A
23 through R, as in Ronald. 150 -- Paragraph 151, A through
24 F, as in Frank; and then page -- or, excuse me. Paragraph
25 155, A through K that discussed the fraud claims.

1 And, then, the causation for fraud -- now,
2 typically causation is going to be --
3 THE COURT: Can I stop you real --
4 MR. ECHOLS: -- a factual issue.
5 THE COURT: I'm sorry. But under the fraud, you
6 don't think I should be focusing on the plaintiffs -- the
7 fraudulent -- the alleged fraud by the defendant that
8 induced the plaintiff? Don't they have to know what
9 specifically the plaintiff relied on for the fraud? Or do
10 you think --
11 MR. ECHOLS: Yes, Your Honor. That's for --
12 THE COURT: Or just generally -- no. Right?
13 MR. ECHOLS: That's for fraudulent inducement,
14 Your Honor.
15 THE COURT: Right.
16 MR. ECHOLS: And, so, true, there is some
17 particularity, but it's also tempered when it's in the
18 second sentence of 9(b).
19 THE COURT: Okay.
20 MR. ECHOLS: So, here's our position on fraud --
21 THE COURT: Okay. I'm just --
22 MR. ECHOLS: -- in general.
23 THE COURT: -- trying to follow it a little bit
24 better. Okay.
25 MR. ECHOLS: And, so, here's our position

1 generally on fraud and I'll throw in the causation elements
2 of fraud --

3 THE COURT: Yeah.

4 MR. ECHOLS: -- too.

5 THE COURT: Yeah. I didn't mean to stop you.
6 Okay.

7 MR. ECHOLS: We believe that the allegations in
8 the Amended Complaint are sufficient.

9 THE COURT: No, I know.

10 MR. ECHOLS: But if the Court wants more
11 particularity in those paragraphs that I outlined, we're
12 happy to provide it.

13 THE COURT: Okay.

14 MR. ECHOLS: It's not a question of anything and
15 we're happy to do it if that's what the Court orders.

16 THE COURT: Okay. I appreciate that. Thank you.
17 I --

18 MR. ECHOLS: On the causation --

19 THE COURT: Causation. Okay.

20 MR. ECHOLS: -- for --

21 THE COURT: Yeah. That's different.

22 MR. ECHOLS: On the causation for fraud, in the
23 Amended Complaint, Paragraph 156, and this is Subparts A
24 through G and then 157, also A through G. And, so, I'll
25 just leave the fraud at that, Your Honor.

1 So, there was an interesting argument made by
2 defense -- by both defense counsel that we need
3 particularity for civil conspiracy. That's just not true.
4 There's no caselaw that says that. All I can do is plead
5 the elements of civil conspiracy. Nobody said that we
6 haven't. In our Opposition, pointed out to the jury
7 instruction --

8 THE COURT: Yeah.

9 MR. ECHOLS: -- 6.9 and the *Picus versus Wal-Mart*
10 [phonetic] case.

11 Now, what we do agree with is that there has to be
12 an underlying tort.

13 THE COURT: Right.

14 MR. ECHOLS: A fraud tort to have -- or, excuse
15 me, a fraud claim. And, so, what we did is we had a Nevada
16 Deceptive Trade Practices Act as the underlying fraud
17 claim. And, so, the argument made -- and I'll skip over a
18 little bit to the R.J. Reynolds argument here. The
19 argument is made by R.J. Reynolds that there has to be
20 product use in order to have a Deceptive Trade Practices
21 claim. And that's simply not true, Your Honor, and I'll
22 point you to a couple of statutes.

23 NRS -- and these are cited in our Opposition, too,
24 but NRS 41.600 talks about victims of consumer fraud, which
25 we allege plaintiffs here are. And if you go specifically

1 to the Deceptive Trade Practices Act, NRS 598.0915 defines
2 deceptive trade practice and then sub 5 of that statute
3 says:

4 Knowingly a deceptive trade practice in the course
5 of the business or occupation is knowingly makes a
6 false representation as to the characteristics,
7 ingredients, uses, benefits, alterations, or quantities
8 of goods or services for sale or lease by false
9 representation as to the sponsorship, approval, status,
10 affiliation, or connection of a person therewith.

11 All of these -- and there's 16 different types of
12 deceptive trade practices listed in that particular code
13 section. It doesn't say anything about I have to actually
14 buy the product. It's a -- and that's exactly what we've
15 alleged here, Your Honor. It's the advertising. It's the
16 massive public fraud that's existed here and not only to
17 the public, but also to the plaintiffs individually.

18 And, on the deceptive trade practices, there's a
19 great line and I didn't see it cited in the Opposition, so
20 I wanted to give the Court this citation, too.

21 THE COURT: Okay.

22 MR. ECHOLS: It might be in there and I might have
23 missed it. It's *Betsinger*. And let me spell that. It's
24 B-E-T-S-I-N-G-E-R *versus DR Horton, Inc.* And it's a Nevada
25 case that's 232 P.3d 433. And the quote I have is at page

1 436. It's a 2010 Nevada Supreme Court case. And I'll just
2 read this direct quote here, Your Honor. It says:

3 The purpose of the consumer protection statute was
4 to provide consumers with a cause of action that was
5 easier to establish than common law fraud and,
6 therefore, statutory fraud must only be proven by a
7 preponderance of the evidence.

8 And then it goes on and says: Statutory defenses
9 that sound in fraud are separate and distinct from
10 common law fraud.

11 And I think those two sentences out of the
12 *Betsinger* case are very important in deciding this Motion
13 to Dismiss because we don't have a particularity
14 requirement for the statutory fraud case in the -- or the
15 statutory fraud claim. The statutory fraud claim can act
16 as the wheel, so to speak, the wheel in -- or the hub and
17 spoke kind of analogy from law school for a conspiracy.
18 So, we've alleged civil conspiracy. Where the underlying
19 statutory fraud claim -- and the Nevada Supreme Court says:
20 Hey, because it's statutory, you back off of some of those
21 real [indiscernible] of the common law fraud claim.

22 THE COURT: Can -- then, based on your argument to
23 me then, besides suing R.J. Reynolds, you could have sued
24 any manufacturer of cigarettes within the time frame you
25 want, even if there's no proof that your client used them,

1 you know, if -- is that what you're saying? Basically, not
2 just R.J. Reynolds, but I don't know -- I'll be honest, how
3 many cigarette manufacturers there were, but, based on that
4 argument, you could have sued whatever companies were
5 manufacturing cigarettes during the time frame that your
6 client was smoking, even if there's no allegations that she
7 smoked any of their products. Correct?

8 MR. ECHOLS: Correct, Your Honor. As long as the
9 cigarette manufacturer participated in the civil conspiracy
10 and that --

11 THE COURT: Well, but --

12 MR. ECHOLS: And that kind of goes back to our
13 historical allegations in the Complaint.

14 So, there are two cases that are cited in our
15 Opposition -- well, they're cited in the Motion, too, in
16 the RJ Reynolds. And I'll switch over to the R.J. Reynolds
17 just to clean up some of the arguments there.

18 So, there's the *Baymiller* case, which is a Federal
19 District Court of Nevada case from 2012 and that's 894
20 F.Supp 1302.

21 THE COURT: Okay.

22 MR. ECHOLS: And then there's the *Moretti*, M-O-R-
23 E-T-T-I, *versus Wyeth*, also a Federal District Court of
24 Nevada. And I only have the Westlaw cite for that. I
25 apologize, Your Honor. It's a 2009, Westlaw 49532.

1 THE COURT: Do it again. 2009 Westlaw?
2 MR. ECHOLS: And then 49532.
3 THE COURT: 495 -- okay. Thank you.
4 MR. ECHOLS: And, so, both of these cases are
5 really inapposite to civil conspiracy and deceptive trade
6 practices claims. *Baymiller* doesn't mention either one of
7 these claims and *Moretti* interprets Minnesota deceptive
8 trade practice law. And, so, to the extent that the
9 defense relies upon those, you know, in their Motion, and
10 they do here today, they're simply inapposite.
11 THE COURT: Okay.
12 MR. ECHOLS: And I think that's all I have. I
13 don't recall any questions left out, but I'm happy to
14 answer them if I've missed anything.
15 THE COURT: Let me look at my notes, if you don't
16 mind, real quick since I --
17 MR. ECHOLS: Sure thing, Your Honor.
18 [Pause in proceedings]
19 THE COURT: Okay. I'm -- I got your notes. Thank
20 you. Okay.
21 MR. ECHOLS: All right. Thank you, Your Honor.
22 THE COURT: You're welcome. Who -- there's more
23 argument, if you want, from either -- from either of the
24 people who filed the Motions, R.J. Reynolds or Liggett,
25 Philip Morris. Does anyone want to add to the argument the

1 Court has heard?

2 MR. ROBERTS: Thank you, Your Honor. This is Lee
3 Roberts for Philip Morris and ASM Nationwide.

4 THE COURT: Okay.

5 MR. ROBERTS: And I'd like to respond briefly to -
6 -

7 THE COURT: Yes. Okay.

8 MR. ROBERTS: -- these -- to the arguments raised
9 by plaintiffs.

10 First of all, Your Honor, with regard to the gross
11 negligence claim, --

12 THE COURT: Right.

13 MR. ROBERTS: What we're saying is it's not a
14 separate cause of action.

15 THE COURT: Yeah. The -- you --

16 MR. ROBERTS: And what they claim [indiscernible]
17 --

18 THE COURT: -- heard me ask about that, Mr.
19 Roberts.

20 MR. ROBERTS: Yes.

21 THE COURT: I struggle with that.

22 MR. ROBERTS: So, I -- under this case, it simply
23 is not a separate cause of action because it is not a
24 necessary element of any claim or defense in the case.

25 THE COURT: Right. Okay.

1 MR. ROBERTS: All they have to prove is
2 negligence. And, as far as they're putting us on notice
3 that they think they have more than gross negligence, which
4 would rise to conscious disregard under *Countrywide*, that's
5 -- if gross negligence alone is not enough, why plead it?
6 Just plead conscious disregard because that's what you have
7 to prove.

8 THE COURT: Okay.

9 MR. ROBERTS: The Court was cited to several
10 paragraphs of the Amended Complaint with regard to the time
11 frames, and I believe you were cited Paragraph 92 and 115.
12 But with regard to the pre-'69, pre-July 1st, 1969 failure
13 to warn claim, I'd ask the Court to review Paragraph 93 of
14 their Complaint.

15 THE COURT: Okay.

16 MR. ROBERTS: Which says that additionally, prior
17 to July 1, 1969, defendants failed to warn or adequately
18 warn foreseeable users of the following, including but not
19 limited to, and then they go on to list some things. Well,
20 here's the problem with the product case. You know, we've
21 cited the basic policy reason for product liability cases.
22 We have talked about the fact that you have to allege
23 product use and that you have to prove the statements that
24 are relied upon, that -- you know, that additional warnings
25 would have been heeded and, ultimately, we're not arguing

1 that they can't prove something. We're arguing that if
2 it's an element of the cause of action that they have to
3 prove, then initially it has to be plead.

4 THE COURT: Yeah. They have --

5 MR. ROBERTS: Even if it's only --

6 THE COURT: -- plead it, all the --

7 MR. ROBERTS: -- basically in --

8 THE COURT: -- elements. I understand that.

9 Yeah.

10 MR. ROBERTS: Yes.

11 So, let's talk about this pre-1969. You can't
12 have a shotgun warning which fails -- I mean, shotgun
13 pleading which fails to advise each individual defendant of
14 what the allegations are against them. You can't lump
15 together defendants that are not similarly situated. If
16 she only used L & M cigarettes, for example, from 1964 to
17 1969, then we contend that they don't state a failure to
18 warn claim or a product liability claim against Philip
19 Morris who only manufactured the Marlboro and Basic brand
20 cigarettes. And we know she could not have smoked Basic
21 brand cigarettes prior to 1969 because they didn't exist.
22 So, we're asking for more specificity. Which defendant
23 failed to warn prior to 1969? Which defendants' product
24 did you use prior to 1969? And all of this is intertwined
25 under Nevada law with the product liability case.

1 Going back to *Allison v. Merck*, Your Honor, the --
2 you know, the Court said something here that was
3 interesting, which is basically for product -- a product
4 can be unreasonably dangerous if it fails to come with
5 adequate warnings.

6 So, the warnings that existed with cigarettes
7 differed over various periods of time. And, so, in order
8 to adequately state a product liability case, we contend
9 that they need to at least allege the time frames they
10 smoked our cigarettes. This is at Headnotes 9 and 10 of
11 the *Allison* case where it talks about an unavoidably unsafe
12 vaccine may be defective if marketed without an adequate
13 warning. Accordingly, under the [indiscernible] rational,
14 even under the broadly exculpatory interpretation of
15 Comment K, liability cannot be avoided by a manufacturer in
16 the marketing of a vaccine unless the vaccine is
17 accompanied by proper direction and warnings.

18 So, we believe that we're entitled to more
19 specificity and whether or not they're alleging the pre-
20 1969 failure to warn case against Philip Morris because,
21 right now, the Complaint lumps the defendants together
22 improperly and we don't know what is being alleged against
23 us.

24 I -- with regard to the fraud claims, Your Honor,
25 under Rule 9(b), we are asking that every one of the fraud-

1 related claims be dismissed with leave to amend with more
2 specificity. And the *Rocker* case actually supports our
3 Motion. The *Rocker* case, at Headnotes 5, 6, and 7, holds
4 that, under Rule 9(b), a plaintiff must plead the
5 circumstances constituting fraud with particularity.
6 Pleading with particularity is required in order to afford
7 adequate notice to the opposing parties so that they can
8 defend against the charge and not just deny that they've
9 done anything wrong. And here's the key. To plead with
10 particularity, plaintiff must include in their Complaint
11 averments to the time, the place, the identity of the
12 parties involved, and the nature of the fraud.

13 And you can't just say here are all the bad
14 statements and bad conduct and failure to warn and
15 affirmative misrepresentations made over 66 years. You
16 have to allege which one of those they claim defrauded them
17 and the elements of fraud include reliance, and reliance
18 under the caselaw means you would have heeded the different
19 instruction, that you relied upon a particular fraudulent
20 statement to either start smoking or to continue smoking.
21 And that is completely absent from the current Complaint.

22 Plaintiffs contend that under *Rocker* that if
23 there's information that they're lacking, they can relax
24 the standard and find it in discovery. That is not what
25 *Rocker* held. At page 1193 of *Rocker*, 122 Nevada 1193, the

1 heading on that section, first complete paragraph, is:
2 Relaxed standards for particularized pleading when
3 information is in the defendants' possession.

4 THE COURT: Correct.

5 MR. ROBERTS: And that's the key. If they had a
6 plausible claim that they needed discovery in order to
7 plead with more specificity, maybe *Rocker* would give them a
8 break. However, as obvious by the Complaint, and -- they
9 know every statement which these manufacturers have made
10 and other people in the industry have made since 1954.
11 What is missing from their Complaint is which one of those
12 statements this plaintiff allegedly relied upon to start or
13 continue smoking and that she would have stopped smoking if
14 not for that statement. That information is only in the
15 plaintiffs' possession. Only the plaintiffs know which of
16 these 66 years of statements this plaintiff allegedly
17 relied upon in choosing to continue smoking and, in fact,
18 smoked. And chose to rely upon, as Mr. Kennedy said, to
19 smoke our product, not to smoke somebody else's product.
20 If I'm Philip Morris, we're talking about L & M cigarettes
21 from 1964 to 1969. They cannot state a cause of action
22 against us. So, we are asking for dismissal, Your Honor,
23 with leave to amend.

24 Briefly addressing the consumer -- the conspiracy
25 case, while generally they are correct that you don't have

1 to plead conspiracy with particularity, it's always
2 conspiracy to do something, conspiracy to commit some tort,
3 to commit some wrongful act. And, in this case, they
4 acknowledge that it's conspiracy to defraud. And,
5 therefore, they do have to plead that fraud with
6 particularity. And they cannot escape that requirement by
7 relying on the Consumer Protection Act as the type of fraud
8 and the fact that you only need a preponderance of the
9 evidence and not clear and convincing.

10 The *Betsinger* case, which they cited to the Court,
11 is not a Motion to Dismiss case. And if the Court will
12 read it, it doesn't say anything at all about a relaxed
13 requirement to plead specificity for that type of fraud
14 under Rule 9(b). It simply deals with the burden of proof
15 and I'll leave that to Mr. Kennedy to explain further
16 because he was one of the lawyers in that *Betsinger* case
17 and he's intimately aware with it. But I am -- I'm not
18 aware of anything in that case that says you don't have to
19 plead consumer protection fraud with particularity in order
20 to survive a Motion to Dismiss.

21 And, unless the Court has any questions for me,
22 I'll turn it over to Liggett and then Mr. Kennedy.

23 THE COURT: Okay. That's fine. Thank you.

24 MR. ROBERTS: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 MS. LUTHER: Your Honor, Kelly Luther again. Once
2 again, I have nothing to add to Mr. Roberts's argument.

3 THE COURT: Okay. Thank you. Mr. Kennedy.

4 MR. KENNEDY: Your Honor, for R.J. Reynolds,
5 Dennis Kennedy again. Okay.

6 I just -- I have one point, but it's got three
7 subparts to it and it's quick.

8 THE COURT: Okay.

9 MR. KENNEDY: First off, the plaintiffs and the
10 defendants agree there must be an underlying claim if you
11 have a conspiracy claim. You had to conspire to do
12 something.

13 THE COURT: To do something.

14 MR. KENNEDY: And, in this case, Mr. Echols said
15 it's to violate the Deceptive --

16 THE COURT: Deceptive --

17 MR. KENNEDY: -- Trade Practices Act.

18 Mr. Roberts is right. I was the lawyer for the
19 Betsingers in the *Betsinger* case. Contrary to what the
20 Court was told, the *Betsinger* case does not stand for the
21 proposition that you can sue for a violation of the
22 Deceptive Trade Practices Act without the purchase and sale
23 of a product. The *Betsinger* case involves a plaintiff who
24 had a contract to purchase a house and when they went to
25 close the purchase, the developer said: Sorry, we've sold

1 it to somebody else. And that was the crux of the case.
2 That case does not say, nor does it come anywhere close to
3 saying, you can violate the Deceptive Trade Practices Act
4 without there having been a purchase --

5 THE COURT: Or sale.

6 MR. KENNEDY: -- or sale of a product.

7 Lastly, the Court hit it on the head when the
8 Court asked: Wait a minute. Can you just sue anybody
9 under the Deceptive Trade Practices Act whether you bought
10 their product or not? And the plaintiffs said: Yes. In
11 our view, you sure can.

12 Well, that's a rather unique view because no case
13 anywhere says that and, of course, that can't be the case.
14 It has to involve purchase or sale of a product or a
15 service. And, as to R.J. Reynolds here, we have the
16 plaintiff admitting: Never bought it; never used it if
17 it's an R.J. Reynolds product. That's why we ask for a
18 dismissal with prejudice. That's all I have.

19 THE COURT: Okay. All right. Thank you, all,
20 very much. I really appreciate the good lawyering -- do
21 you want to respond? I guess you can, Micah, but I've read
22 it. I really, really appreciate the professionalism and
23 the good legal -- I'm going to go back -- I read
24 everything. In cases like this, I still take copious notes
25 to make sure I didn't miss anything and to fill things in.

1 So, I'm going to -- I promise you I'm going to work on it
2 this afternoon because I prefer to get the minute orders
3 out, obviously, while it's fresh in my head. So I'm going
4 to do it that way. Hopefully after lunch hour -- yeah.
5 It's the lunch hour.

6 Okay. Thank you, all. It was a pleasure having
7 you all. I'm -- thank you for participating, even though
8 it's kind of difficult this way.

9 MR. ROBERTS: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. KENNEDY: Very good. Thanks, Your Honor.

12 THE COURT: Thank you. It's fun seeing all of you
13 and I still have one case left. Right?

14 MR. ROBERTS: Appreciate your time.

15

16 PROCEEDING CONCLUDED AT 11:16 A.M.

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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.


KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER