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

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APPENDIX OF EXHIBITS TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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EXHIBIT 19

EXHIBIT 19

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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	CASE NO.: A-19-807650-C DEPT NO.: IV **PLAINTIFFS' REPLY TO DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S OPPOSITION TO MOTION TO RECONSIDER ORDER GRANTING MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(b)(5)**

CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; and ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS, a domestic corporation; and ROE BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

I. INTRODUCTION

A victim can be directly harmed by a wrongdoer without having bought the wrongdoer's product. NRS 41.600 contemplates that scenario in its plain language, caselaw has interpreted it as such, and this case exemplifies it. R.J. Reynolds produced and spread false information that caused Sandra Camacho to believe cigarettes are safer than they are. This fraudulent representation caused her to begin and continue smoking until her larynx became cancerous. She was directly harmed by R.J. Reynolds' prominent participation in the tobacco industry's conspiracy to convince the public that cigarettes do not cause cancer. As such, Mrs. Camacho is a victim with statutory standing to sue R.J. Reynolds—not for its products, but for its deception regarding cigarettes' health risks.

The crux of R.J. Reynolds' argument is that direct harm can only arise from the purchase or use of the wrongdoer's product. Opp. at 8. Since civil conspiracy is a derivative claim, the upshot is that when several corporations conspire to defraud the public as a united front with false information about a ***common*** product, consumers can never hold the conspirators accountable under the NDTPA, only the manufacturer.

This twisted position flouts the very purpose of the NDTPA and NRS 41.600 by eviscerating the function of these remedial statutes.

R.J. Reynolds' reasoning (1) sets up a strawman argument by mischaracterizing the Nevada Supreme Court's decision in *Fairway Chevrolet Co. v. Kelley*, 134 Nev. 935, 429 P.3d 663, 2018 WL 5906906 (2018) (unpublished); (2) disregards the Supreme Court's admonition in *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 232 P.3d 433 (2010) by conflating a common law fraud claim with a statutory claim under the NDTPA; and (3) betrays the legislative intent to create a private cause of consumer action that does not rely on privity.

R.J. Reynolds' opposition improperly relies upon EDCR 2.24 for the timing to file Plaintiffs' motion for reconsideration. However, as a local rule, EDCR 2.24 is inferior to the Nevada Rules of Civil Procedure, as stated in NRCP 83(a). *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 583, 245 P.3d 1190, 1193 (2010) ("NRCP 83 prohibits local rules that are inconsistent with the NRCP. . . ."). Thus, the proper timing for reconsideration is, as stated within Plaintiffs' motion, any time prior to the entry of the final judgment, as allowed by NRCP 54(b). Therefore, Plaintiffs respectfully request that this Court grant reconsideration.

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I. LEGAL ARGUMENT

A. R.J. REYNOLDS' RELIANCE ON *FAIRWAY* IS A STRAW MAN ARGUMENT.

Fairway's plaintiff did not suffer any harm from the defendant's conduct and admitted so. Fairway Opening Brief ("FOB") at 10–12, which is attached as **Exhibit 1**. He was a consumer protection vigilante, who sued the defendant for a 30-second TV commercial that he believed was unlawful. *Id.* at 1–2. In contrast, Mrs. Camacho was influenced and misled by decades of misinformation created and disseminated by R.J. Reynolds and its conspirators. **Exhibit 2**, at 6, ¶ 23–58, ¶ 24. As a direct result of these false marketing and public relations efforts, Mrs. Camacho believed cigarettes to be safer than they were and became addicted to smoking, which caused her laryngeal cancer. **Exhibit 2**, at 48–50. To argue that these two plaintiffs are analogous is a flagrant misstatement.

The Supreme Court's unpublished opinion in *Fairway* simply holds that when a plaintiff does not allege harm at the hand of the defendant, NRS 41.600 provides no standing. *Id.* at *1. The Court did not require the plaintiff to have bought or used the defendant's product. *Id.* Nor did the Court impose any definition of "victim" that is narrower than the ordinary usage. *Id.*

Importantly, the successful appellant in *Fairway* relied heavily on three federal cases that addressed the same issue of standing at bar in this proceeding: *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651 (D. Nev. 2009); *S. Serv. Corp. v. Excel Bldg. Servs.*,

Inc., 617 F. Supp. 2d 1097 (D. Nev. 2007); and *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145 (9th Cir. 2011). **Exhibit 1**, at 15. All three cases interpreted NRS 41.600 to merely require the defendant to have caused harm to the plaintiff, but none of these cases support R.J. Reynolds' argument that the harm must arise from the purchase or use of a defendant's product. Quite the opposite, *S. Serv. Corp* and *Del Webb Communities* staunchly guarded a broad and ordinary definition of "victim" against any narrow judicial construction. *S. Serv. Corp*, 617 F. Supp. 2d at 1100; *Del Webb Communities*, 652 F.3d at 1152–1153. Having contemplated these cases, *Fairway* did not reject or modify the federal courts' reading of NRS 41.600. Instead, the Court ruled consistently with the federal courts by citing BLACK'S LAW DICTIONARY and MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY for the broad and ordinary definition of "victim": "The undisputed facts of this case demonstrate that respondent was not a 'victim' of consumer fraud under any ***sensible*** definition of that term, as the definition of "victim" connotes ***some sort*** of harm being inflicted on the "victim." *See, e.g.*, BLACK'S LAW DICTIONARY, 1798 (10th ed. 2014) (defining "victim" as "[a] person harmed by a crime, tort, or other wrong"); MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, 1394 (11th ed. 2007) (defining "victim" as "one that is injured, destroyed, or sacrificed under any of various conditions" and "***one that is tricked or duped***"). *Fairway*, 2018 WL 5906906, at *1 (emphases added).

If these are the meter-stick definitions of "victim," then the Supreme Court could not have intended to deprive a victim of her standing to sue when she was tricked into

using a harmful product, simply because the trickster did not make the product. R.J. Reynolds' misconduct at issue here is not a false claim in its advertising about its own product, but a decades-long false narrative it perpetuated with its conspirators about a common product from which they all profited.

Plaintiffs' Amended Complaint detailed how R.J. Reynolds was involved in the conspiracy to deceive American consumers, like Mrs. Camacho, from the very beginning. **Exhibit 2**, 6–19 (The Frank Statement was signed in 1954 by R.J. Reynolds' president). Plaintiffs not only pointed to R.J. Reynolds' misconduct through the Tobacco Industry Research Committee and the Tobacco Institute, **Exhibit 2**, at 11, ¶ 42; 16, ¶ 70, but also provided specific false statements from R.J. Reynolds, such as its CEO's 1982 claim that "there is absolutely no proof that cigarettes are addictive." **Exhibit 2**, at 35, ¶ 155(g). Plaintiffs even included a photograph containing R.J. Reynolds' CEO, James W. Johnston (third from the right), from a 1994 Congressional hearing, where he denied that cigarettes are addictive or disease-causing. **Exhibit 2**, at 17, ¶ 74. The totality of such false representations over decades is what led Mrs. Camacho to use, and become addicted to, cigarettes, which caused her laryngeal cancer. This causal link was clearly alleged by the Plaintiff's Amended Complaint. **Exhibit 2**, at 1 PA 1–55.

Juxtaposed against the *Fairway* plaintiff's mere indignation, Mrs. Camacho's harm in this case is actual, substantial, and directly caused by R.J. Reynolds' deception.

She is, in every "sensible" definition of the word, a "victim." Therefore, Plaintiffs have standing to sue R.J. Reynolds under NRS 41.600.

B. R.J. REYNOLDS MISTAKENLY CONFLATES A STATUTORY CONSUMER FRAUD CLAIM WITH A COMMON LAW FRAUD CLAIM.

The claim at issue in this case is not a common law fraud or misrepresentation claim. **Exhibit 2**, at 47. It is a statutory consumer fraud claim brought under the NDTPA and NRS 41.600. R.J. Reynolds' failure to recognize the difference is fatal to its argument. Both *Moretti v. Wyeth, Inc.*, 2009 U.S. Dist. LEXIS 29550, 2009 WL 749532 (D. Nev. Mar. 20, 2009) and *Baymiller v. Ranbaxy Pharmaceuticals, Inc.*, 894 F. Supp.2d 1302 (D. Nev. 2012) are product liability cases where the plaintiff sought relief via the common law claims of fraud and misrepresentation. These common law claims require the plaintiff to prove that the defendant owed him a duty of care. *Moretti*, 2009 WL 749532, at *3. This duty, "at a minimum, required some form of relationship between the parties." *Baymiller*, 894 F. Supp.2d at 1309. In a negligent misrepresentation claim, this duty must arise from a business transaction. *Id.* In no uncertain language, the federal district court's decision in these cases turned on whether the plaintiff and defendant are connected by privity: "In *Kite*, this Court found that negligent misrepresentation was only available if a plaintiff suffered pecuniary losses in the context of a business transaction. *Id*. As such, this Court's previous reasoning is in line with *Moretti* and *Foster*. Thus, this Court finds that Glaxo does not have a duty to warn or otherwise disseminate information about the risks associated with their generic

competitors' drugs because Mary Baymiller did not purchase or ingest a Glaxo product. As such, Mary Baymiller did not have a relationship with Glaxo and Glaxo did not owe Mary Baymiller any duty to warn. Accordingly, the Court grants Glaxo's motion for summary judgment on claim 6 for fraud and negligent misrepresentation." *Baymiller*, 894 F. Supp. 2d at 1311.

A statutory consumer fraud claim under the NDTPA is vastly different. First, the NDTPA was enacted to "provide consumers with a cause of action that was easier to establish than common law fraud." *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 232 P.3d 433, 435 (2010). More importantly, NRS 41.600 was enacted precisely because the Legislature wished to give consumer victims the right to sue without having to establish privity. *See* Assembly History, A.B. 319, 58th Session (1975) ("A.B. 319 (chapter 629) establishes consumer fraud as a separate cause of action apart from breach of contract or other causes of action in commercial dealings."). This legislative intent is reflected in the plain language of the statute: "4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction." NRS 41.600(4) (1975). That provision remained unchanged through ten legislative amendments. *See* NRS 41.600(4) (2021).

Thus, the "bedrock principle" R.J. Reynolds relies on in its Opposition has no bearing on this statutory consumer fraud claim. Opp. at 3. To the contrary, this Court must "look to the language of the statute itself to determine a party's [standing]." *Fergason v. Las Vegas Metro. Police Dep't*, 131 Nev. 939, 952, 364 P.3d 592, 600

(2015). Since NRS 41.600 does not limit standing to purchasers or users of a defendant's product, this Court must afford the statute "liberal construction to accomplish its beneficial intent." *Poole v. Nevada Auto Dealership Investments, LLC*, 135 Nev. 280, 449 P.3d 479, 485 (Ct. App. 2019) (citing *Welfare Div. of State Dept. of Health, Welfare & Rehab. v. Washoe County Welfare Dept.*, 88 Nev. 635, 637, 503 P.2d 457, 458 (1972)). This Court must not impose a greater constitutional requirement for standing beyond the language of the statute. *See Fergason*, 131 Nev. at 952, 364 P.3d 592 at 600. Thus, the Court should reject R.J. Reynolds' attempts to extinguish Plaintiff's NDTPA claim.

C. R.J. REYNOLDS' INTERPRETATION BETRAYS THE PURPOSE OF THE NDTPA AND NRS 41.600.

By asking this Court to impose the requirements of common law fraud onto a NDTPA claim, R.J. Reynolds seeks to nullify the NDTPA's remedial purpose. The Court of Appeals in *Poole* faced a similar request and rejected it with persuasive reasoning. The respondent in *Poole* asked the court to construe the word "knowingly" in the NDTPA as to require specific intent to defraud, which is the common law standard. *Id.* at 483. The Court of Appeals, however, chose to define "knowingly" as to require only general intent because to do otherwise would "render NDTPA and common law fraud claims redundant" and "disserve the NDTPA's remedial purpose, and discourage claims by forcing parties to clear a significantly higher bar." *Id.* at 485. Analyzing other jurisdictions' treatment of the same issue, the Court of Appeals

recognized that several states favored the respondent's reading. *Id.* at 484–485. But, the Court of Appeals held steadfast: "We conclude, however, that our interpretation better serves the NDTPA's remedial purpose. Because the NDTPA is a remedial statutory scheme, *Sellinger v. Freeway Mobile Home Sales, Inc.*, 110 Ariz. 573, 521 P.2d 1119, 1122 (1974) (recognizing that remedial statutes are those that 'are designed to redress existing grievances and introduce regulations conducive to the public good'), we 'afford[ ] [it] liberal construction to accomplish its beneficial intent.'" *Id.* at 485.

R.J. Reynolds' proposed reading would deny standing to the very victim that the NDTPA was enacted to protect. If a defendant corporation harmed a consumer through fraud, it is liable under the NDTPA, regardless of its liability under common law. Mrs. Camacho's cancer was caused by smoking, which was caused by the misinformation campaign that spanned most of her life. The depth of the deception was possible because R.J. Reynolds, like the other tobacco companies, conspired to present a united front. That causal link between R.J. Reynolds and Mrs. Camacho's injury exists without her having used R.J. Reynolds' product.

This lawsuit is unique in the scale, complexity, and length of deception perpetrated by R.J. Reynolds and its conspirators. As Judge Gladys Kessler wrote in her 1,683-page opinion finding R.J. Reynolds and other cigarette makers in violation of civil racketeering laws:

> It is about an industry, and in particular these Defendants, that survives, and profits, from selling a highly addictive product which causes diseases that lead to a staggering number of deaths per year, an immeasurable

> amount of human suffering and economic loss, and a profound burden on our national health care system. Defendants have known many of these facts for at least 50 years or more. Despite that knowledge, they have consistently, repeatedly, and with enormous skill and sophistication, denied these facts to the public, to the Government, and to the public health community.

United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1, 28, 2006 U.S. Dist. LEXIS 61412, 18–19 (D.D.C. Aug. 17, 2006). Common law fraud claims may be unequipped to address this type of fraudulent sophistication. But, the NDTPA closed that loophole, and that is the remedial purpose this Court should protect and enforce. Therefore, the Court should interpret Plaintiffs' NDTPA claim consistent with *Poole* and the various aligned cases that confirm the remedial purpose of these statutes.

D. R.J. REYNOLDS' TIMING ARGUMENT FOR RECONSIDERATION IS WITHOUT MERIT.

R.J. Reynolds' opposition improperly relies upon EDCR 2.24 for the timing to file Plaintiffs' motion for reconsideration. However, as a local rule, EDCR 2.24 is inferior to the Nevada Rules of Civil Procedure, as stated in NRCP 83(a). *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 583, 245 P.3d 1190, 1193 (2010) ("NRCP 83 prohibits local rules that are inconsistent with the NRCP. . . ."). Thus, the proper timing for reconsideration is, as stated within Plaintiffs' motion, any time prior to the entry of the final judgment, as allowed by NRCP 54(b). Accordingly, Plaintiffs are not bound by the 14-day limit in EDCR. As a consequence, this Court is not powerless to grant reconsideration, even though the Court's prior rulings may have been decided by a predecessor Judge. NRCP 63 addresses the role of a successor judge when the prior

judge is unable to proceed. The Nevada Supreme Court has addressed Rule 63 in *Smith's Food King v. Hornwood*, 108 Nev. 666, 668, 836 P.2d 1241, 1242 (1992), where the Court held that "a judge who replaces the original trial judge after the original judge has filed findings of fact and conclusions of law has the discretion to grant a new trial." In situations prior to the entry of a final judgment, the Supreme Court has confirmed the ability of parties to request reconsideration, even when a case is transferred from one District Judge to another. *See In re Manhattan W. Mechanic's Lien Litig.*, 131 Nev. 702, 707 n.3, 359 P.3d 125, 128 n.3 (2015) ("[The petitioner] argues that the district court erred in reconsidering the motion. [The petitioner's] argument is without merit because NRCP 54(b) permits the district court to revise a judgment that adjudicates the rights of less than all the parties until it enters judgment adjudicating the rights of all the parties."). Therefore, the Court should reject R.J. Reynolds' timing argument regarding Plaintiffs' motion for reconsideration.

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II. CONCLUSION

For the above reasons, this Court should grant reconsideration and reinstate Plaintiffs' NDTPA claim. Since R.J. Reynolds concedes that Plaintiffs' civil conspiracy claim should be reinstated if the NDTPA claim is viable, Opp. at 12-13, this Court should also reinstate the civil conspiracy claim.

DATED 3rd day of August 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of August 2021 I caused to be served a true and correct copy of the **PLAINTIFFS' REPLY TO DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S OPPOSITION TO MOTION TO RECONSIDER ORDER GRANTING MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(b)(5)** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

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Exhibit 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

FAIRWAY CHEVROLET COMPANY,

Appellant,

vs.

ALLEN KELLEY,

Respondent.

Supreme Court Case No.: 72444

District Court Case No.:
A-13-674480-C

FAIRWAY CHEVROLET COMPANY'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1. Appellant Fairway Chevrolet Company ("Fairway") is a Nevada corporation.

2. William R. Urga, Esq. and L. Christopher Rose, Esq. of Jolley Urga Woodbury Holthus & Rose represented Fairway in the district court and have appeared in this Court.

3. No publicly traded company has any interest in this appeal.

DATED this 26th day of September, 2017.

JOLLEY URGA WOODBURY HOLTHUS & ROSE

/s/ L. Christopher Rose

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ADDENDUM A:

NRS 41.600
NRS 482.351
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NRS 598.0915 -.0925
NAC 482.100 -.250

TABLE OF AUTHORITIES

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Constitutional Provisions

Statutes and Other Authorites

Regulations

TABLE OF ABBREVIATIONS

App.	The Joint Appendix filed August 25, 2017
DMV	The Nevada Department of Motor Vehicles
DTPA	Nevada's Deceptive Trade Practices Act, NRS 598.0903 -.9694
Ex.	Trial exhibit
Fairway	Defendant/Appellant Fairway Chevrolet Company
FFCL #1	The district court's Findings of Fact and Conclusions of Law on Liability (First) Phase of Trial, 13 App. 2422-36
FFCL #2	The district court's Findings of Fact and Conclusions of Law on Remedy (Second) Phase of Bifurcated Trial and Mandatory Injunction, 15 App. 2784-93
FFCL #3	The district court's Amended Findings of Fact and Conclusions of Law on Second Remedy Phase of Trial; and, Amended Mandatory Permanent Injunction, 20 App. 3911-30
Kelley	Plaintiff/Respondent Allen Kelley
McCarthy	McCarthy Advertising Group, L.P. dba McCarthy Advertising, Fairway's former advertising agency
Mr. Heinrich	Greg Heinrich, Fairway's owner and president
Mr. Hoisington	Terry Hoisington, Fairway's general manager
Mr. McCarthy	Tim McCarthy, owner and president of McCarthy Advertising
Phase 1	The first phase of the trial in district court to determine liability only, August 10-13, 2015
Phase 2	The second phase of the trial in district court to determine remedy, if any, December 11, 2015

JURISDICTIONAL STATEMENT

Fairway appeals the permanent mandatory injunction, the order awarding attorneys' fees and costs, and the final judgment and permanent injunction. NRAP 3A(a), NRAP 3A(b)(1), NRAP 3A(b)(3) and NRAP 3A(b)(8). Allen Kelley ("Kelley") filed both the permanent mandatory injunction and order granting attorneys' fees on January 18, 2017, and gave notice of entry that same day. 20 App. 3931-65. Kelley filed the final judgment and permanent injunction on January 23, 2017 and served notice of entry on January 24, 2017. 20 App. 3970-76. Fairway timely filed its notice of appeal on February 17, 2017. 20 App. 3981-83.

ROUTING STATEMENT

This case involves several issues of first impression in Nevada arising from Nevada's consumer fraud statute, NRS 41.600, and Nevada's vehicle dealer advertising statute, NRS 482.351(1). The principal issues include the requirement that a person be a "victim" to bring a consumer fraud claim and the interpretation and enforcement of NRS 482.351(1). The Nevada Legislature has stated that the distribution and sale of motor vehicles is a matter of public interest and the public welfare. NRS 482.318. This matter is therefore presumptively retained by the Supreme Court under NRAP 17(a)(14) as involving issues of statewide public importance.

This case is also presumptively retained by the Supreme Court under NRAP 17(a)(13) because it raises a question of first impression under the United States and Nevada Constitutions. The district court entered a permanent injunction restricting Fairway's ability to engage in advertising, raising the issue of whether the injunction violates Fairway's rights under the First Amendment.

This case also falls under NRAP 17(b)(7) for assignment to the Court of Appeals as the judgment includes a permanent mandatory injunction. The injunction was entered, however, based on statutes and issues that are of statewide public importance and implicate Fairway's constitutional rights. The Nevada Supreme Court should therefore retain this case under NRAP 17(a)(13) and (14).

ISSUES PRESENTED FOR REVIEW

1) Victim: Only a "victim" may bring a claim for consumer fraud under NRS 41.600(1). Kelley sued seeking purely injunctive relief and attorneys' fees despite admittedly suffering no injury, harm or damages. He spent years watching vehicle dealer advertisements and filing lawsuits, and the district court found Kelley was not misled and was well versed in advertising law before seeing Fairway's commercial. Did the district court err in finding that Kelley was a "victim" of consumer fraud?

2) Intent to mislead: Under NRS 482.351(1), a vehicle dealer may be liable if it intentionally publishes an advertisement that is materially misleading or

inaccurate. Before trial, the district court correctly stated that this statute required proof of intent to mislead. The district court later found that Fairway did not act with intent to defraud, deceive or mislead. Did the district court err when it nonetheless found that Fairway violated NRS 482.351(1) simply by publishing an advertisement?

3) Specific versus general statute: NRS 482.351(1) is the only statute that specifically addresses vehicle dealer advertising. Under Nevada law, a specific statute governs over a general statute. The district court relied on NRS 598.0923(3), which prohibits knowingly violating a state or federal statute or regulation but which does not specifically relate to vehicle dealers or advertising. Did the district court err in relying on a general statute that conflicts with NRS 482.351(1), Nevada's vehicle dealer advertising statute?

4) Permanent mandatory injunction: Permanent injunctions are to prevent future harm or injury and to enforce legal obligations. Here, Kelley admitted he suffered no harm or injury. Yet, the district court entered a permanent mandatory injunction requiring Fairway to adopt a written advertising policy and prohibiting Fairway from advertising without prior owner review, neither of which are required by law. Did the district court err in granting a permanent mandatory injunction when: a) an injunction serves no purpose and provides no protection for Kelley; b) Kelley did not satisfy the prerequisites for injunctive relief; c) the

injunction created new obligations that do not exist at law; d) Kelley had unclean hands; and e) the district court had no supporting evidence, relied on speculation and committed other evidentiary errors?

5) Freedom of speech: Advertising is speech protected by the constitutions of the United States and Nevada. The district court entered a permanent mandatory injunction enjoining Fairway from certain advertising unless its owner first reviews each advertisement or designates someone to do so. Does the injunction violate Fairway's constitutional rights?

INTRODUCTION

This dispute involves a television commercial advertising a 9.9% interest rate for qualified buyers financing the purchase of a new 2012 Chevrolet. Fairway's advertising agency, McCarthy, created the advertisement. Fairway was especially clear with McCarthy that the commercial needed a large, prominent disclaimer that approved credit was required and not all buyers would qualify. But after Fairway approved the written script and disclaimer, McCarthy aired a commercial with a small disclaimer nothing like what Fairway approved. And it did so without Fairway's knowledge.

Kelley considered himself to be a guardian of the public. He spent years watching for dealer advertisements and filing multiple class action lawsuits. Well versed in advertising laws and litigation, Kelley knew that every dealer required a credit check and could not guarantee financing. Not only had Kelley previously decided his family should not buy a vehicle from Fairway, he and his wife also testified they could not afford and did not intend to buy a vehicle *from anyone* in 2012. Yet, when he saw Fairway's advertisement in December of that year, Kelley quickly pounced on the opportunity to file his *seventh* advertising class action against a vehicle dealer. Kelley conceded he suffered no harm or damages from Fairway's advertisement and he was not aware of anyone who did. Despite that, he sued to get justice and satisfaction.

The district court found that Kelley was not "deluded and duped" by the advertisement and that he was, exactly as Fairway maintained, "pretty well-versed in the law." The district court also found that Fairway did not act with intent to defraud, deceive or mislead. But after expressing confusion over which statutes applied and how to interpret them, the district court followed Kelley down a winding maze of misconstrued, inapplicable, and conflicting statutes and regulations. The result of this misguided journey was a ruling holding Fairway strictly liable for violating a statute that requires intent to mislead.

On top of these errors, the district court then entered the most severe remedy available – a mandatory permanent injunction. Such an extraordinary remedy serves no purpose for Kelley, who admitted he suffered no harm or injury. The injunction requires Fairway to adopt a written advertising policy and enjoins it from publishing advertisements without prior owner review. Neither mandate is based on any legal obligation, and the injunction infringes on Fairway's constitutional rights. Rather than protecting Kelley from future harm, which he undisputedly is not at risk of suffering, the injunction impermissibly punishes Fairway for a two second portion of a 30-second television commercial it used on one occasion nearly five years ago.

This appeal followed.

STATEMENT OF THE CASE

This is an appeal from a judgment and permanent mandatory injunction entered after a bench trial before the Honorable Kenneth C. Cory, District Judge of the Eighth Judicial District Court.

Although filed as a class action, the district court denied class certification and it proceeded with Kelley as a plaintiff individually. The district court tried the case in two phases. It found Fairway liable in Phase 1, and granted injunctive relief in Phase 2. The district court also awarded Kelley $385,021.25 in attorneys' fees and $11,567.40 in costs. Fairway posted a bond and the district court issued a stay of the judgment and injunction pending appeal.

STATEMENT OF THE FACTS

Fairway Began Doing Business in 1969

Fairway is a Nevada corporation that was formed in 1969. 9 App. 1568. Founded by William Heinrich, the Heinrich family has owned and operated Fairway for three generations. *Id.*, 14 App. 2702-03. William's son Greg Heinrich has worked at Fairway since 1969, is the current owner, and has served as Fairway's president since 1989. 9 App. 1568. Fairway has always prided itself on its high standards in doing business and striving to put customers' needs first. *Id.*, 14 App. 2702-04.

Kelley Begins Searching for Dealer Advertisements

Kelley met an attorney in approximately 2000 who was a neighbor. 8 App. 1376. Kelley was told that vehicle dealership advertising promising guaranteed financing was improper and that if Kelley saw such an advertisement, a lawsuit could be filed against the dealer. 8 App. 1377-79, 14 App. 2616. Kelley was asked to notify the attorney of such advertisements.[1] *Id.* Kelley then began watching for dealership advertisements and reporting to the attorney for a decision about whether to file suit. *Id.*

According to Kelley, his discussions with the attorney made him aware that there is no such thing as "guaranteed financing". 14 App. 2617.

Kelley's Six Prior Class Action Lawsuits Over Dealership Advertisements

Kelley eventually filed six class action lawsuits against vehicle dealers over advertising. 8 App. 1360. The first two lawsuits were against Bill Heard Chevrolet in 2008, the third was against World Kia, and the fourth lawsuit against United Nissan. *Id.* at 1381-84.

Kelley's lawsuits all pertained to advertisements with alleged guaranteed financing. *Id.* at 1360. None of the lawsuits involved an actual transaction, as Kelley had not bought a vehicle since 2003, five years before his first suit. 9 App.

[1] Nevada Revised Statute 41.600 allows a plaintiff's attorney to recover attorneys' fees and costs.

1653. Kelley testified he brought these suits because he felt a responsibility as a guardian of the public, and that if he did not bring suit he did not know who else would. 8 App. 1384. According to Kelley, as a guardian of the public, he felt it was his job to go out and get justice. *Id.* at 1372.

In addition to these four lawsuits, Kelley sued Fairway in 2008 and again in 2009. 1 App. 31, 45. Prior to discovery or adjudication, Fairway settled those lawsuits through settlement agreements where it denied any liability or wrongdoing. 13 App. 2319, 2333. Fairway received a complete release from any liability based on the facts, transactions and occurrences at issue in the 2008 and 2009 lawsuits.[2] *Id.* at 2316-17, 2331-32.

In 2010, Kelley Decides His Family Should Not Buy from Fairway as He Did Not Trust Fairway because of its Advertisements

After suing it twice, Kelley did not have a favorable opinion of Fairway. 3 App. 286. In fact, in 2010, when Kelley's daughter was looking to buy a Chevrolet Camaro, he told her not to go to Fairway because he did not trust Fairway. *Id.* at

[2] Based on the valid, binding release agreements, Fairway objected to introduction of evidence at trial of the 2008 and 2009 lawsuits and the advertisements at issue in them. 13 App. 2291-2339. The district court entered an order excluding evidence of the 2008 and 2009 lawsuits and did not allow the prior advertisements into evidence in Phase 1 or Phase 2. 15 App. 2781-83, 11 App. 1890, 14 App. 2518. It admitted redacted versions of the two prior settlement agreements (again, over Fairway's objection) although it agreed with Fairway that it bought its peace and the two prior advertisements should not be relitigated. 14 App. 2544-45. Despite these rulings, the district court violated its own order and relied on both the prior lawsuits and prior advertisements, referencing them extensively in FFCL #2 and #3 to grant injunctive relief. 15 App. 2791, 20 App. 3917-3929.

289-90. Kelley suggested she go to Ed Bozarth Chevrolet because Kelley had not seen it running "stupid ads" like Fairway's. *Id.*

Kelley and His Wife Had No Intent or Ability to Buy a Vehicle in 2012 because they Were Trying to Save their House from Foreclosure

Kelley testified in deposition and at trial that he decided not to buy a car in the 2011, 2012 and 2013 time frame because he and his wife were trying to save their house from foreclosure. 14 App. 2664. They decided they were not buying "anything" during those years. *See id.* Kelley's wife, Dr. Ashley Kelley, likewise testified that she and her husband's financial struggles were severe from 2008 to 2013. 12 App. 2175-77. She agreed that because they were trying to keep their house, they could not afford anything, including purchasing vehicles, in 2011, 2012 and 2013. *Id.* at 2177.

In December 2012, GM Financial Offers a Maximum 9.9% Interest Rate to All Qualified Buyers

In December 2012, GM Financial, the finance division of General Motors, offered a year-end special incentive for a maximum 9.9% interest rate on the purchase and financing of any new 2012 Chevrolet. 9 App. 1585. During a difficult economic time, this was a significant incentive. 10 App. 1753. Lenders normally classified buyers in one of 17 credit tiers, sometimes requiring interest rates of 12%, 20% or higher. *Id.* at 1753, 1759. If approved for financing, this

incentive removed the credit tiers and placed all buyers on a level playing field with a capped, or maximum, interest rate of 9.9%. *Id.* at 1802.

Fairway's Advertising Agency, McCarthy, Creates a Draft Advertisement Based on the 9.9% Incentive

Terry Hoisington, Fairway's general manager, contacted McCarthy, Fairway's advertising agency, to create an advertisement. *Id.* at 1803. McCarthy had worked with Fairway since 2007 developing radio, internet and television advertisements. 10 App. 1799, 9 App. 1579. Fairway hired McCarthy because it specialized in automobile dealership advertising nationwide. 10 App. 1800. Tim McCarthy testified that McCarthy was responsible for Fairway's compliance with DMV, federal and state guidelines for advertising. 12 App. 2097, 2116-17. McCarthy also agreed by contract to produce advertising within applicable regulations. 9 App. 1581.

McCarthy created a written version of a television commercial for the 9.9% incentive called a broadcast copy. 10 App. 1673. The broadcast copy stated the minimum 500 credit score required, and then stated "EVERYONE GETS APPROVED AT 9.9 PERCENT" both in the written and audio portions of the advertisement. *Id.* The broadcast copy included several different disclaimers, but no disclaimer addressed the fact that the 9.9% interest rate was available only to those who qualified for financing. *Id.*

Fairway Adds a Disclaimer to the Advertisement Stating that Approved Credit is Required and Not All Buyers Will Qualify

Mr. Hoisington was aware of DMV advertising regulation NAC 482.180(3) relating to advertising financing. 14 App. 2685-86. He therefore rejected McCarthy's broadcast copy, and revised it to add a disclaimer stating that a buyer must have approved credit to receive the 9.9% rate. 10 App. 1804-05, 1807-08. Mr. Hoisington specifically told McCarthy that the commercial needed to convey that not all buyers would qualify. *Id.* at 1808. Mr. Hoisington wanted a disclaimer to ensure it advertised a capped, maximum interest rate. 14 App. 2685-86.

Mr. Hoisington testified that it was paramount that the disclaimer be large. 10 App. 1765. The advertised 9.9% interest rate was supposed to be full screen and the disclaimer was to be similarly large. *Id.* at 1766-67. Mr. Hoisington's intent was to make the disclaimer very clear that not all would qualify for financing. *Id.* at 1770. McCarthy's revised broadcast copy included the disclaimer in large letters similar to the advertised 9.9% incentive:

> MAKE THESE GRAPHICS FULL SCREEN
> KILL LETTERBOX CG: EVERYONE GETS APPROVED AT 9.9%
> DISCLAIMER: Special Rate Secured through GM Financial. With Approved Credit. Not All Buyers will Qualify. Must have at least a 500 Credit Score. See Dealer for Full Details.

9 App. 1586.

According to Mr. Hoisington, the size of the font displayed in the broadcast copy was supposed to be representative of the size of the font in the final commercial. 10 App. 1766-67. When he approved the disclaimer, Mr. Hoisington understood that there would be enlarged letters as displayed in the broadcast copy beginning from "Everyone Gets Approved" throughout the disclaimer, including the words "With Approved Credit. Not All Buyers will Qualify." 14 App. 2683-84. With this disclaimer, Mr. Hoisington believed the advertisement was accurate and complied with NAC 482.180(3). 10 App. 1811.

Without Fairway's Knowledge or Permission, McCarthy Drastically Changes the Disclaimer in the Final Commercial

When McCarthy produced the final television commercial, it radically changed the disclaimer Mr. Hoisington added. Ex. 6A[3]. Instead of a large, legible disclaimer in bold letters, the disclaimer was much smaller and hard to read. *Id.* Also added were the letters "APR" followed by an exclamation point. *Id.* It was drastically different from what Mr. Hoisington approved. *Id.*

Mr. Hoisington did not see or approve the final television commercial before it aired. 10 App. 1749. He testified the disclaimer should have been much larger and he did not expect a small disclaimer at the bottom. 14 App. 2683-86. In fact, Mr. Hoisington previously had a telephone call with McCarthy specifically

[3] Exhibit 6A is a compact disc of the television commercial. Fairway filed a motion requesting to have the original exhibit transmitted to this Court.

instructing McCarthy to make the disclaimer large and prominent and one cohesive statement with the advertised rate. *Id.* at 2685.

Still, the website PreApprovedFast.com was shown in large letters for 18 seconds of the 30 second commercial to tell consumers they needed credit approval. Ex. 6A. This site allowed a consumer to submit a credit application and to know the type of vehicle he or she could qualify for before going to Fairway. 14 App. 2686-87. Customers were audibly invited to call or register on line. Ex. 6A. Further, the commercial stated both audibly and in large, bold letters that a minimum 500 credit score was required. *Id.*

Kelley Sees the Advertisement and Visits Fairway Posing as A Buyer

Kelley saw Fairway's television commercial in December 2012. 8 App. 1364. Significantly, Kelley testified he did not think there was anything wrong with the advertisement unless Fairway's intention was to deceive customers.[4] 14 App. 2645-46. Although he did not trust Fairway, told his daughter not to buy a car from Fairway, and had no intent or ability to buy a vehicle because his house was in foreclosure, Kelley decided to visit Fairway. 9 App. 1565. Kelley picked the most expensive Chevrolet Suburban at Fairway's store, a luxury model priced at over $60,000. *Id.*

[4] This testimony is consistent with the correct interpretation of NRS 482.351(1), which is that it requires "intent to mislead."

Kelley now claimed that when he saw Fairway's television commercial, he thought there would be no credit check. 8 App. 1387. He equated no credit check to be guaranteed financing. *Id.*, 14 App. 2648. Kelley also claimed the advertisement meant that *anyone* should have been approved to finance *any number* of vehicles (even ten) they wanted at *any price*. 8 App. 1384-87.

In contradiction to Kelley's claims and testimony, Kelley also testified and admitted:

- he knew from his attorney prior to his first lawsuit against Bill Heard Chevrolet in 2008 that there was no such thing as "guaranteed financing." 8 App. 1378, 14 App. 2617.
- he was fully aware lenders did not finance anyone without a credit check because he alleged as much in his complaint against Bill Heard Chevrolet in 2008. 14 App. 2653.
- he knew Fairway's 9.9% advertisement required at least a credit score of 500, and that Fairway could only determine a credit score by running a credit check. 8 App. 1388.
- he purposefully left his wife off his credit application because her credit score was less than 500 in December 2012. *Id.* at 1394-95, 1398, 1425-27.

Kelley's credit application to Fairway showed $2,900 in monthly income and a monthly house payment of $7,400 based on loans totaling $1.575 million. 9

App. 1597. Kelley could not qualify to finance the Suburban he selected *regardless* of interest rate. *Id.* at 1565.

Seven Days after his Visit to Fairway, Kelley Files a Class Action Lawsuit

Kelley testified that he did not suffer harm or damages of any kind as a result of Fairway's advertisement or his visit to Fairway. 8 App. 1416. Kelley also testified he does not ever plan on going to Fairway in the future to purchase a vehicle. *Id.* Nonetheless, on January 4, 2013, seven days after visiting Fairway, Kelley filed suit. 1 App. 1.

SUMMARY OF THE ARGUMENT

The judgment and permanent mandatory injunction should be reversed based on any one of several grounds. First, Kelley was not a "victim" of consumer fraud under NRS 41.600(1) because he admittedly suffered no harm, injury, or damages of any kind. In fact, he knew long before seeing Fairway's commercial that dealers always perform a credit check and do not guarantee financing.

Second, the district court misinterpreted NRS 482.351(1) – the only statute that governs vehicle dealer advertising in Nevada. The district court correctly ruled before trial that NRS 482.351(1) required "intent to mislead." But after finding that Fairway did not act with intent to mislead, the district court decided only intent to publish was needed. This interpretation contradicted the plain language of the statute, the Legislature's declared purpose for it, and resulted in

strict liability. Then the district court misapplied its own erroneous interpretation by holding Fairway liable despite also finding that it did not intend to publish the commercial with a small disclaimer it did not see or approve.

Third, instead of relying exclusively on NRS 482.351(1), Nevada's vehicle dealer advertising statute, the district court mistakenly relied on NRS 598.0923(3) of the DTPA, which relates to neither vehicle dealers nor advertising. This resulted in liability standards that contradicted NRS 482.351(1) as well as *every* statute under the DTPA relating to advertising, all of which *explicitly* require intent to mislead.

Fourth, it was error for the district court to grant a permanent mandatory injunction. Such an extraordinary remedy was unwarranted as Kelley was not and never will be harmed. The injunction improperly imposes obligations not required by law and was based on speculation about whether Fairway might be sold in the future. And Kelley was undeserving of this drastic remedy due to his unclean hands.

Fifth, the permanent mandatory injunction violates Fairway's constitutional rights by prohibiting Fairway from engaging competitively in truthful advertising. This *sua sponte* remedy engineered nine months after trial cannot withstand constitutional scrutiny.

ARGUMENT

Standard of review for Sections I, II and III: "This Court conducts de novo review of statutory construction."[5] *Carson-Tahoe Hosp. v. Bldg. & Const. Trades Council of N. Nevada*, 122 Nev. 218, 220, 128 P.3d 1065, 1066 (2006). The Court reviews factual findings for clear error and the legal consequences of those factual findings de novo. *State v. Cantsee*, 130 Nev. Adv. Op. 24, 321 P.3d 888, 890, (2014).

I. KELLEY WAS NOT A "VICTIM" OF CONSUMER FRAUD AS REQUIRED UNDER NRS 41.600(1).

Kelley's claims are all predicated on NRS 41.600, entitled "Actions by victims of fraud." NRS 41.600(1) provides that "[a]n action may be brought by any person who is a victim of consumer fraud." (emphasis supplied). The statute then defines consumer fraud, among other things, as "an act prohibited by NRS 482.351," or "[a] deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive." NRS 41.600(2)(d)-(e). Kelley relied on both NRS 41.600(2)(d) and (e).

The district court erred in concluding that Kelley was a "victim" of consumer fraud under NRS 41.600(1). It therefore should not have reached the

[5] As set forth in the Table of Contents, copies of the main statutes and regulations at issue are included in Addendum A to this Opening Brief.

questions of whether Kelley could establish acts of consumer fraud under NRS 41.600(2)(d) and (e). But it erred in answering those questions, too.

A. Kelley was Not a "Victim" of Consumer Fraud because He Admitted He Suffered No Injury, Harm, or Damages.

Only a "victim" under NRS 41.600(1) may bring a claim of consumer fraud. While the Nevada Legislature did not define a "victim", several courts have interpreted the statute to require a claimant to suffer harm or damage.

In *Picus v. Wal-Mart Stores, Inc.*, Judge Phillip Pro of the United States District Court of Nevada found that to establish a private cause of action under NRS 41.600, a plaintiff must prove that an act of consumer fraud by the defendant caused damage to the plaintiff. 256 F.R.D. 651, 658 (D. Nev. 2009); *see also S. Serv. Corp. v. Excel Bldg. Services, Inc.*, 617 F. Supp. 2d 1097, 1100 (D. Nev. 2007) (requiring the plaintiff to show "it was directly harmed" for a claim under NRS 41.600). The Ninth Circuit Court of Appeals has likewise required "direct harm" for a plaintiff to having standing to sue under NRS 41.600. *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1153 (9th Cir. 2011).[6]

[6] While the Legislature amended NRS 41.600 in 2011 to allow for damages and equitable relief, this does not change the analysis since equitable relief still requires some type of injury or harm.

This Court has relied on Arizona law in the past regarding consumer legislation.[7] As recently as last year, the Arizona Supreme Court reaffirmed that a private cause of action under its Consumer Fraud Act requires "consequent and proximate injury resulting from the misrepresentation." *Watts v. Medicis Pharm. Corp.*, 365 P.3d 944, 953 (Ariz. 2016). Many other states also require some type of harm or damages for claims under consumer protection acts. *See Goshen v. Mut. Life Ins. Co. of New York*, 774 N.E.2d 1190, 1196 (N.Y. 2002) ("The origin of any advertising or promotional conduct is irrelevant if the deception itself—that is, the advertisement or promotional package—did not result in a transaction in which the consumer was harmed."); *see also Bower v. AT & T Mobility, LLC,* 196 Cal. App. 4th 1545, 1554-56, 127 Cal. Rptr. 3d 569, 576-79 (Cal. Ct. App. 2011); *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986); *Mulligan v. QVC, Inc.*, 888 N.E.2d 1190, 1195 (Ill. Ct. App. 2008); *Yellowpine Water User's Ass'n v. Imel*, 670 P.2d 54, 56 (Idaho 1983).

Kelley was not a "victim" here. He admittedly suffered no injury, harm or damages of any kind. 8 App. 1416. He entered no transaction. In fact, he testified that he did not intend or even have the ability to buy a vehicle in 2012. 14 App. 2664. He filed this lawsuit only because he believed he was a guardian of the

[7] *See Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 166, 232 P.3d 433, 435 (2010) (*citing Dunlap v. Jimmy GMC of Tucson, Inc.*, 666 P.2d 83, 87 (Ariz. Ct. App. 1983)).

public and he intended to obtain justice. 8 App. 1372. Kelley's practice over many years of hunting for dealer advertisements was merely a method of manufacturing litigation. In these circumstances, Kelley was not a "victim."

B. Kelley Was Not a "Victim" Because He Knew Dealers Must do Credit Checks and Do Not Guarantee Financing.

Kelley suffered no injury, harm, or damages because he was not and could not have been deceived by Fairway's advertisement. Kelley admitted that long before he saw Fairway's commercial that he *already knew* vehicle dealers always do credit checks and do not guarantee financing. 14 App. 2617, 2653. That flowed from Kelley being well-versed in advertising law. 15 App. 2769. The district court therefore correctly concluded that Kelley was not "deluded and duped". *Id.* Indeed, not once did the district court find that Kelley was deceived or misled. In these circumstances, Kelley did not qualify for "victim" status.

II. THE DISTRICT COURT ERRED BY MISINTERPRETING AND FINDING FAIRWAY LIABLE UNDER NRS 482.351(1).

The district court also erred in determining that Kelley established consumer fraud under NRS 41.600(2)(d). That section defines consumer fraud as "[a]n act prohibited by NRS 482.351," Nevada's vehicle dealer advertising statute. The district court misinterpreted NRS 482.351(1) by disregarding the scienter requirement and imposing strict liability, finding that the mere "intent to publish"

an advertisement sufficed. Then the district court disregarded its own mistaken interpretation and contradicted its factual findings by holding Fairway liable.

A. The District Court Erred in Interpreting NRS 482.351(1) by Ignoring the Scienter Element, Imposing Strict Liability, and Rendering the Word "Intentionally" Meaningless.

The district court correctly found that Fairway did not act with intent to defraud, deceive or mislead, which was undisputed. 12 App. 2268, 2271, 13 App. 2428-29. But the district court improperly found Fairway liable for violating NRS 482.351(1), which clearly requires intent to mislead. This was error.

NRS 482.351(1) provides:

> **NRS 482.351 "Bait and switch," misleading or inaccurate advertising by dealer or rebuilder prohibited; regulations.**
>
> 1. No vehicle dealer or rebuilder may employ "bait and switch" advertising or otherwise intentionally publish, display or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold, leased, manufactured, handled or furnished to the public.

(emphasis supplied).

This Court has held, "[w]hen a statute's language is plain and unambiguous, and its meaning is clear and unmistakable, we may not look beyond the statute for a different meaning or construction." *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 117, 127 P.3d 1082, 1086 (2006). "No part of a statute should be rendered meaningless, and this court will not read statutory language in a manner

that produces absurd or unreasonable results." *Carson-Tahoe Hosp.*, 122 Nev. at 220, 128 P.3d at 1067.

Thus, "courts must construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001). This Court has explained that it does not rule on the "merits and efficacy" of legislation because "public policy choices [are] left to the sound wisdom and discretion of our state Legislature." *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73, 382 P.3d 886, 891 (2016). As such, "[t]he Legislature has the last word on how it writes its statutes . . . ." *Bank of Nevada v. Petersen*, 132 Nev. Adv. Op. 64, 380 P.3d 854, 861 (2016).

"The preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *Bldg. Energetix Corp.*, 129 Nev. Adv. Op. 6, 294 P.3d 1228, 1232 (2013) (*quoting BedRoc Ltd., LLC v. United States,* 541 U.S. 176, 183 (2004)).

Prior to trial, the district court correctly ruled that NRS 482.351(1) required scienter, or intent to mislead. 9 App. 1480-81. Kelley's counsel later conceded that NRS 482.351(1) required scienter. *Id.* at 1551 (Plaintiff's counsel addressing the district court: "I agree with you now that, in fact, as to 482.351 there is a

scienter intent element"); *see also* 10 App. 1761-63. Even Kelley testified there was nothing wrong with the advertisement unless Fairway intended to deceive customers. 14 App. 2645-46.

After finding that Fairway did not act with intent to defraud, deceive or mislead, the district court's post-trial reversal in statutory interpretation was inexplicable. The district court changed course to rule that only "intent to publish" was required under NRS 482.351(1). 12 App. 2273, 13 App. 2434. This resulted in strict liability. But NRS 482.351(1) could not be any clearer that it prohibits a vehicle dealer from *intentionally* publishing a misleading or inaccurate advertisement. The use of the word "intentionally" is pivotal and of paramount importance. It is an express condition to liability. It shows that the Legislature intended to hold a vehicle dealer responsible for *intentionally* misleading or inaccurate advertisements, not *any* misleading or inaccurate advertisement. If it were otherwise, the Legislature could have simply omitted the word "intentionally."

Since the district court found that Fairway did not act with intent to mislead, this case should have ended with judgment in Fairway's favor based on NRS 482.351(1).

B. The Legislature's Declared Purpose for NRS 482.351(1) was to Prevent Fraud, Not to Punish Mistakes or Create Strict Liability.

The Legislature left no guesswork about its intent to regulate *intentionally* misleading advertising. The legislative declaration for NRS Chapter 482 makes clear that the Legislature regulated vehicle dealer advertising in this state "in order to prevent frauds, impositions and other abuse upon its citizens." NRS 482.318 (emphasis supplied).

The Legislature's statement that it intended to prevent "frauds, impositions and other abuse" was deliberate. "Fraud" requires scienter. "Impositions and other abuse" likewise denote intentional misconduct; otherwise, those words would not have been grouped with the term "fraud" nor would the statute proscribe "other abuse" like fraud. *Bldg. Energetix Corp.*, 129 Nev. Adv. Op. 6, 294 P.3d at 1234 ("[t]he doctrine of *noscitur a sociis* teaches that 'words are known by—acquire meaning from—the company they keep.'").

The Legislature's intent is further shown by the "bait and switch" prohibition in NRS 482.351(1), which likewise requires scienter as specified in NRS 482.351(3). If NRS 482.351(1) was meant to require scienter only for "bait and switch" advertising but not for "otherwise" misleading or inaccurate advertising, the Legislature would not have addressed these two types of advertising in a single statute, much less in the same sentence.

C. The District Court Erred by Using Statutes that Do Not Pertain to Vehicle Dealer Advertising to Interpret NRS 482.351(1).

In attempting to sort through the intricate statutory puzzle Kelley presented, the district court incorrectly interpreted the "intent" requirement of NRS 482.351(1) by looking to other statutes such as the DTPA and NRS 41.600. Instead, the district court should have focused exclusively on NRS 482.351(1).

The district court admitted its confusion with how to interpret NRS 482.351(1). 12 App. 2272-73. The district court stated, "there is not a lot to help the Court to figure out how to interpret intentionally in 482.351" and that it was "difficult for me to sort this out." *Id.* When considering reversing the "intent to mislead" ruling and instead interpreting NRS 482.351(1) to require mere "intent to publish," the district court stated, "I find myself wrestling with that." *Id.* at 2272. But the district court nonetheless reversed itself, speculating that the Legislature's "apparent desire" in passing NRS 41.600 and the DTPA was indicative of how to interpret NRS 482.351(1). 13 App. 2434.

The district court's methodology was both misguided and baffling. When interpreting a clear and unambiguous statute, the only task is to examine the language of the statute itself – in this case, NRS 482.351(1). *State Drywall, Inc.*, 122 Nev. at 117, 127 P.3d at 1086 (stating that when a statute is clear, "we may not look beyond the statute for a different meaning or construction"). The district court erred when it looked elsewhere, to NRS 41.600 and the DTPA, to speculate

about the Legislature's desire for the meaning of NRS 482.351(1). If the Legislature wished to remove the scienter element of NRS 482.351(1) or otherwise change the standard of liability for vehicle dealer advertising, it would amend NRS 482.351(1), not other statutes unrelated to vehicle dealers.

As this Court has noted, "[t]he preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *Bldg. Energetix Corp.*, 129 Nev. Adv. Op. 6, 294 P.3d at 1232. This Court has also emphasized that it will not rewrite a statute that the Legislature could have, but did not, draft differently. *Carson-Tahoe Hospital Id.* at 221, 128 P.3d at 1067-68 (reversing erroneous statutory interpretation, stating, "[a]pplying some of these provisions while ignoring others would result in the type of law making that must be left to the Legislature. We do not lightly encroach upon the powers of this coordinate branch of our government.").

The same result is required here. NRS 482.351(1) must be interpreted according only to its plain terms, not by speculating about the Legislature's desire in passing other statutes that do not govern vehicle dealer advertising.

D. Even Under the District Court's Incorrect Interpretation of NRS 482.351(1), Fairway Did Not Intend to Publish the Advertisement Because it Intended the Disclaimer to be Much Larger.

Even accepting the district court's erroneous "intent to publish" interpretation of NRS 482.351(1), the judgment must still be reversed. The undisputed evidence showed, and the district court expressly found, that Fairway did not intend to publish the advertisement with the disclaimer as it appeared in the final commercial. 12 App. 2268, 2271, 13 App. 2428-29. That disclaimer nowhere near resembled the disclaimer Fairway approved. The district court naturally could not and did not find that Fairway intended to publish the television commercial. Indeed, the evidence showed and the district court found:

- Fairway approved the written broadcast copy of the advertisement with a large, prominent disclaimer similar in size to the advertised interest rate (13 App. 2428, 9 App. 1586):

> MAKE THESE GRAPHICS FULL SCREEN
> KILL LETTERBOX CG: EVERYONE GETS APPROVED AT 9.9%
> DISCLAIMER: Special Rate Secured through GM Financial. With Approved Credit. Not All Buyers will Qualify. Must have at least a 500 Credit Score. See Dealer for Full Details.

- After approving the written broadcast copy, Fairway did not see the final version of the television commercial before it aired. 10 App. 1749, 13 App. 2425, 2428-29.
- Without Fairway's knowledge or approval, McCarthy drastically changed the content and size of the disclaimer displayed in the final television commercial. *Compare* Ex. 6A *and* Ex. 52, 9 App. 1586.
- The disclaimer in the final commercial was not what Fairway expected or intended because Mr. Hoisington approved a much larger disclaimer and specifically told McCarthy the disclaimer needed to be large and prominent. 13 App. 2428, 14 App. 2683-86.

Given the evidence and district court findings, and the drastic disparity between what Fairway approved and what was produced, it is impossible to conclude that Fairway "intentionally" published the television commercial. Indeed, the evidence and findings show just the opposite. *Id.*

Perhaps most compelling is that even Kelley concedes Fairway's defense to liability based on it not approving the disclaimer in the final commercial. Kelley explained repeatedly that it is a defense to liability if an advertisement was published by mistake, without authorization, or with content different from what was approved. 9 App. 1471. (The Court: "How would someone unintentionally publish then?" Plaintiff's counsel: "By mistake. I never authorized that . . . This advertisement did

advertisement did not match what I said it was okay to go [publish]. That's unintentional.") (emphasis supplied); *and* 12 App. 2231. Kelley specifically acknowledged that seeing and approving the final iteration of an advertisement is a prerequisite for liability. 9 App. 1471. The evidence is undisputed Fairway did not do that here. 12 App. 2268, 13 App. 2425, 2428-29.

Based on the evidence and its own findings, it was wrong for the district court to hold Fairway liable even under its flawed interpretation of NRS 482.351(1). This requires reversing and entry of judgment in Fairway's favor.

III. THE DISTRICT COURT SHOULD NOT HAVE RELIED ON NRS 598.0923(3) BECAUSE NRS 482.351(1) SPECIFICALLY GOVERNS VEHICLE DEALER ADVERTISING.

Kelley's consumer fraud claim also relied upon NRS 41.600(2)(e), which defines consumer fraud to include "[a] deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive." Kelley relied on NRS 598.0923(3) from the DTPA, which provides:

> **NRS 598.0923 "Deceptive trade practice" defined.** A person engages in a "deceptive trade practice" when in the course of his or her business or occupation he or she knowingly:
>
> . . .
>
> 3. Violates a state or federal statute or regulation relating to the sale or lease of goods or services.

(emphasis supplied). Through NRS 598.0923(3), Kelley then alleged that Fairway violated DMV advertising regulations NAC 482.180(3), 482.120(1) and 482.110.

The district court erred in relying on NRS 598.0923(3) because Kelley's complaint stemmed entirely from a vehicle dealer advertisement, which is specifically and explicitly governed by NRS 482.351(1).

A. NRS 482.351(1) Specifically Governs Advertisements by Vehicle Dealers, So the District Court Erred in Relying on NRS 598.0923(3), Which Does Not.

"It is a well settled rule of statutory construction that a special provision, dealing expressly and in detail with a particular subject, is controlling, in preference to a general provision relating only in general terms to the same subject." *W. Realty Co. v. City of Reno*, 63 Nev. 330, 337, 172 P.2d 158, 161 (1946); *see also State Indus. Ins. Sys. v. Surman*, 103 Nev. 366, 368, 741 P.2d 1357, 1359 (1987) (reversing where district court applied a statute of general application, stating, "NRS 616.607(1)(a) specifically addresses the question of when lump sum PPD awards are permissible, and a specific statute takes precedence over a general statute"); *Sierra Life Ins. Co. v. Rottman*, 95 Nev. 654, 656, 601 P.2d 56, 57 (1979) (affirming decision applying a specific statute over general statute, stating, "it is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally").

Based on the foregoing, NRS 482.351(1) should have been the only statute used to consider Fairway's potential liability. It is the only statute in Nevada that

specifically pertains to vehicle dealer advertising. If the Legislature did not intend NRS 482.351(1) to be the sole basis for vehicle dealer liability based on advertising, it would not have included it as a basis for "consumer fraud" under NRS 41.600.

Stated another way, if NRS 598.0923(3) could be used for holding a vehicle dealer liable for a misleading advertisement, NRS 482.351(1) would be rendered superfluous and meaningless in the context of NRS 41.600. But in statutory construction, "[n]o part of a statute should be rendered meaningless." *Carson-Tahoe Hosp.*, 122 Nev. at 220, 128 P.3d at 1067. Indeed, "courts must construe statutes to give meaning to all of their parts and language, and . . . will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *Coast Hotels & Casinos, Inc.*, 117 Nev. at 841, 34 P.3d at 550.

The Legislature simply would not have drafted NRS 41.600 to include NRS 482.351 as a basis for consumer fraud if it intended for a plaintiff to bypass it and challenge vehicle dealer advertisements under NRS 598.0923(3). Because NRS 482.351(1) explicitly governs vehicle dealer advertising and is specifically listed as a basis for consumer fraud under NRS 41.600, the district court erred in relying on NRS 598.0923(3), a statute of broad, general application that does not relate to either vehicle dealers or advertising.

B. NRS 598.0923(3) and DMV Advertising Regulations Contradict the "Scienter" Requirement of NRS 482.351(1) Because they Allow for Negligence or Strict Liability.

The district court's improper reliance on NRS 598.0923(3) resulted in standards that conflict with NRS 482.351(1), and led to absurd results. Whereas NRS 482.351(1) requires scienter, the DMV regulations incorporated through NRS 598.0923(3) allowed for negligence or strict liability. Statutes and regulations that contradict the Legislative mandate of NRS 482.351(1) – Nevada's only vehicle dealer advertising statute – cannot be a basis for Fairway's liability.

1) NAC 482.120(1) Uses a Negligence Standard.

The district court was wrong to rely on DMV advertising regulation NAC 482.120(1) because it provides a negligence standard. 13 App. 2430-33. It prohibits a vehicle dealer from using an advertisement or statement "which is known, or through the exercise of reasonable care, should be known to be false, deceptive or misleading." NAC 482.120(1). This standard contradicts the intent to mislead requirement of NRS 482.351(1).

2) NAC 482.180(3) Results in Strict Liability.

The district court also mistakenly relied on NAC 482.180(3) regarding advertising of financing because that regulation creates strict liability. *Id.* It prohibits advertising statements such as "everybody financed," "no credit rejected," "we finance anyone" and other similar statements. NAC 482.180(3).

This is strict liability, and likewise contradicts the intent to mislead standard of NRS 482.351(1).

This Court's mandate that specific statutes govern over general statutes is intended to avoid the conflicts presented here. Given that NRS 482.351(1) governs vehicle dealer advertisements and requires intent to mislead, the contradicting standards above cannot be a basis for a consumer fraud claim.

C. An Administrative Regulation May Not be Applied to Impose Civil Liability in a Way that Contradicts the Statute Pursuant to Which the Regulation was Adopted.

The district court erred by allowing Kelley to circumvent the scienter requirement of NRS 482.351(1) with the lower, conflicting standards of DMV regulations NAC 482.120(1) and 482.180(3) as incorporated through NRS 598.0923(3). That is especially so because the DMV regulations contradict the statute pursuant to which they were adopted.

Under NRS 482.351(2), the Legislature granted the director of the DMV authority to adopt regulations to enforce NRS 482.351(1). The director of the DMV then adopted NAC 482.100-.250. The exclusive penalties for violating those regulations are the imposition of administrative fines or suspension or revocation of a vehicle dealer's license. *See* NAC 482.250(1). Thus, the DMV regulations were never intended to be a basis for consumer fraud or any private cause of action or civil liability. They were intended purely for regulatory purposes.

This Court has stated that it will not hesitate to declare a regulation invalid when it conflicts with existing statutory provisions or exceeds the statutory authority of the agency. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000). Here, the DMV regulations may perhaps be used to impose fines or suspend or revoke a dealer's license. But because application of the DMV regulations conflicts with NRS 482.351(1), the enabling statute pursuant to which the regulations were adopted, they cannot be a basis for civil liability.

D. The District Court's Definition of "Knowingly" under NRS 598.0923(3) Results in Strict Liability and Contradicts Nevada's Vehicle Dealer Advertising Statute, NRS 482.351(1).

Kelley should not have been allowed to proceed under the lesser standard of NRS 598.0923(3) – which resulted in strict liability – as the safety net for his failure to prove scienter under NRS 482.351(1). NRS 598.0923 does not define the term "knowingly." Kelley argued that a "knowingly" standard is as close as it gets to strict liability without calling it strict liability. 8 App. 1345, 9 App. 1482. The district court agreed, ruling that a defendant acts "knowingly" if the defendant affirmatively engaged in a certain act regardless of whether the defendant knew the act was wrongful. 13 App. 2432.

In forging its definition of "knowingly," the district court borrowed from other Nevada statutes, such as NRS 193.017. *Id.* But this Court held that the

"knowingly" standard of NRS 193.017 does not create strict liability. *Garcia v. District Court*, 117 Nev. 697, 702, 30 P.3d 110, 113 (2001). In *Garcia*, this Court reversed because the defendants did not have reason to know they were acting unlawfully. *Id.*

This Court should reject a strict liability standard for vehicle dealer advertising liability. The Legislature has spoken in this area, and it requires intent to mislead. NRS 482.351(1).

E. *Every* Statute Governing Advertising Liability Under the DTPA Requires "Intent to Mislead".

The plain language of NRS 482.351(1) is enough to establish that intent to mislead is required for vehicle dealer liability when it comes to advertising. It is doubly compelling, however, when we consider that in *every* statute governing advertising under the DTPA, the Legislature *always* requires proof of intent to mislead. NRS 598.0915(9), (10) and (11) expressly require advertising "*with intent*" to mislead. (emphasis supplied). NRS 598.0917 similarly requires an advertisement for goods or services the seller "in truth *may not intend* or desire to sell." (emphasis supplied).

In other words, in four separate statutes under the DTPA that govern advertising, mere "intent to publish" an advertisement is not sufficient. "Knowingly" publishing an advertisement is not sufficient. Neither is negligence. And there is certainly no strict liability. There is no question that for advertising

liability in *any* arena – whether for vehicle dealers or others – the Legislature deliberately regulated *intentionally* misleading advertisements.

F. NRS 598.0923(3) is Inapplicable because There Was no "Sale or Lease of Goods or Services."

By its terms, the violation at issue in NRS 598.0923(3) must be one "relating to the sale or lease of goods or services." Here, Fairway did not sell or lease goods or services to Kelley, making this statute inapplicable.

The Legislature clearly intended NRS 598.0923(3) to require a sale of goods or services and not to relate to advertising. Indeed, if NRS 598.0923(3) were intended to apply to advertising, then there would have been no need for the DTPA's four other statutory provisions that expressly govern advertising. *See* Section III(E), *supra*, discussing NRS 598.0915(9)-(11) and 598.0917. Each of those DTPA advertising statutes would be rendered superfluous. And if the advertisement pertained to vehicle dealers, NRS 482.351(1) would be rendered superfluous, too. The Legislature knew how to differentiate between liability for advertisements, on the one hand, and liability for the sale or lease of goods or services, on the other. NRS 598.0923(3) governs the latter, so it is inapplicable here.

G. Even if Kelley Were Allowed to Proceed Under NRS 598.0923(3), Fairway Did Not "Knowingly" Publish the Advertisement at Issue Because It Did Not Approve the Changes to the Disclaimer.

Even if Kelley were allowed to pursue a claim under NRS 598.0923(3), the judgment must nonetheless be reversed because Fairway did not "knowingly" publish the advertisement at issue. As stated above, the evidence was undisputed, and the district court found, that Fairway did not see the final television commercial before it was published and that Fairway intended the disclaimer to be much larger. *See* Section II(D), *supra*, 13 App. 2425, 2428-29.

Once again, given the gross disparity between the disclaimer Fairway approved and the disclaimer shown in the commercial, it is legally and factually impossible to conclude that Fairway "knowingly" published the television commercial. Indeed, the district court made no finding that Fairway "knowingly" published the commercial.

It is worth highlighting again that Kelley concedes it is a defense to liability if the content of a final advertisement was different from what a defendant approved. 9 App. 1471, 12 App. 2231. That is precisely what happened here. And it is precisely what the district court found. 12 App. 2268, 13 App. 2425, 2428-29. Thus, although the district court improperly relied on NRS 598.0923(3), Fairway has no liability under that statute in any event.

IV. THE DISTRICT COURT ERRED IN GRANTING A MANDATORY INJUNCTION AND, NINE MONTHS LATER, ADDING A PERMANENT INJUNCTION.

The district court was wrong not to resolve this case in Fairway's favor on liability. But it made things worse by then granting the most severe equitable remedy available: a permanent mandatory injunction. The extreme remedy of a permanent mandatory injunction – or any equitable remedy for that matter – was nowhere near justified.

After five days of trial, the district court denied all injunctive relief Kelley requested.[8] 15 App. 2793. The district court specifically rejected the notion that a lengthy injunction was needed, especially one ordering Fairway to "obey the law." 15 App. 2790-91. In fact, the district court stated that an injunction requiring compliance with NAC 482.180(3) was not only vague but that the law already required that of vehicle dealers. 15 App. 2757. But at the last minute, the district court manufactured its own remedy. It granted Kelley a mandatory injunction requiring Fairway to adopt a written advertising policy – something not required

[8] In his Complaint, Kelley sought only a permanent mandatory injunction granting the following four items: 1) enjoining Fairway from ever using the December 2012 again, or similar commercials; 2) enjoining Fairway from using any advertisement that violates NAC 482.180(3); 3) mandating that Fairway comply with all DMV advertising regulations in NAC 482.100 -.250; and 4) mandating that Fairway establish an advertising compliance committee to review all advertisements, to be dissolved if there were no proven violations with the DMV after one year. 1 App. 24-25.

by law, wholly unsupported by evidence, and not requested by Kelley during three years of litigation. 15 App. 2768, 2771-72, FFCL #2, 15 App. 2784-93.

Adding to the bizarre rulings, *nine months later*, when finalizing decisions on post-trial motions, the district court reversed itself *again* and decided *sua sponte* that a permanent mandatory injunction in fact should be entered. 18 App. 3466-67. And it did so with no further evidence from any of the parties. It still required a written advertising policy, but it also permanently enjoined Fairway from using any advertisement without it first being reviewed by Greg Heinrich, Fairway's owner, or his designated representative. *Id.*

At issue in this case was a two-second portion of a 30-second television commercial for a finance incentive that Fairway advertised for only a few days. 9 App. 1564, Ex. 6A. Any injunctive relief was unwarranted, and a permanent mandatory injunction in particular.

Standard of review for Section IV: A district court's decision to grant injunctive relief is normally reviewed for an abuse of discretion. *Boulder Oaks Community Ass'n v. B & J Andrews Enterprises, LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009). However, when the facts are undisputed, as they are here, this Court reviews a permanent injunction de novo. *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291, 212 P.3d 1098, 1103 (2009). Further, questions of law in reviewing

a permanent injunction are reviewed de novo. *University & Comm. College System of Nevada v. DR Partners*, 117 Nev. 195, 198, 18 P.3d 1042, 1045 (2001).

A. Injunctive Relief Served No Purpose Because Kelley Was Not Deceived and Did Not and Will Not Suffer Harm or Damages.

Equity should not have intervened here because an injunction does not protect and serves no purpose whatsoever for Kelley. As this Court has held, a mere showing of liability or a statutory violation is not enough. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 325, 130 P.3d 1280, 1285 (2006). A plaintiff must demonstrate a likelihood of future violations and harm.[9] *Id.* Many courts considering consumer fraud actions over advertising have therefore denied permanent injunctions.

In a class action advertising case under the Illinois Consumer Fraud Act and Deceptive Trade Practices Act, *Brooks v. Midas-Int'l Corp.*, 361 N.E.2d 815 (Ill. Ct. App. 1977), the plaintiff sued Midas for damages and injunctive relief to stop it from falsely advertising a "guarantee" on its mufflers. *Id.* at 817. The appellate court affirmed dismissal of the claim for injunctive relief because the plaintiff could not show how he would be damaged in the future as he already made his purchase and suffered whatever harm might occur. *Id.* at 821-22. Since the

[9] Significantly, in *Edwards* this Court affirmed denial of permanent injunctive relief because only two violations had occurred three years earlier, the violations caused no harm, and the offending conduct had stopped. *Id.*

plaintiff could not obtain injunctive relief individually, it was likewise unavailable for the class. *Id.* at 822.

More recently, in *Buetow v. A.L.S. Enterprises, Inc.*, 650 F.3d 1178 (8th Cir. 2011), another false advertising class action, the Eighth Circuit reversed the district court's grant of a permanent injunction enjoining the defendant from advertising that its line of hunting clothing eliminated 100% of human odors to animals. *Id.* at 1181. Although the advertisement was false and injunctive relief was permitted under the Minnesota Consumer Fraud and Unlawful Trade Practices Acts, the plaintiffs could show no threat of future harm or injury. *Id.* at 1184-85.

The same rationale applied in another false advertising case, *Hayna v. Arby's, Inc.*, 425 N.E.2d 1174 (Ill. Ct. App. 1981). In that case, the plaintiff brought a class action lawsuit under the Illinois Deceptive Trade Practices Act because Arby's roast beef sandwiches were not real "roast beef". *Id.* at 1176. The trial court dismissed plaintiff's injunction claim because she could not show future harm or damage. *Id.* The appellate court affirmed, stating that the plaintiff "does not and cannot credibly contend that defendants' advertising practices would likely mislead her into resuming the purchase of defendants' sandwiches on the mistaken assumption that defendants have ceased using the simulated roast beef substitute." *Id.* at 1186 (emphasis supplied).

In *Logan v. Burgers Ozark Country Cured Hams Inc.*, 263 F.3d 447 (5th Cir. 2001), the plaintiff brought false advertising claims under the Lanham Act based on HoneyBaked Hams falsely advertising its sliced meat products. The advertisements were indeed false, but the district court denied a permanent injunction. *Id.* at 450-51. The Fifth Circuit affirmed, stating that the plaintiff had "failed to establish that it will suffer irreparable harm absent injunctive relief. It points to no evidence that HoneyBaked continues to make references to spiral sliced meat products in its advertising or that it will in the future." *Id.* at 465.

Similarly, in *Catrett v. Landmark Dodge, Inc.*, 560 S.E.2d 101 (Ga. Ct. App. 2002), the appellate court affirmed the dismissal of a claim for injunctive relief against a vehicle dealer for fraud and violation of Georgia's Fair Business Practices and Deceptive Trade Practices Act. The court stated: "[t]he remedy by injunction is to prevent, prohibit or protect from future wrongs and does not afford a remedy for what is past. . . . Catrett . . . has not presented any evidence – or even alleged – that he 'is likely to be damaged' by these trade practices in the future." *Id.* at 106 (emphasis supplied) (citation omitted).

The undisputed evidence here overwhelmingly weighs against any type of injunctive relief. That evidence showed:

- Kelley admittedly was not harmed or damaged by Fairway's advertisement and he is not aware of anyone who was. 8 App. 1372-73, 1416.

- Kelley knew long before any of his seven lawsuits against vehicle dealers that there was no such thing as "guaranteed financing". 8 App. 1378, 14 App. 2617.
- Kelley knew lenders will not approve anyone for financing without a credit check, as he alleged against Bill Heard Chevrolet in 2008 – five years before he filed this action against Fairway. 14 App. 2653.
- Kelley filed this lawsuit to get justice and for satisfaction as a guardian of the public, not because he needed protection. 8 App. 1372, 14 App. 2672-76.
- In 2010 – two years before Fairway's advertisement at issue here – Kelley told his daughter not to go to Fairway because he did not trust Fairway due to its "stupid ads". 3 App. 289-90.
- Kelley testified he does not plan to go to Fairway to buy a car in the future. 8 App. 1416.

Kelley failed to show a current or future threat of any harm. An injunction therefore serves no purpose for Kelley. It does not now and will not ever protect him. It comes as no surprise that there is not a single district court finding or conclusion that Kelley was deceived, misled, harmed or that he needed and would benefit from an injunction. *See* FFCL #1, FFCL #2, FFCL #3. The opposite is true as the district court specifically found that Kelley was not deceived. 15 App. 2769.

It is revealing that not once has Kelley even attempted to argue that he is at risk of suffering harm or needs the protection of an injunction. In fact, Kelley's trial briefs and closing argument were calculatingly silent about how injunctive relief would benefit or protect him. That silence speaks volumes.

B. Injunctive Relief Should have been Denied because Kelley Suffered No Harm, Fairway Did Not Act Intentionally, There Were No Other Violations, and Fairway Took Significant Steps to Avoid Future Advertising Issues.

Kelley did not establish his entitlement to injunctive relief. Under traditional factors, "[p]ermanent injunctive relief is available where there is no adequate remedy at law, where the balance of equities favors the moving party, and where success on the merits has been demonstrated." *State Farm Mut. Auto. Ins. Co. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993) (emphasis omitted). Under *Edwards*, the district court must consider the totality of the circumstances concerning the alleged violation. The court may examine any relevant factors, including (1) the gravity of any harm caused, (2) the extent of and motivation behind the violator's participation in the wrongful conduct, (3) the isolated or recurrent nature of the violation, and (4) whether the violator has recognized culpability and/or sincerely promised that future violations will not occur. *Edwards*, 122 Nev. at 325, 130 P.3d at 1285.

Applying the applicable considerations here shows injunctive relief should have been denied.

1) Kelley Admittedly Did Not Suffer and Will Not Suffer Any Harm – Irreparable or Otherwise.

Whether considering irreparable harm or the gravity of harm under *Edwards*, the answer is simple: none. Kelley admitted Fairway's advertisement did not cause him any harm or damage of any kind. 8 App. 1416. And because Kelley is aware of dealership advertising laws and has no plans to ever buy a vehicle from Fairway in the future, Kelley is not at risk of suffering any harm – irreparable or otherwise. *Id.*, 15 App. 2769.

Because he was not a candidate for injunctive relief, Kelley repeatedly argued that an injunction was necessary to "protect the community." The notion of Kelley being a "private attorney general" also surfaced. But this case was, as the district court previously ordered, only about one plaintiff: Allen Kelley.

a) The "Community" was Irrelevant because the District Court Entered an Order Saying So.

In FFCL #2, the district court stated that the harm to Kelley was "minimum" and included merely his drive to Fairway. 15 App. 2791. But in FFCL #3, the district court reversed itself (again), finding that the gravity of harm should also consider the community, not just Kelley. 20 App. 3927. This contradictory ruling was not only another mistake but it violated the district court's prior orders.

First, prior to trial, the district court entered an order denying class action certification, making this clearly an action only about Kelley, not the community.

6 App. 848-49. The district court agreed with Fairway that certification was not warranted because no one else filed suit, was injured, or complained about Fairway's advertisement, and Kelley could not be a class representative because of his impure motives and improper conduct. *Id.*, *and* 3 App. 387-405.

Second, when ruling on liability in Phase 1, the district court once again specifically rejected Kelley's attempts to tout this case as one about the community. 12 App. 2266. The district court stated that it was not ruling on anything other than the specific facts of this case, which was not a class action but about one plaintiff. *Id.* Thus, the district court's entry of a permanent mandatory injunction in reliance on the "community" theory – in violation of its own orders – was bewildering and incorrect.

b) NRS 41.600 is Not a Private Attorney General Statute.

The district court also incorrectly ruled that NRS 41.600 deputized Kelley as a "private attorney general" – a last-minute notion the district court raised and Kelley ran with during closing arguments on the last day of trial. 15 App. 2723, 2788, 20 App. 3922-23. But NRS 41.600 is for victims of consumer fraud. It is not a private attorney general statute. The only statute in Nevada akin to a private attorney general is NRS Chapter 357. Known as a "qui tam" action, this chapter only applies for attempted fraud on the government, which is not applicable here.

See NRS 357.020-.80, *Int'l Game Tech., Inc. v. Second Judicial Dist. Court of Nevada*, 122 Nev. 132, 138, 127 P.3d 1088, 1093–94 (2006).

The district court cited a California case in its findings to support its novel private attorney general theory. 15 App. 2801, 20 App. 3922-23. But that case was based on a California statute that Nevada does not have. *See Graham v. DaimlerChrysler Corp.*, 101 P.3d 140 (Cal. 2005). Significantly, the plaintiffs in *Graham* – unlike Kelley here – all made purchases and were damaged. Further, the California Supreme Court required the plaintiffs to prove that they "engaged in a reasonable attempt to settle [their] dispute with the defendant prior to litigation." *Id.* at 144. Kelley would have failed this inquiry since he sprinted to court a mere week after his visit to Fairway to file his seventh dealer advertising lawsuit. 1 App. 1.

2) Fairway Did Not Act with Intent to Defraud, Deceive or Mislead Nor Engage In Misconduct of Any Type.

Under *Edwards*, the district court may look at the extent of and motivation behind the defendant's participation in the conduct in question. This too is a simple analysis. The district court found that Fairway did not act with intent to defraud, deceive or mislead or with any other wrongful intent. 12 App. 2268, 2271, 13 App. 2428-29. In fact, the district court found that the evidence was undisputed as to Fairway's intent and that the reason the advertisement was used "was just as Mr. Hoisington testified." 12 App. 2268, 18 App. 3468. And that

reason was McCarthy changed the disclaimer in the final commercial without Fairway's knowledge or approval. *See* Section II(D), *supra*. This factor also weighed in favor of denying injunctive relief.

3) The Evidence Showed Just One Violation in One Commercial that Aired for Less than One Week.

Edwards also looks at the isolated or recurring nature of the violation. Here, the district court found that this case was the only violation of DMV advertising regulation NAC 482.180(3).[10] 15 App. 2770. The problem language was only two seconds of a thirty second commercial than ran for less than a week nearly five years ago. 9 App. 1564, Ex. 6A. No similar advertisements have run since that date, nor does Fairway intend to disseminate such advertisements in the future. 14 App. 2588, 2703-04. A single, isolated violation likewise weighed in favor of denying any injunctive relief – a fact that Kelley conceded at trial. 9 App. 1437 ("If it's only one single isolated incident, that's a huge issue for [the] Court to militate towards no injunction."); *Id.* at 1438 ("If there's one violation, that militates towards no equitable relief.").

Despite finding only one advertising violation, the district court improperly relied on Kelley's two prior lawsuits against Fairway in 2008 and 2009 and

[10] As stated earlier, the correct analysis should have been whether there were any prior violations of Nevada's vehicle dealer advertising statute, NRS 482.351(1) because NAC 482.180(3) is not a basis for a private claim. But under any analysis, the were no prior violations.

redacted portions of the settlement agreements from those suits. 15 App. 2791, 20 App. 3917-3929, FFCL #2, FFCL #3. This was error.

First, settlements are not advertisements. The fact that Fairway was sued and settled prior lawsuits did not show any prior violations. Much the opposite, the district court acknowledged it would be "entirely inappropriate" to suggest two prior settlements of two prior lawsuits could show a violation. 14 App. 2535.

Second, the two prior lawsuits were settled with releases of liability. 13 App. 2291-2339. There were no admissions of wrongdoing or liability, and no proven violations. *Id.* The district court acknowledged as much, stating that the prior lawsuits involved unproven conduct resolved through settlements. 14 App. 2544-45. The mere fact that Kelley sued Fairway in 2008 and 2009 was therefore irrelevant.

Third, relying on the two prior lawsuits contradicted the district court's pre-trial order stating that the Court would not admit any evidence of the prior lawsuits filed in 2008 and 2009. 15 App. 2781-83. This order followed substantial briefing with legal authority showing that evidence of pre-release conduct from prior lawsuits was not admissible. 13 App. 2291-2339. The district court also excluded evidence of the two advertisements at issue in the 2008 and 2009 lawsuits. 14 App. 2518. After ordering evidence of the 2008 and 2009 lawsuits and

advertisements to be excluded, it was wrong for the district court to rely on *both* the lawsuits *and* the advertisements extensively in its FFCL #2 and FFCL #3.

Fourth, for the same reasons, the district court erred in relying upon redacted portions of the settlement agreements for the 2008 and 2009 lawsuits. 15 App. 2775-78, FFCL #2 and FFCL #3. They had no relevance given the district court's findings that those lawsuits and settlement agreements did not establish any prior violations. 14 App. 2544-45. Further, Kelley agreed in the settlement agreement for the 2009 lawsuit that the agreement would not be admissible in any subsequent litigation other than one to enforce the agreement. 13 App. 2333. Both Kelley and the district court agreed this was not a lawsuit to enforce the 2009 settlement agreement, but the district court admitted it anyway. 14 App. 2545-46. It claimed the settlement agreements were relevant to show that Fairway had a "heightened awareness" of NAC 482.180(3). 20 App. 3928. But Fairway never disputed it was aware of NAC 482.180(3). To the contrary, that regulation was the very reason Fairway added the disclaimer to the 2012 television commercial. 14 App. 2685-86.

In the end, the district court still found *just one violation* despite its improper reliance on the 2008 and 2009 lawsuits, advertisements and settlement agreements. One violation – as Kelley openly conceded – required that injunctive relief be denied.

4) Fairway Took "Excellent Steps" to Ensure Compliant Advertisements in the Future.

Edwards last considers whether the defendant recognized culpability and/or sincerely promised that future violations will not occur. The district court found that Fairway accepted responsibility for its actions and advertisements. 20 App. 3928. Fairway takes its responsibilities seriously and never intended to mislead or deceive. 14 App. 2702-04. Further, Fairway has not run and does not intend to run similar advertisements in the future. *Id.*

More importantly, Fairway made drastic changes to its advertising procedures to avoid any future issues. First, Fairway fired McCarthy, its long-time advertising agency, and brought all advertising "in house." 14 App. 2690. Mr. Hoisington personally creates the content of Fairway's advertisements. Fairway uses a script writer/producer, who fine tunes the writing and helps produce the advertising spot, but the concept and content is from Mr. Hoisington. *Id.* at 2690-92.

Second, Fairway reduced the number of television commercials it runs each year and stopped doing radio advertising. *Id.* Fairway also hired its own digital expert to assist with television and internet advertisements, which are also done in-house. Mr. Hoisington gives the employee the concept and content for the internet, and once created, Mr. Hoisington approves the content. *Id.*, *see also id.* at 2704-07.

Finally, Mr. Hoisington reviews every advertisement before it is disseminated. *Id.* at 2692. No advertising goes out without Mr. Hoisington having created it, looked at it, and approved it. *Id.* As Greg Heinrich testified, Fairway made these changes to better control the advertising process and avoid the issues it had with McCarthy because clear, truthful and accurate advertising is very important to Fairway. *Id.* at 2702-04. It is undisputed that since the December 2012 television commercial, Fairway has not run any advertisements that could be construed as approving everyone for financing. 14 App. 2703.

The district court found Fairway's new advertising procedures significant, stating that they were "excellent steps." 15 App. 2767. Furthermore, Kelley did not challenge in any way the nature or adequacy of Fairway's new advertising procedures.

5) There Are No Complaints on File with the Nevada DMV About Fairway Advertisements.

In his Complaint, Kelley sought a mandatory injunction requiring Fairway to establish an advertisement compliance committee until there were no violations of advertising rules on DMV records. 1 App. 25. But Fairway has never had any complaints from the DMV about advertisements, much less violations. 14 App. 2688-90. Kelley admitted he is unaware of advertising violations on DMV records. *Id.* at 2671-72. By his own standards, Kelley's request for injunctive relief was unfounded from the start.

C. The Injunction Created Obligations Unsupported by Law, Disrupted the Status Quo, and was Unsupported by Evidence.

"Mandatory injunctions are disfavored, and therefore, the district court should not issue the mandatory preliminary injunction 'unless the facts and law clearly favor the moving party'". *Venetian Casino Resort LLC v. Local Joint Executive Bd. of Las Vegas*, 45 F. Supp. 2d 1027, 1031-32 (D. Nev. 1999). "Mandatory injunctions are used to restore the status quo, to undo wrongful conditions. A court should exercise restraint and caution in providing this type of equitable relief." *Leonard v. Stoebling*, 102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986). "A mandatory injunction is a stern remedy." *Id.* In order to grant injunctive relief, the "balance of equities" must favor the moving party. *Jafbros Inc.*, 109 Nev. at 928, 860 P.2d at 178.

In this case, the district court erred in manufacturing unprecedented equitable remedies – remedies Kelley did not request for conduct that is not wrongful. And it did so by relying on speculation.

1) The Law Does Not Require a Written Advertising Policy or Prohibit Advertising Without Prior Owner Review.

The permanent mandatory injunction is unprecedented because the district court manufactured legal rights that do not exist. This was error. In reviewing a permanent injunction, this Court has stated, "[t]he existence of a right violated is a prerequisite to the granting of an injunction." *Jafbros Inc.*, 109 Nev. at 928, 860

P.2d at 178 (*quoting* 43 C.J.S. § 18 *Injunctions* (1978)) (emphasis supplied). "Accordingly, an injunction will not issue 'to restrain an act which does not give rise to a cause of action . . . .'" *Id.* (emphasis supplied). "[A] court of equity may not by injunction compel that for which no legal duty lies." *Hall v. Hall*, 506 S.W.2d 42, 45 (Mo. Ct. App. 1974) (affirming order denying mandatory injunction). "Equity does not create rights but determines what rights the parties have and whether and in what manner it is just and proper to enforce them." *Id.* "A court of equity may not act merely upon its own conceptions of what may be right in a particular case, but is bound by established rules and precedents." *Id.*

Here, it was not wrongful for Fairway – or any vehicle dealer – not to have a written advertising policy. It was not wrongful for Fairway – or any vehicle dealer – not to have its owner look at every advertisement before it was published. This conduct does not give rise to a cause of action – a prerequisite to injunctive relief under *Jafbros*. Unsupported by any statute or regulation, the district court erred when it invented these unprecedented and legally unsupportable remedies, particularly since they provide no benefit to Kelley.

It is a dangerous precedent indeed for a plaintiff – especially one as litigious as Kelley – to be given authority over a business's advertising policy and practices through a mandatory permanent injunction. This Court has stated that "public policy choices [are] left to the sound wisdom and discretion of our state

Legislature." *Schwartz*, 132 Nev. Adv. Op. 73, 382 P.3d at 891. It is for the Legislature – not Kelley and not the district court – to decide if vehicle dealers should have written advertising policies, or if the law should mandate who reviews their advertisements. This too is an independent basis to reverse the judgment.

2) The Injunction Destroyed the Status Quo and Denied Fairway the Ability to Avoid Injunctive Relief.

The district court's permanent mandatory injunction did not maintain or restore the status quo, which is the sole purpose of an injunction. *Leonard*, 102 Nev. at 550-51, 728 P.2d at 1363. Further, Fairway was grossly prejudiced by these newly invented legal duties because it had no prior notice of them. Kelley did not seek these remedies throughout three years of litigation because *even he* had no idea they were within the realm of possibility. 1 App. 1-27.

The injunction is also grossly inequitable because it grants Kelley perpetual police power and authority over Fairway's advertising. He has the unending ability to investigate, monitor, do discovery about, and enforce the permanent mandatory injunction. This includes seeking contempt sanctions and attorneys' fees for any perceived impropriety in any future advertisement. Stated differently, while Kelley dubbed himself the "guardian of the public," the district court crowned him the overseer of Fairway's advertising operations. This remedy was both unprecedented and unjustified.

3) The Injunction was Unsupported by Evidence and Improperly Based on Pure Speculation.

The permanent mandatory injunction was also wholly unsupported by the evidence. Worse yet, when the district court *sua sponte* amended the injunction nine months after trial, it did so by relying purely on speculation.

a) The Injunction is Not Supported by Evidence About a Written Advertising Policy.

Kelley presented no expert witnesses or fact witnesses to support the remedies awarded. More specifically, Kelley presented: a) no evidence that Fairway had an obligation to adopt a written advertising policy or require its owner to review all advertisements; b) no evidence these are standard practices or customary in the industry for vehicle dealers; c) no evidence what a written advertising policy should contain; and d) no evidence that any other vehicle dealer uses a written advertising policy or has its owner review every advertisement before publishing.

The only evidence Kelley presented relating to written policies was Fairway's testimony that it uses written policies in its sales department, finance department, and service department – departments that have many employees. In contrast, only Terry Hoisington is responsible for Fairway's advertising. 14 App. 2578-79, 2602. Based on a quantum leap of unjustifiable reasoning, the district court then improperly found that Kelley had established a need for Fairway to

adopt a written policy for advertising (even though he did not ask for one). 15 App. 2767-68. This was error.

b) The District Court was Wrong to Speculate that Fairway Might be Sold When it *Sua Sponte* Amended the Injunction Nine Months After Trial.

The rationale the district court gave when it *sua sponte* overhauled the injunction nine months after trial was perplexing. The district court speculated about whether the Fairway dealership might be sold, stating: "policies change, things change, how do I know but what the [Heinrich] family sells the dealership, somebody else comes in and we're right back where we were with this one with an ad that went out . . . ." 18 App. 3466-67.

This purely speculative and hypothetical reasoning was improper to even consider much less to use as a basis for granting the extraordinary remedy of a permanent mandatory injunction. There was no evidence the Heinrich family intended to sell the Fairway dealership. If anything, the evidence showed just the opposite: three generations of the Heinrich family have owned and operated Fairway since 1969. 14 App. 2703, 9 App. 1568. Guesswork and conjecture about whether Fairway might be sold in the future, and double conjecture about policies or advertisements the speculative future owners may use, is irrelevant and could never be a basis for entering a permanent injunction. *Gramanz v. T-Shirts & Souvenirs, Inc.*, 111 Nev. 478, 485, 894 P.2d 342, 347 (1995) (reversing judgment

based on "speculation not supported by evidence"); *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 688–89, 191 P.3d 1138, 1151 (2008) ("We have repeatedly advised against speculating as to the nature and substance of proffered evidence.").

An injunction based on mere speculation and conjecture should not be allowed.

D. Kelley Was Precluded from Obtaining Injunctive Relief Due to His Unclean Hands.

Equity is to help one who has been wronged. It is not designed to aid one who manufactures a wrong. As Kelley already admitted, he filed this suit merely to get satisfaction for himself and justice for the public, not because he had been damaged or needed the protection of an injunction. 8 App. 1372, 1416, 14 App. 2673-77. Thus, the evidence shows that when Kelley visited Fairway in December 2012, he was looking to manufacture a basis for a seventh lawsuit against a vehicle dealer. In addition to the evidence cited previously, which is incorporated herein, other evidence shows Kelley did not act with clean hands or in good faith. It is undisputed that:

- Kelley began looking for dealer advertisements in the early/mid 2000s and bringing them to his attorney for decision about whether they could file suit. 8 App. 1377-79, 14 App. 2616.

- Kelley filed six prior lawsuits to get justice – although like here, he suffered no harm or damage of any kind from the advertisements at issue in the prior lawsuits since he never bought a vehicle. 8 App. 1360, 9 App. 1653.
- Before Kelley even visited Fairway in December 2012, Kelley and his wife had already decided not to buy cars in 2011, 2012 or 2013 as they did not have the ability and were attempting to save their house from foreclosure. 14 App. 2664, 12 App. 2175-77.
- Kelley misrepresented his income on his credit application because it does not identify $19,200 in rental income (9 App. 1597-99) that Kelley and his wife received in 2012 from their second home. 12 App. 2181, 9 App. 1631.
- Kelley misrepresented that he completed his credit application "for the purpose of securing credit". 9 App. 1598. Kelley knew that was not true based on his testimony that he intended to get justice for the public and that he and his wife had no intent or ability to buy a vehicle in 2012. 14 App. 2664, 12 App. 2175-77, 8 App. 1372.
- For the same reasons, Kelley knew the allegation in his Complaint that he "went to Fairway seeking to purchase a new SUV" was similarly false. 1 App. 14.

Nevada has long recognized the equitable maxim that "one seeking equity may not do so with 'unclean hands'". *Evans v. Dean Witter Reynolds, Inc.*, 116

Nev. 598, 610, 5 P.3d 1043, 1050 (2000). "The doctrine bars relief to a party who has engaged in improper conduct in the matter in which that party is seeking relief." *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 637-38, 189 P.3d 656, 662 (2008). This Court has explained that "the unclean hands doctrine precludes a party from attaining an equitable remedy when that party's 'connection with the subject-matter or transaction in litigation has been unconscientious, unjust, or marked by the want of good faith.'" *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766, (2008) (*quoting Income Investors v. Shelton*, 101 P.2d 973, 974 (Wash. 1940)).

Kelley's conduct falls squarely within the purview of the unclean hands doctrine, and should not be rewarded. He did not act in good faith or with pure motives, and equity should not have intervened.

V. THE PERMANENT MANDATORY INJUNCTION VIOLATES FAIRWAY'S CONSTITUTIONAL RIGHTS.

Nine months after trial, the district court *sua sponte* amended the mandatory injunction to add a permanent injunction that "no ad shall go out without either the owner or the owner's designated employee seeing the final product before it goes out to the public." 18 App. 3467. The written injunction differs slightly, stating that it applies to any advertisement relating to financing; *i.e.*, that "falls within the ambit or purview of NAC 482.180(3)." 20 App. 3929-30. This injunction prohibits

Fairway from engaging competitively in truthful advertising and as such violates Fairway's constitutional rights.[11]

The Nevada and United States Constitutions prohibit a governmental entity from restraining protected speech. *See* Nev. Const. Art. 1, §9; U.S. Const. amend. I. Commercial speech is protected speech. Indeed, "[t]he First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation." *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561 (1980). *See also Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976) ("It is clear, for example, that speech does not lose its First Amendment protection because money is spent to project it, as in a paid advertisement of one form or another.").

Central Hudson set out strict requirements to review a restraint of commercial speech: (1) the speech must be protected by the First Amendment; (2) the government must have a substantial interest in restraining the speech; (3) the restraint must directly advance the governmental interest asserted; and (4) the restraint on speech can be no more extensive than necessary to serve that interest. *Central Hudson*, 447 U.S. at 556. On occasion, the Supreme Court has applied strict scrutiny to commercial speech. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566

[11] Standard of review for Section V: This Court reviews issues of constitutionality de novo. *Matter of Halverson*, 123 Nev. 493, 509, 169 P.3d 1161, 1172 (2007).

(2011). The permanent injunction here cannot withstand scrutiny under these standards.

First, advertising is clearly a form of speech protected by the First Amendment and Article 1, Section 9 of Nevada's Constitution. The United States Supreme Court has long recognized it as such. *Cent. Hudson*, 447 U.S. at 561; *Virginia State Bd. of Pharmacy*, 425 U.S. at 761; *Sorrell v. IMS Health Inc.*, 564 U.S. at 579.

Second, there is no governmental interest – much less a *substantial* one – in enjoining advertising unless Fairway's owner reviews it first. The Legislature specifically regulated vehicle dealer advertising in NRS 482.351(1), but imposed no "prior owner review" requirement. Further, the district court could not assert an interest in prohibiting future conduct that *may* be misleading or that *may* violate NAC 482.180(3). Indeed, "the power to . . . regulate particular conduct does not necessarily include the power to . . . regulate speech about that conduct." *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 193 (1999).

Third, the permanent injunction does not "directly" advance any governmental interest because no such interest exists. While the district court speculated about the need for a permanent injunction for fear that Fairway might be sold in the future, such speculation was improper. 18 App. 3466-67. The United States Supreme Court has stated that "'speculation or conjecture' [] is an

unacceptable means of demonstrating that a restriction on commercial speech directly advances the State's asserted interest." *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 507 (1996).

Fourth, and most importantly, the injunction is far more extensive than necessary to advance any purported government interest that may exist, if any. Enjoining Fairway from engaging in advertising, or even imposing conditions and restrictions on such advertising – as this injunction does – is wholly unnecessary because the Nevada Legislature already regulates dealer advertising through NRS 482.351(1). Further, the DMV adopted advertising regulations for vehicle dealers through NAC 482.100 -.250. Placing yet an additional restriction on Fairway's speech before it occurs is unnecessary and excessive, especially since other vehicle dealers that compete with Fairway have no such restriction. Further, the Supreme Court has stated that an absolute prohibition on even potentially misleading speech is impermissible. *See In re R.M.J.*, 455 U.S. 191, 203 (1982). Here, the injunction does much more than that since it enjoins Fairway from even engaging in truthful advertising. And if any future advertisement is alleged to be improper, the injunction transforms what should be no more than a potential claim under NRS 41.600 into contempt proceedings that do not afford Fairway the same procedural protections.

Moreover, the injunction is far more extensive than necessary because it imposes a prior restraint on Fairway's advertisements. The term "prior restraint" refers to prohibitions on speech before it occurs. *Alexander v. United States*, 509 U.S. 544, 549 (1993). "Temporary restraining orders and permanent injunctions—*i.e.,* court orders that actually forbid speech activities—are classic examples of prior restraints." *Id.* at 550. Prior restraints have been found unconstitutional in cases where speakers must meet requirements before he or she can speak. *See Harman v. City of New York*, 140 F.3d 111, 120 (2nd Cir. 1998). They have also been found unconstitutional where an injunction has only delayed or postponed speech. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559-60 (1976). In other words, it is "clear that the barriers to prior restraint remain high." *Id.* at 561.

Because prior restraints are "the most serious and the least tolerable infringement on First Amendment rights," courts have typically struck down injunctions that prohibit even questionably protected speech. *See Near v. Minnesota*, 283 U.S. 697, 713 (1931) (overturning a restraint on publication of any periodical containing "malicious, scandalous, or defamatory" matter); *New York Magazine v. Metropolitan Transp. Authority*, 136 F.3d 123, 131-32 (2nd Cir. 1998) (finding that a prior restraint on commercial advertisements failed the fourth-prong of the *Central Hudson* test as the restraint was more excessive than necessary); *Evans v. Evans*, 162 Cal. App. 4th 1157, 1168 (2008) ("While [a party] may be

held responsible for abusing his right to speak freely in a subsequent tort action, he has the initial right to speak without censorship.").

Kelley cannot meet his high burden of showing that the permanent mandatory injunction passes scrutiny under *Central Hudson* or is otherwise proper. This Court should reverse.

CONCLUSION

Kelley should not have been allowed to proceed under NRS 41.600. Once he was, NRS 482.351(1) should have been the beginning and end of any further analysis. The district court found – indeed, repeatedly emphasized – that Fairway did *not* act with intent to mislead or deceive. That dispositive finding should have led to judgment in Fairway's favor. Instead, it somehow led to the unprecedented entry of equity's most extraordinary remedy. This Court should reverse the permanent mandatory injunction, the award of attorneys' fees and costs, and the final judgment, and judgment should be entered in Fairway's favor.

DATED this 26th day of September, 2017.

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CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 28.2 AND 32

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 font size and Times New Roman font face.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 13,995 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief compiles with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript of appendix where the matter relied on is to be found. I understand that I may be subject to

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sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 26th day of September, 2017.

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CERTIFICATE OF SERVICE

This is to certify that on the 26th day of September, 2017, a true and correct copy of the foregoing **FAIRWAY CHEVROLET COMPANY'S OPENING BRIEF** was submitted for filing via the Court's eFlex electronic filing system, and electronic notification will be sent to the following:

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ADDENDUM A

FRAUD UPON PURCHASERS; MISREPRESENTATION

NRS 41.600 Actions by victims of fraud.

1. An action may be brought by any person who is a victim of consumer fraud.
2. As used in this section, "consumer fraud" means:
(a) An unlawful act as defined in NRS 119.330;
(b) An unlawful act as defined in NRS 205.2747;
(c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;
(d) An act prohibited by NRS 482.351; or
(e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.
3. If the claimant is the prevailing party, the court shall award the claimant:
(a) Any damages that the claimant has sustained;
(b) Any equitable relief that the court deems appropriate; and
(c) The claimant's costs in the action and reasonable attorney's fees.
4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

(Added to NRS by 1975, 1177; A 1985, 2261; 1989, 649; 1997, 2216; 2001, 490; 2005, 1425; 2007, 743; 2011, 268; 2013, 1029)

NRS 41.610 Actions against seller or manufacturer of unapproved drug for misrepresentation of its therapeutic effect. The purchaser of a substance which has not been approved as a drug by the Food and Drug Administration but which has been licensed for manufacture in this state has a cause of action against the seller or manufacturer for any misrepresentation of its therapeutic effect made directly to the purchaser or by publication.

(Added to NRS by 1977, 1645; A 1983, 111)

NRS 482.351 "Bait and switch," misleading or inaccurate advertising by dealer or rebuilder prohibited; regulations.

1. No vehicle dealer or rebuilder may employ "bait and switch" advertising or otherwise intentionally publish, display or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold, leased, manufactured, handled or furnished to the public.

2. The Director shall adopt such regulations as may be necessary for making the administration of this section effective.

3. As used in this section, "bait and switch" advertising consists of an offer to sell goods or services which the seller in truth may not intend or desire to sell, accompanied by one or more of the following practices:

(a) Refusal to show the goods advertised.

(b) Disparagement in any material respect of the advertised goods or services or the terms of sale.

(c) Requiring other sales or other undisclosed conditions to be met before selling the advertised goods or services.

(d) Refusal to take orders for the goods or services advertised for delivery within a reasonable time.

(e) Showing or demonstrating defective goods which are unusable or impractical for the purposes set forth in the advertisement.

(f) Accepting a deposit for the goods or services and subsequently switching the purchase order to higher priced goods or services.

(Added to NRS by 1965, 1472; A 1971, 1305; 1999, 3284)

NRS 482.318 Legislative declaration. The Legislature finds and declares that the distribution and sale of motor vehicles in the State of Nevada vitally affects the general economy of the State and the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license motor vehicle manufacturers, distributors, new and used vehicle dealers, brokers, rebuilders, leasing companies, salespersons, and their representatives doing business in the State of Nevada in order to prevent frauds, impositions and other abuse upon its citizens.

(Added to NRS by 1965, 1471; A 1971, 1302; 1995, 2365)

NRS 598.0915 "Deceptive trade practice" defined. A person engages in a "deceptive trade practice" if, in the course of his or her business or occupation, he or she:

1. Knowingly passes off goods or services for sale or lease as those of another person.
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.
4. Uses deceptive representations or designations of geographic origin in connection with goods or services for sale or lease.
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.
6. Represents that goods for sale or lease are original or new if he or she knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
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.
8. Disparages the goods, services or business of another person by false or misleading representation of fact.
9. Advertises goods or services with intent not to sell or lease them as advertised.
10. Advertises goods or services for sale or lease with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
11. Advertises goods or services as being available free of charge with intent to require payment of undisclosed costs as a condition of receiving the goods or services.
12. Advertises under the guise of obtaining sales personnel when the purpose is to first sell or lease goods or services to the sales personnel applicant.
13. Makes false or misleading statements of fact concerning the price of goods or services for sale or lease, or the reasons for, existence of or amounts of price reductions.
14. Fraudulently alters any contract, written estimate of repair, written statement of charges or other document in connection with the sale or lease of goods or services.
15. Knowingly makes any other false representation in a transaction.
16. Knowingly falsifies an application for credit relating to a retail installment transaction, as defined in NRS 97.115.

(Added to NRS by 1973, 1483; A 1983, 881; 1985, 2256; 1995, 1094; 1997, 1375; 1999, 3280; 2001, 489, 2149)

NRS 598.0916 "Deceptive trade practice" defined. A person engages in a "deceptive trade practice" when, in the course of his or her business or occupation, he or she disseminates an unsolicited prerecorded message to solicit a person to purchase goods or services by telephone and he or she does not have a preexisting business relationship with the person being called unless a recorded or unrecorded natural voice:

1. Informs the person who answers the telephone call of the nature of the call; and
2. Provides to the person who answers the telephone call the name, address and telephone number of the business or organization, if any, represented by the caller.

(Added to NRS by 1999, 3332)

NRS 598.0917 "Deceptive trade practice" defined. A person engages in a "deceptive trade practice" when in the course of his or her business or occupation he or she employs "bait and switch" advertising, which consists of an offer to sell or lease goods or services which the seller or lessor in truth may not intend or desire to sell or lease, accompanied by one or more of the following practices:

1. Refusal to show the goods advertised.
2. Disparagement in any material respect of the advertised goods or services or the terms of sale or lease.
3. Requiring other sales or other undisclosed conditions to be met before selling or leasing the advertised goods or services.
4. Refusal to take orders for the sale or lease of goods or services advertised for delivery within a reasonable time.
5. Showing or demonstrating defective goods for sale or lease which are unusable or impractical for the purposes set forth in the advertisement.
6. Accepting a deposit for the goods or services for sale or lease and subsequently switching the purchase order or lease to higher priced goods or services.
7. Tendering a lease of goods advertised for sale or a sale of goods advertised for lease or tendering terms of sale or lease less favorable than the terms advertised.

(Added to NRS by 1985, 2255; A 1993, 1959; 1999, 3281)

NRS 598.0918 "Deceptive trade practice" defined. A person engages in a "deceptive trade practice" if, during a solicitation by telephone or sales presentation, he or she:

1. Uses threatening, intimidating, profane or obscene language;
2. Repeatedly or continuously conducts the solicitation or presentation in a manner that is considered by a reasonable person to be annoying, abusive or harassing;
3. Solicits a person by telephone at his or her residence between 8 p.m. and 9 a.m.;

4. Blocks or otherwise intentionally circumvents any service used to identify the caller when placing an unsolicited telephone call; or

5. Places an unsolicited telephone call that does not allow a service to identify the caller by the telephone number or name of the business, unless such identification is not technically feasible.

(Added to NRS by 2001, 659; A 2003, 2875)

NRS 598.092 "Deceptive trade practice" defined. A person engages in a "deceptive trade practice" when in the course of his or her business or occupation he or she:

1. Knowingly fails to identify goods for sale or lease as being damaged by water.

2. Solicits by telephone or door to door as a lessor or seller, unless the lessor or seller identifies himself or herself, whom he or she represents and the purpose of his or her call within 30 seconds after beginning the conversation.

3. Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

4. Fails to make delivery of goods or services for sale or lease within a reasonable time or to make a refund for the goods or services, if he or she allows refunds.

5. Advertises or offers an opportunity for investment and:

(a) Represents that the investment is guaranteed, secured or protected in a manner which he or she knows or has reason to know is false or misleading;

(b) Represents that the investment will earn a rate of return which he or she knows or has reason to know is false or misleading;

(c) Makes any untrue statement of a material fact or omits to state a material fact which is necessary to make another statement, considering the circumstances under which it is made, not misleading;

(d) Fails to maintain adequate records so that an investor may determine how his or her money is invested;

(e) Fails to provide information to an investor after a reasonable request for information concerning his or her investment;

(f) Fails to comply with any law or regulation for the marketing of securities or other investments; or

(g) Represents that he or she is licensed by an agency of the State to sell or offer for sale investments or services for investments if he or she is not so licensed.

6. Charges a fee for advice with respect to investment of money and fails to disclose:

(a) That he or she is selling or offering to lease goods or services and, if he or she is, their identity; or

(b) That he or she is licensed by an agency of any state or of the United States to sell or to offer for sale investments or services for investments or holds any other license related to the service he or she is providing.

7. Notifies any person, by any means, as a part of an advertising plan or scheme, that he or she has won a prize and that as a condition of receiving the prize he or she must purchase or lease goods or services.

8. Knowingly misrepresents the legal rights, obligations or remedies of a party to a transaction.

9. Fails, in a consumer transaction that is rescinded, cancelled or otherwise terminated in accordance with the terms of an agreement, advertisement, representation or provision of law, to promptly restore to a person entitled to it a deposit, down payment or other payment or, in the case of property traded in but not available, the agreed value of the property or fails to cancel within a specified time or an otherwise reasonable time an acquired security interest. This subsection does not apply to a person who is holding a deposit, down payment or other payment on behalf of another if all parties to the transaction have not agreed to the release of the deposit, down payment or other payment.

10. Fails to inform customers, if he or she does not allow refunds or exchanges, that he or she does not allow refunds or exchanges by:

(a) Printing a statement on the face of the lease or sales receipt;

(b) Printing a statement on the face of the price tag; or

(c) Posting in an open and conspicuous place a sign at least 8 by 10 inches in size with boldface letters, ➥ specifying that no refunds or exchanges are allowed.

11. Knowingly and willfully violates NRS 597.7118 or 597.7125.

12. Knowingly takes advantage of another person's inability reasonably to protect his or her own rights or interests in a consumer transaction when such an inability is due to illiteracy, or to a mental or physical infirmity or another similar condition which manifests itself as an incapability to understand the language or terms of any agreement.

(Added to NRS by 1985, 2256; A 1987, 87; 1993, 1959; 1999, 3281; 2005, 1426; 2009, 2443; 2011, 266)

NRS 598.0921 "Deceptive trade practice" defined.

1. A person engages in a "deceptive trade practice" if, in the course of his or her business or occupation:

(a) He or she issues a gift certificate that expires on a certain date, unless either of the following is printed plainly and conspicuously on the front or back of the gift certificate in at least 10-point font and in such a manner that the print is readily visible to the buyer of the gift certificate before the buyer purchases the gift certificate:

(1) The expiration date of the gift certificate; or

(2) A toll-free telephone number accompanied by a statement setting forth that the buyer or holder of the gift certificate may call the telephone number to obtain the balance of the gift certificate and the expiration date of the gift certificate;

(b) He or she imposes upon the buyer or holder of a gift certificate a service fee, unless each of the following is printed plainly and conspicuously on the front or back of the gift certificate in at least 10-point font and in such a manner that the print is readily visible to the buyer of the gift certificate before the buyer purchases the gift certificate:

(1) The amount of the service fee;

(2) The event or events that will cause the service fee to be imposed;

(3) The frequency with which the service fee will be imposed; and

(4) If the service fee will be imposed on the basis of inactivity, the duration of inactivity, which must not be less than 3 continuous years of nonuse, that will cause the service fee to be imposed; or

(c) Regardless of the notice provided, he or she imposes upon the buyer or holder of a gift certificate:

(1) A service fee or a combination of service fees that exceed a total of $1 per month; or

(2) A service fee that commences or is imposed within the first 12 months after the issuance of the gift certificate.

2. The provisions of this section do not apply to:

(a) A gift certificate that is issued as part of an award, loyalty, promotional, rebate, incentive or reward program and for which issuance the issuer does not receive money or any other thing of value;

(b) A gift certificate that is sold at a reduced price to an employer or nonprofit or charitable organization, if the expiration date of the gift certificate is not more than 30 days after the date of sale; and

(c) A gift certificate that is issued by an establishment licensed pursuant to the provisions of chapter 463 of NRS.

3. As used in this section:

(a) "Gift certificate" means an instrument or a record evidencing a promise by the seller or issuer of the instrument or record to provide goods or services to the holder of the gift certificate for the value shown in, upon or ascribed to the instrument or record and for which the value shown in, upon or ascribed to the instrument or record is decreased in an amount equal to the value of goods or services provided by the issuer or seller to the holder. The term includes, without limitation, a gift card, certificate or similar instrument. The term does not include:

(1) An instrument or record for prepaid telecommunications or technology services, including, without limitation, a card for prepaid telephone services, a card for prepaid technical support services and an instrument for prepaid Internet service purchased or otherwise distributed to a consumer of such services, including, without limitation, as part of an award, loyalty, promotional or reward program; or

(2) An instrument or record, by whatever name called, that may be used to obtain goods or services from more than one person or business entity, if the expiration date is printed plainly and conspicuously on the front or back of the instrument or record.

(b) "Issue" means to sell or otherwise provide a gift certificate to any person and includes, without limitation, adding value to an existing gift certificate.

(c) "Record" means information which is inscribed on a tangible medium or which is stored in an electronic or other medium, including, without limitation, information stored on a microprocessor chip or magnetic strip, and is retrievable in perceivable form.

(d) "Service fee" means any charge or fee other than the charge or fee imposed for the issuance of the gift certificate, including, without limitation, a service fee imposed on the basis of inactivity or any other type of charge or fee imposed after the sale of the gift certificate.

(Added to NRS by 2005, 1226; A 2007, 308)

NRS 598.0922 "Deceptive trade practice" defined.

1. Except as otherwise provided in subsection 2, a person engages in a "deceptive trade practice" if the person advertises or conducts a live musical performance or production in this State through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group.

2. A person does not engage in a "deceptive trade practice" pursuant to subsection 1 if:

(a) The performing group is the authorized registrant and owner of a federal service mark comprising in whole or dominant part the mark or name of that group registered in the United States Patent and Trademark Office;

(b) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the performing group is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public;

(d) The advertising does not relate to a live musical performance or production taking place in this State; or

(e) The performance or production is expressly authorized in writing by the recording group.

3. As used in this section:

(a) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) "Person" means the performing group or its promoter, manager or agent. The term does not include the performance venue or its owners, managers or operators unless the performance venue has a controlling or majority ownership interest in and produces the performing group.

(c) "Recording group" means a vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(d) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a cassette tape, compact disc or phonograph album, in which the sounds are embodied.

(Added to NRS by 2007, 737)

NRS 598.0923 "Deceptive trade practice" defined. A person engages in a "deceptive trade practice" when in the course of his or her business or occupation he or she knowingly:

1. Conducts the business or occupation without all required state, county or city licenses.
2. Fails to disclose a material fact in connection with the sale or lease of goods or services.
3. Violates a state or federal statute or regulation relating to the sale or lease of goods or services.
4. Uses coercion, duress or intimidation in a transaction.

5. As the seller in a land sale installment contract, fails to:

(a) Disclose in writing to the buyer:

(1) Any encumbrance or other legal interest in the real property subject to such contract; or

(2) Any condition known to the seller that would affect the buyer's use of such property.

(b) Disclose the nature and extent of legal access to the real property subject to such agreement.

(c) Record the land sale installment contract pursuant to NRS 111.315 within 30 calendar days after the date upon which the seller accepts the first payment from the buyer under such a contract.

(d) Pay the tax imposed on the land sale installment contract pursuant to chapter 375 of NRS.

(e) Include terms in the land sale installment contract providing rights and protections to the buyer that are substantially the same as those under a foreclosure pursuant to chapter 40 of NRS.

➥ As used in this subsection, "land sale installment contract" has the meaning ascribed to it in paragraph (d) of subsection 1 of NRS 375.010.

(Added to NRS by 1985, 2256; A 1999, 3282; 2009, 1118)

NRS 598.0924 "Deceptive trade practice" defined.

1. A provider or vendor of floral or ornamental products or services engages in a "deceptive trade practice" if the provider or vendor misrepresents the geographic location of its business by listing:

(a) A local telephone number in any advertisement or listing unless the advertisement or listing identifies the actual physical address, including the city and state, of the provider or vendor's business.

(b) An assumed or fictitious business name in any advertisement or listing if:

(1) The name of the business misrepresents the provider or vendor's geographic location; and

(2) The advertisement or listing does not identify the actual physical address, including the city and state, of the provider or vendor's business.

2. The provisions of this section do not apply to:

(a) A publisher of a telephone directory or any other publication or a provider of a directory assistance service that publishes or provides information about another business;

(b) An Internet website that aggregates and provides information about other businesses;

(c) An owner or publisher of a print advertising medium that provides information about other businesses;

(d) An Internet service provider; or

(e) An Internet service that displays or distributes advertisements for other businesses.

3. This section does not create or impose a duty or an obligation on a person other than a vendor or provider described in subsection 1.

4. As used in this section:

(a) "Floral or ornamental products or services" means floral arrangements, cut flowers, floral bouquets, potted plants, balloons, floral designs and related products and services.

(b) "Local telephone number" means a specific telephone number, including the area code and prefix, assigned for the purpose of completing local telephone calls between a calling party or station and any other party or station within a telephone exchange located in this State or its designated local calling areas. The term does not include long distance telephone numbers or toll-free telephone numbers listed in a local telephone directory.

(Added to NRS by 2013, 1030)

NRS 598.0925 "Deceptive trade practice" defined.

1. Except as otherwise provided in this section, a person engages in a "deceptive trade practice" when, in the course of his or her business or occupation, he or she:

(a) Makes an assertion of scientific, clinical or quantifiable fact in an advertisement which would cause a reasonable person to believe that the assertion is true, unless, at the time the assertion is made, the person making it has possession of factually objective scientific, clinical or quantifiable evidence which substantiates the assertion; or

(b) Fails upon request of the Commissioner or Attorney General to produce within 6 working days the substantiating evidence in his or her possession at the time the assertion of scientific, clinical or quantifiable fact was made.

2. This section does not apply to general assertions of opinion as to quality, value or condition made without the intent to mislead another person.

(Added to NRS by 1989, 649; A 1997, 3195; 2009, 2712; 2011, 2652; 2013, 1054; 2015, 3653)

Advertising

NAC 482.100 Definitions. (NRS 482.160, 482.351) As used in NAC 482.100 to 482.250, inclusive, unless the context otherwise requires:

1. "Advertisement" means any oral or printed statement disseminated by the seller or lessor of a vehicle for the purpose of inducing, or which is likely to induce, the purchase or lease of the vehicle, including, but not limited to, statements:
   (a) Made in a newspaper or other publication or on radio or television;
   (b) Contained in any notice, handbill, sign, catalog or letter; or
   (c) Printed on any tag or label attached to or accompanying the vehicle.
2. "Discount" means any deduction made from the gross sales price of a vehicle by the seller.
3. "Down payment" means an amount a seller receives in cash or trade from the purchaser of a vehicle that is used to reduce the cash price of the vehicle.
4. "Invoice" means a written itemized statement received by a dealer from the manufacturer of a vehicle listing the price of the vehicle, the price of the optional equipment included with the vehicle, if applicable, and the additional charges imposed by the manufacturer, if applicable.

[Dep't of Motor Veh., Advertising Reg. part § 3, eff. 3-28-66; A and renumbered as part § 9, 7-21-74; §§ 3, 4 & part 8, eff. 7-21-74] — (NAC A 3-14-96)

NAC 482.110 Exemptions; copy of regulations provided by dealer. (NRS 482.160, 482.351)

1. NAC 482.100 to 482.250, inclusive, do not apply to:
   (a) Any radio or television broadcasting station or broadcaster; or
   (b) Any publisher, printer, distributor or owner, any newspaper or magazine, billboard or other advertising medium, or any owner, operator, agent or employee of any advertising agency or other business engaged in preparing or disseminating advertising for public consumption on behalf of any other person when the advertising is in good faith and he or she is without knowledge of its untrue, deceptive or misleading character.
2. A dealer shall provide a copy of NAC 482.100 to 482.250, inclusive, to:
   (a) Any advertising agent or agency or other business engaged in preparing or disseminating advertisements for the dealer; and
   (b) Each employee assigned to preparing or disseminating advertisements for the dealer.

[Dep't of Motor Veh., Advertising Reg. § 6, eff. 7-21-74] — (NAC A 3-14-96)

NAC 482.120 False, deceptive or misleading advertising prohibited. (NRS 482.160, 482.351) No person licensed under the provisions of chapter 482 of NRS, or any agent or employee of that person, may publish, disseminate, display or cause directly or indirectly to be used, published, disseminated, displayed or made in any newspaper, magazine or other publication, by any radio, television, or other advertising medium or any other advertising device, or by public outcry, proclamation or declaration, or any other manner or means or method, but not limited to solicitation or dissemination by mail, telephone or door-to-door contacts, any statement which is known, or through the exercise of reasonable care, should be known to be false, deceptive or misleading, in order to:

1. Induce any person to purchase, sell, lease, dispose of, utilize or acquire any ownership, title or interest in any vehicle or to enter into any obligation or transaction relating thereto; or
2. Include such a statement as a part of a plan or scheme which intentionally misstates the cost or price of a vehicle for the purposes of producing an erroneous belief by any person that the actual cost or price is the same as stated in the advertisement.

[Dep't of Motor Veh., Advertising Reg. § 2, eff. 7-21-74]

NAC 482.130 Accuracy of advertising. (NRS 482.160, 482.351)

1. Any advertised statements and offer for the sale or lease of a specific vehicle indicating the condition, equipment and price of the vehicle and the terms of the sale or lease must be clearly set forth and based upon facts. Such an advertisement must clearly indicate that only one vehicle is being offered for sale or lease. The vehicle must be identified by the year and make of the vehicle and by no less than the last six digits of the vehicle identification number or by stock number.

2. An advertisement for vehicles which have the same make, model, year and price and are similarly equipped is not required to list a stock number or the last six digits of the vehicle identification number for each vehicle if the advertisement includes the make, model, year and price of the vehicles. If the number of vehicles which are advertised is limited, the advertisement must state the number of vehicles which are available at the advertised price.

3. An advertisement must not present information that is erroneous or misleading regarding which vehicle or vehicles are being offered for sale at the price or prices indicated in the advertisement.

4. If an advertisement includes the terms of the sale of a vehicle:

(a) The terms of the sale must not be presented in a misleading or inaccurate manner; and

(b) Any provision which qualifies the terms of the sale must be:

(1) If the advertisement is a printed advertisement, printed in at least 8-point type in a type face that can be read without extra effort; and

(2) Except as otherwise provided in this subparagraph, located in close proximity to the terms of the sale that are qualified. If the qualifying provision is not so located, the advertisement must clearly indicate that part of the advertisement that contains the qualifying provisions.

5. The price and terms of the sale included in an advertisement must remain available until the vehicle is sold, unless a date of expiration is included in the advertisement.

[Dep't of Motor Veh., Advertising Reg. § 1, eff. 3-28-66; A and renumbered as § 7, 7-21-74] — (NAC A 3-14-96)

NAC 482.140 "Bait and switch" advertising and selling practices prohibited. (NRS 482.160, 482.351)

1. "Bait and switch" advertising and selling practices must not be used. Vehicles advertised for sale must, unless otherwise stated, be in the possession of the dealer, owner or advertiser as advertised at the address given. Unless otherwise stated, the vehicles must be in a condition to be demonstrated and be willingly shown and sold at advertised prices and terms. The advertiser shall, upon request, present evidence to the prospective purchaser that the advertised vehicles have been sold.

2. As used in this section, "bait and switch" means to offer a vehicle at a low price to attract a prospective purchaser in order to induce him or her to purchase a vehicle with a higher price by disparaging the advertised vehicle.

[Dep't of Motor Veh., Advertising Reg. § 2, eff. 3-28-66; A and renumbered as part § 8, 7-21-74; part § 3, eff. 3-28-66; A and renumbered as part § 9, 7-21-74] — (NAC A 3-14-96)

NAC 482.150 Price of vehicle advertised. (NRS 482.160, 482.351)

1. If the price of a vehicle is advertised, the price must include all charges known to the dealer, including, but not limited to:

(a) Delivery charges imposed by the manufacturer or distributor of the vehicle; and

(b) Charges for servicing the vehicle imposed by the dealer.

➥ The price may exclude charges for the preparation of documents related to the sale of the vehicle imposed by the dealer, if the charges are separately identified in the advertisement and the amount of the charges is indicated.

2. Except as otherwise provided in this subsection, any advertisement which includes the term "manufacturer's suggested retail price," "MSRP," "factory price" or a similar term must include the price of the vehicle which includes any fee charged by the dealer and any manufacturer's discounts included on the sticker affixed to the window of the vehicle. The price may exclude charges for the preparation of documents related to the sale of the vehicle imposed by the dealer, taxes and fees for licenses.

3. A dealer shall not advertise a new vehicle at a price which does not include the standard equipment and any additional equipment which is listed on the invoice.

4. Statements such as "at cost," "below cost" or "below invoice," must be construed literally. "Cost" is the actual cash or invoice price paid by the dealer for the vehicle or vehicles offered. If an advertisement contains a statement such as "at cost," "below cost" or "below invoice," the dealer must, upon request, present to the prospective purchaser the actual invoice.

5. If specific claims of savings are used in an advertisement, the dealer must, upon request, explain to the prospective purchaser the manner in which the savings are calculated. The term "wholesale" must not be used in the business firm's name, signs or display signs.

6. If the term "wholesale price" or "low book price" is used in an advertisement, the price must correspond to the appropriate value set forth for the vehicle in a recognized reference publication.

7. As used in this section:

(a) "Manufacturer's suggested retail price" or "MSRP" means the total price of the vehicle which is shown on the sticker which is required to be affixed to the window of the vehicle pursuant to 15 U.S.C. §§ 1601 et seq.

(b) "Recognized reference publication" includes the *Kelley Blue Book*, the *National Automobile Dealer's Association Used Car Guide* and any other publication of similar scope and reputation.

[Dep't of Motor Veh., Advertising Reg. § 4, eff. 3-28-66; A and renumbered as § 10, 7-21-74] — (NAC A 3-14-96)

NAC 482.155 Loan advertised. (NRS 482.160, 482.351) If a dealer advertises a loan for the purchase of a vehicle and includes in the advertisement:

1. The amount of the down payment;
2. The amount of the periodic payment;
3. The number of payments or the period over which payments must be made; or
4. The amount of the finance charge,

➥ the dealer shall include in the advertisement any other terms of the loan related to the cost of the loan, including the annual percentage rate.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety, eff. 3-14-96)

NAC 482.160 Payments and down payments advertised. (NRS 482.160, 482.351)

1. The amount of payments and down payments must not be stated in a manner that gives the impression that it is the selling price of the vehicle.

2. The statement "no money down" or others of similar import mean that the advertiser will deliver the vehicle described to the purchaser without payment of any nature or without a trade-in.

3. Unless the advertiser clearly indicates that there is a down payment, the amount quoted as the weekly, monthly or other periods of installment payments must be understood to include the down payment.

[Dep't of Motor Veh., Advertising Reg. § 5, eff. 3-28-66; A and renumbered as § 11, 7-21-74]

NAC 482.165 Line of credit advertised. (NRS 482.160, 482.351)

1. If a dealer advertises a line of credit for the purchase of vehicles and includes in the advertisement:

(a) The periodic rate used to compute the annual percentage rate;
(b) The date the finance charge begins to accrue;
(c) The method of determining the balance upon which the finance charge is imposed;
(d) The method of determining the finance charge; or
(e) The amount of any fee included in the line of credit,

➥ the dealer shall include in the advertisement all fees that will be charged for the line of credit, including any membership or participation fees, and the annual percentage rate.

2. If an advertisement includes the annual percentage rate for a line of credit, it must be identified using the term "annual percentage rate" or "APR." If the rate included in the advertisement is a variable periodic rate, that fact must be disclosed in the advertisement.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety, eff. 3-14-96)

NAC 482.170 Trade-in allowances advertised. (NRS 482.160, 482.351) No specific amount or range of amounts may be stated in an advertisement as an offer for a trade-in if the amount or range of amounts stated is contingent upon the condition, model or age of the prospective purchaser's vehicle, unless those conditions are stated in the advertisement. The use of phrases such as "up to," "as much as" or those of similar meaning, are not considered to be adequate explanation.

[Dep't of Motor Veh., Advertising Reg. § 6, eff. 3-28-66; A and renumbered as § 12, 7-21-74] — (NAC A 3-14-96)

NAC 482.175 Lease advertised. (NRS 482.160, 482.351) If a dealer offers a vehicle for lease, an advertisement for that vehicle must include a statement that the vehicle is being offered for lease. If a dealer includes a term of the lease in the advertisement, he or she shall include in the advertisement:

1. The total amount required before the vehicle is delivered;
2. The number, period and amount of payments;
3. If an option to buy the vehicle is included in the lease, the price of the option or the method of determining the price of the option;
4. If an option to buy the vehicle is not included in the lease, a statement indicating that fact; and
5. The amount or method of determining the amount of any charges imposed at the termination of the lease.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety, eff. 3-14-96)

NAC 482.180 Financing advertised. (NRS 482.160, 482.351)

1. The phrases "no finance charge," "no carrying charge" or similar expressions may not be used when there is a charge for placing the transaction on a time-payment basis.
2. Terms featuring weekly, semimonthly or other periodic payments must not be used unless purchasers are given contracts payable in accordance with those terms; for example, weekly or semimonthly payments may not be featured unless actually available.
3. Advertised claims such as "everybody financed," "no credit rejected," "we finance anyone" and other similar statements, are not permitted since no dealer can be assured that financing will be extended or obtained due to adverse credit background, length or lack of employment, or bankruptcy.
4. Advertised terms based upon payments extending beyond 36 months must clearly state the number of months and any other special considerations required to obtain these terms.

[Dep't of Motor Veh., Advertising Reg. § 7, eff. 3-28-66; A and renumbered as § 13, 7-21-74]

NAC 482.185 Rebate advertised. (NRS 482.160, 482.351)

1. If a dealer advertises a rebate on a vehicle, an advertisement for the sale of that vehicle must include:

(a) The amount of the rebate; and

(b) If the dealer is required to make a contribution toward the rebate, the statement "Dealer participation may affect price of vehicle."

2. As used in this section, "rebate" means a monetary incentive offered by a manufacturer to a prospective purchaser to induce him or her to purchase a vehicle.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety, eff. 3-14-96)

NAC 482.190 Trade styles and signs. (NRS 482.160, 482.351)

1. The words "finance," "loan," "discount" or similar expressions may not be used in the firm name, signs or trade style of a company offering vehicles for sale unless the firm is actually engaged in the finance business and offering only bona fide repossessed vehicles.
2. The words "repo," "repossessed" or "repossession" may not be used in the business firm's name or trade style, signs or display signs. The words "repo," "repossessed" or "repossession" may be used through other means of advertising; for example, radio, television, newspapers, magazines only when that firm identifies that particular vehicle by vehicle identification number, the vehicle is identifiable as a repossessed vehicle and will be sold for the unpaid balance and actual repossession costs incurred.

[Dep't of Motor Veh., Advertising Reg. § 8, eff. 3-28-66; A and renumbered as § 14, 7-21-74]

NAC 482.200 Repossessions; unpaid balance. (NRS 482.160, 482.351) The term "repossessed" may be used only to describe vehicles presently and directly taken back from the purchaser. Advertisers offering repossessed vehicles for sale shall provide written proof of repossessions. The amount quoted as the unpaid balance and actual repossession costs incurred must be the full selling price.

[Dep't of Motor Veh., Advertising Reg. § 9, eff. 3-28-66; A and renumbered as § 15, 7-21-74]

NAC 482.210 Used vehicles of current year models; demonstrators, executive vehicles. (NRS 482.160, 482.351)

1. If a used vehicle of a current year model is advertised, the first line of the advertisement must contain the word "used" or the text must clearly indicate that the vehicle offered is used.

2. The term "demonstrator" or "executive vehicle," if used in advertising, refers to a vehicle which has never been registered. The terms include vehicles used by new vehicle dealers or their salespersons for demonstrating performance ability, but not vehicles purchased by dealers or salespersons and used as their personal vehicles.

[Dep't of Motor Veh., Advertising Reg. § 10, eff. 3-28-66; A and renumbered as § 16, 7-21-74; § 11, eff. 3-28-66; A and renumbered as § 17, 7-21-74] — (NAC A 3-14-96)

NAC 482.220 Executive or official vehicles; taxicabs. (NRS 482.160, 482.351)

1. Executive or official vehicles, when referred to in advertising, must have been used by executives, personnel of a motor vehicle manufacturer or a dealer. These vehicles must not have been registered.

2. Taxicabs and vehicles owned by state, federal, city, county and political subdivisions must be identified as such in their advertising. The word "commercial" or a similar ambiguous term may not be used to describe these vehicles.

[Dep't of Motor Veh., Advertising Reg. § 12, eff. 3-28-66; A and renumbered as § 18, 7-21-74; § 13, eff. 3-28-66; A and renumbered as § 19, 7-21-74]

NAC 482.230 Vehicles advertised as offered by private parties. (NRS 482.160, 482.351)

1. A vehicle owned or in the possession of a dealer or a salesperson must not be advertised to convey the impression the vehicle is being offered by a private party. Clarification must be made by adding the term "dealer" or "dlr" and the license number of the dealer or salesperson to the advertisement.

2. Phrases such as "take over payments," "can be purchased by paying storage bill and taking over payments" and similar phrases conveying an appeal made by a private party or distress appeals, must not be used by dealers.

3. Descriptions of ownership made by a dealer advertising consigned vehicles must be based on facts.

[Dep't of Motor Veh., Advertising Reg. § 14, eff. 3-28-66; A and renumbered as § 20, 7-21-74] — (NAC A 3-14-96)

NAC 482.240 Use of various selling techniques. (NRS 482.160, 482.351)

1. Unsupported claims of underselling are not in the public interest and must not be used since it is obvious that no dealer can be fully informed about every competitor's prices at all times.

2. Use of cards, circulars or other advertising with offers such as "would you take $...," or "if I could get you $... for your vehicle" must not be used. These are deceptive and detrimental to the public's interest.

3. No equipment, accessories or other merchandise may be described as "free" if the advertised vehicle can be purchased at a discount or lesser price without the articles. "Free" offers which require the purchase of something else, or a contractual obligation, or the performance of a service, must describe the conditions under which the "free" offer may be obtained.

4. When words such as "guaranteed," "warranty" or other terms implying protection are used in advertising one or more specified vehicles by radio, television, newspaper, magazines, display signs or any other type of advertising and the warranty referred to does not apply to all vehicles advertised, explanation must be given in clear and concise language, specifying each vehicle to which the warranty or guarantee does apply. The time and coverage of this guarantee or warranty must be clearly stated in the advertising. The purchaser of a vehicle covered by a guarantee or warranty must be provided with a written document stating the specific terms and coverage.

5. Statements such as "write your own deal," "name your own price," "name your own monthly payments," "appraise your own car" and similar phrases are obviously untrue and must not be used.

[Dep't of Motor Veh., Advertising Reg. § 15, eff. 3-28-66; A and renumbered as § 21, 7-21-74; § 16, eff. 3-28-66; A and renumbered as § 22, 7-21-74; § 17, eff. 3-28-66; A and renumbered as § 23, 7-21-74; § 18, eff. 3-28-66; A and renumbered as § 24, 7-21-74; § 19, eff. 3-28-66; A and renumbered as § 25, 7-21-74]

NAC 482.250 Violations. (NRS 482.160, 482.351)

1. Violations of NAC 482.100 to 482.250, inclusive, may constitute grounds for the suspension or revocation of the vehicle dealer's, rebuilder's or leasing company's license or the imposition of administrative fines by the Director of the Department pursuant to the provisions of NRS 482.352, 482.353 and 482.565.

2. It is sufficient in bringing any action pursuant to NAC 482.100 to 482.250, inclusive, that any statement referred to in NAC 482.120 has a tendency to deceive or mislead the public because of its false, deceptive or misleading character, even though no member of the public is actually deceived or misled by the statement.

[Dep't of Motor Veh., Advertising Reg. § 20, eff. 3-28-66; A and renumbered as § 1, 7-21-74; § 5, eff. 7-21-74] — (NAC A 3-14-96; 4-15-97)

Exhibit 2

ACOM
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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 corporation; 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.: A-19-807650-C

DEPT. NO.: IV

AMENDED COMPLAINT

JURY TRIAL DEMAND

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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.

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

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

7. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Defendant LIGGETT GROUP, Inc. (f/k/a LIGGETT GROUP, INC., f/k/a BROOKE GROUP, LTD., Inc., f/k/a LIGGETT & MEYERS TOBACCO COMPANY) (hereinafter "LIGGETT"), 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 Delaware with its principal place of business located in the State of North Carolina. Defendant, LIGGETT, resides and/or conducts business in every county within the State of Nevada and did so during all times relevant to this action.

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

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

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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.

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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.

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

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

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

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

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

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

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

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

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

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

a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as COPD, which includes emphysema and chronic bronchitis, laryngeal cancer, and lung cancer, including squamous cell carcinoma, small cell carcinoma, adenocarcinoma, and large cell carcinoma;

b. Nicotine in cigarettes is addictive;

c. Defendants placed cigarettes on the market that were defective and unreasonably dangerous;

d. Defendants concealed or omitted material information not otherwise known or available, knowing that the material was false and misleading, or failed to disclose a material fact concerning the health effects or addictive nature of smoking cigarettes, or both;

e. Defendants entered into an agreement to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment;

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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);

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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.

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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**

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

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

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

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

45. The Frank Statement was signed by the following domestic cigarette and tobacco product manufacturers, including Defendants herein, organizations of leaf tobacco growers, and tobacco warehouse associations that made up TIRC: American Tobacco by Paul Hahn, President; B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip Morris by O. Parker McComas, President; Defendant, R.J Reynolds by Edward A. Darr, President; Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S. Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company, Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton, General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson, 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.

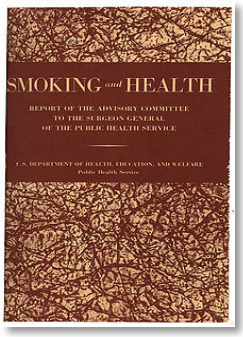
47. For the next five decades, TIRC/CTR worked diligently, and quite successfully, to rebuff the public's concern about the dangers of cigarettes. Defendants, through TIRC/CTR, invented the false and misleading notion that there was an "open question" regarding cigarette smoking and health. They appeared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

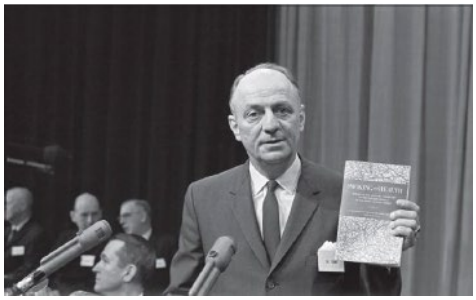
48. TIRC/CTR hired fake scientists and spokespeople to attack genuine, legitimate scientific studies. Virtually none of the so-called "research" funded by TIRC/CTR centered on the immediate questions relating to carcinogenesis and tobacco. Rather than addressing the compounds and carcinogens in cigarette 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."





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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).

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> **"We have deliberately played down the role of nicotine"** (Concealed Document 1972).
>
> **"Very few consumers are aware of the effects of nicotine, i.e., it's addictive nature and that nicotine is a poison"** (Concealed Document 1978).
>
> **"Determine minimum nicotine required to keep normal smoker 'hooked.'"** (Concealed Document 1965).
>
> **"The thing we sell most is nicotine"** (Concealed Document 1980).
>
> **"Without the nicotine, the cigarette market would collapse, and Defendants' would all lose their jobs and their consulting fees"** (Concealed Document 1977).

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

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

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

58. The cigarette industry responded to the "Caution" label by continuing their massive public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the public.

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

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

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

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

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

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

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

> **"School days are here. And that means BIG TOBACCO BUSINESS for somebody . . . line up the most popular students"** (Concealed Document 1927).
>
> **"SUMMER SCHOOL IS STARTING . . . lining up these students . . . as consumers"** (Concealed Document 1928).
>
> **"Today's teenager is tomorrow's potential regular customer"** (Concealed Document 1981).
>
> **"The 14-24 age group . . . represent tomorrow' cigarette business"** (Concealed Document 1974).

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

66. Cigarettes were the number one most heavily advertised product on television until the 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."

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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.

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

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

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

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

81. As recently as 2019, Defendants do not admit or acknowledge that nicotine in their cigarette smoke "is" addictive.

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

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

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

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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 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.

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92. Defendants were negligent in all the following respects, same being the proximate and/or legal cause of SANDRA CAMACHO's injuries and disabilities, 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 the level 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 bloodstream;

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. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and low tar;

k. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;

l. manipulating levels of pH in Defendants' cigarettes;

m. targeting children who could not understand or comprehend the seriousness or addictive nature of nicotine and smoking;

n. targeting minority populations such as African Americans, Hispanics, and women to obtain a greater market share to increase their profits;

o. failing to develop and utilize alternative designs, manufacturing methods, and/or materials to reduce and/or eliminate harmful materials from cigarettes;

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.

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

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

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

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

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

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99. As a direct and proximate and/or legal cause of Defendants' aforesaid negligence, 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).

100. As a further direct and proximate and/or legal cause of Defendants' aforesaid negligence, 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).

101. As a further direct and proximate and/or legal cause of Defendants' aforesaid negligence, 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)

102. As a further direct and proximate and/or legal cause of Defendants' aforesaid negligence, 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).

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

104. 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.

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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

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

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

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

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

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

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

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

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

118. As a direct and proximate and/or legal cause of Defendants' aforesaid gross negligence, 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).

119. As a further direct and proximate and/or legal cause of Defendants' aforesaid gross negligence, 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).

120. As a further direct and proximate and/or legal cause of Defendants' aforesaid gross negligence, 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).

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

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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)

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

123. 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.

124. 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.

125. 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.

126. 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.

THIRD CLAIM FOR RELIEF

(STRICT PRODUCTS LIABILITY)

Sandra Camacho Against Defendants Philip Morris and Liggett

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

128. 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.

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

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

131. 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.

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

133. 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.

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

135. 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;

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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;

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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.

136. 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.

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

138. 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.

139. 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).

140. 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).

141. 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).

142. 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 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).

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

144. 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.

145. 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.

146. 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.

147. 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.

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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

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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;

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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:

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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

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"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

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

161. 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).

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

163. 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.

164. 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.

165. 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.

166. 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.

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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;

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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.

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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;

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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

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).

186. As a further direct and proximate and/or legal cause of Defendants' aforesaid fraudulent concealment, 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).

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 its 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.

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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:

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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

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

199. As a further direct and proximate and/or legal cause of Defendants' concerted actions, 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).

200. As a further direct and proximate and/or legal cause of Defendants' aforesaid concerted actions, 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).

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

202. 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.

203. 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.

204. 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.

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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

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> 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"

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which falsely assured the public, the American government, and SANDRA 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 advertise to children . . . Some straight talk about smoking for young people;"

o. responding the 1988 United States Surgeon General's report that nicotine is the drug in tobacco that causes addiction, by issuing press releases stating, "Claims that cigarettes are addictive is irresponsible and scare tactics;"

p. lying under oath before the United States Congress in 1994 that it was their opinion that it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die.

213. As a direct and proximate and/or legal cause of Defendants' aforementioned acts, 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).

214. As a further direct and proximate and/or legal cause of Defendants' aforementioned acts, 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).

215. As a further direct proximate and/or legal cause of Defendants' aforementioned acts, 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).

216. As a further direct and proximate and/or legal cause of Defendants' aforementioned acts, 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

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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

commerce by Defendants, SILVERADO and SMOKES & VAPORS.

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

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

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

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

230. As a direct and proximate and/or legal cause of the aforesaid defective and unreasonably dangerous condition of cigarette products sold by Defendants, SILVERADO and SMOKES & VAPORS, 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).

231. 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).

232. As a further direct and proximate and/or legal cause of the aforementioned defective

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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).

233. 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 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).

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

235. 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.

236. 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.

237. 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.

238. 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.

WHEREFORE, Plaintiffs, SANDRA CAMACHO and ANTHONY CAMACHO expressly

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reserving the right to amend this Complaint at the time of trial to include all items of damage not yet ascertained, demand judgment against Defendants, PHILIP MORRIS USA, INC.; R.J. REYNOLDS TOBACCO COMPANY, 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.; ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS; LV SINGHS INC. d/b/a SMOKES & VAPORS;DOES I-X; and ROE BUSINESS ENTITIES XI-XX as follows:

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

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

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

4. For reasonable attorneys' fees;

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5. For costs of suit incurred;

6. For a jury trial on all issues so triable; and

7. For such other relief as to the Court seems just and proper.

DATED this 26th day of February 2020.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett

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EXHIBIT 20

EXHIBIT 20

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Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SANDRA CAMACHO, Plaintiff, vs. PHILIP MORRIS USA INC., Defendant. AND RELATED PARTIES	)	CASE NO. A-19-807650-C DEPT NO. IV **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE NADIA KRALL, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 23, 2021

PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(B)(5)

R.J. REYNOLDS TOBACCO COMPANY'S MOTION TO ASSOCIATE COUNSEL (VALENTIN LEPPERT)

SEE NEXT PAGE FOR APPEARANCES:

RECORDED BY: MELISSA BURGENER, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

Case Number: A-19-807650-C

A P P E A R A N C E S

FOR THE PLAINTIFFS:	SEAN K. CLAGGETT, ESQ. MICAH S. ECHOLS, ESQ.
FOR R.J. REYNOLDS TOBACCO:	DENNIS L. KENNEDY, ESQ. JOSEPH A. LIEBMAN, ESQ. REBECCA L. CROOKER, ESQ.
FOR PHILIP MORRIS USA:	HOWARD J. RUSSELL, ESQ. JENNIFER B. KENYON, ESQ.
FOR LIGGETT GROUP:	CHRISTOPHER J. JORGENSEN, ESQ. DANIEL F. POLSENBERG, ESQ.

LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 23, 2021, 9:25 A.M.

* * * * *

THE COURT: Camacho versus Philip Morris USA Incorporated.

Appearances, please.

MR. CLAGGETT: Good morning, Your Honor. Sean Claggett on behalf of the plaintiff.

THE COURT: Mr. Claggett, good morning.

MR. KENNEDY: Your Honor, in court, Dennis Kennedy --

MR. CLAGGETT: Micah Echols is also here for the plaintiff.

MR. KENNEDY: -- and Rebecca Crooker on behalf of Defendant R.J. Reynolds.

THE COURT: Mr. Kennedy, good morning, in person.

And Ms. Crooker, good morning.

MR. CLAGGETT: Your Honor, we also have Micah Echols for the plaintiff here as well.

THE COURT: Mr. Echols, good morning.

MR. ECHOLS: Good morning, Your Honor.

MR. JORGENSEN: This is Chris Jorgensen and Dan Polsenberg for Ligget.

THE COURT: Mr. Jorgensen and Mr. Polsenberg, good morning.

MR. POLSENBERG: Your Honor, good morning to you.

THE COURT: Thank you.

Do we have everyone with their appearance now?

MR. RUSSELL: Good morning, Your Honor. Howard Russell on behalf of Philip Morris. My co-counsel, Jennifer Blues Kenyon is also on.

THE COURT: Mr. Russell, good morning.

Is that everyone's appearances?

MR. LIEBMAN: Good morning, Your Honor. Joseph Liebman is also here on behalf of R.J. Reynolds.

THE COURT: Mr. Liebman, good morning.

MR. LIEBMAN: Good morning.

THE COURT: Is that everyone's appearances? Okay.

So the first motion is the Valentin Leppert's motion to associate counsel. This was the -- basically a supplemental motion filed which has the special circumstances affidavit pursuant to the Nevada Supreme Court Rule 42(6)(a).

After reviewing the supplemental motion, the Court is inclined to grant the motion as all of these actions were filed almost simultaneously in the State of Nevada.

Is there any argument from counsel?

MR. KENNEDY: Your Honor, Dennis Kennedy --

MR. CLAGGETT: Plaintiff has none.

MR. KENNEDY: -- on behalf of the movant. No, we agree with the Court's decision. The rule requires a detailed finding, and we will provide that in the order.

THE COURT: Thank you.

MR. KENNEDY: Okay. Thank you.

THE COURT: Any other counsel want to make an argument on the motion?

MR. CLAGGETT: Plaintiffs take no position on this, Your Honor.

THE COURT: Thank you, Mr. Claggett.

And, also, for those who are on BlueJeans, when you do speak, if you could just state who is speaking because Madam Recorder doesn't know who is speaking even though the Court itself might recognize people's voices.

So the motion to associate counsel is granted. Mr. Kennedy will prepare an order with detailed findings pursuant to the Nevada Supreme Court Rule 42(6)(a).

MR. KENNEDY: Yes, Your Honor.

THE COURT: Thank you.

The next motion is plaintiff's motion to reconsider the order granting R.J. Reynolds Tobacco Company's motion to dismiss. Plaintiff submitted a complaint under NRCP 12(b)(5).

After reading the motions, the Court's inclined to grant the motion. The Court understands defense's arguments that plaintiff didn't actually use the cigarette at issue, but under the Nevada Deceptive Trade Practices Act, this is more about detrimental reliance and the conspiracy and that without the concerted effort of all of the tobacco companies, they would not have succeeded in keeping this alleged harmful

information from the public, including the fact that they testified in Congress.

But, Mr. Claggett, this is your motion or, Mr. Echols, please proceed.

MR. CLAGGETT: Your Honor, we agree with the Court's inclination. We do believe that reconsideration of the prior order is correct. And, in fact, you would be consistent with the majority of the judges in our jurisdiction that have ruled on this already.

The reality is exactly that, is that R.J. Reynolds got together with all the other -- there were seven total major tobacco players that got together in the '50s, and they made a concerted effort for 50 years to defraud the public. And they spent over $250 billion in their efforts of advertising and misleading the -- not only the general public, but also the government and health officials as to the dangers of tobacco.

And as a result, those efforts were put in, and the plaintiff, in fact, did rely upon those false representations to start smoking. And ultimately now, all these years later, she has cancer that will ultimately take her life. And so for those reasons, we agree with the Court's inclinations and rely upon the briefing.

Thank you, Judge.

THE COURT: Thank you, Mr. Claggett.

Mr. Kennedy.

MR. KENNEDY: Thank you, Your Honor. Dennis Kennedy for Defendant R.J. Reynolds.

In addition to what we have set forth in the opposition to the motion, which is the untimeliness and the lack of compliance with the substantive predicates, there is one issue here that the Court must consider before granting reconsideration and essentially reversing the order entered by Judge Earley.

After -- and this is mentioned in the opposition. After Judge Earley's order, seven months after that, the plaintiff sought writ relief in the Nevada Supreme Court. The Nevada Supreme Court considered the petition for writ relief, ordered a response from R.J. Reynolds, and that response has been filed.

This matter and this precise question of standing under the Deceptive Trade Practices Act is now fully briefed on that writ petition, sitting in front of the Nevada Supreme Court, and we're awaiting either a decision or an argument date. So what the plaintiff has done is it said to the Nevada Supreme Court, "We'd like you to address this question on these same grounds because there's some uncertainty among the trial judges." The Nevada Supreme Court has said, "Yes, we will address that question. Please, R.J. Reynolds, give us an answer," and we did. The matter is now fully briefed and sitting in front of the Supreme Court. The case number is

82654.

The plaintiff is now back here saying, "Oh, Your Honor, can't we convince you to change your mind on the original 12(b)(5) dismissal?" And the Supreme Court -- I suspect, if this were brought to their attention, the Supreme Court may say, "Wait a minute. Status quo. We've got this issue before us in this case arising out of Judge Earley's decision." And I suspect the Supreme Court may say, if this matter was brought before it, "Wait a minute. We're going to decide this, that issue in this case." And I respectfully suggest to Your Honor that Your Honor not go back and change Judge Earley's decision. The Supreme Court now has that issue on that precise question in front of it in this case, and we're waiting for a decision.

THE COURT: Thank you, Mr. Kennedy.

Mr. Claggett, can you respond to that? Because based upon Mr. Kennedy's representations, the Court would be inclined to stay this motion until the Supreme Court rules on the issue because it's really up to the Supreme Court at this point.

MR. CLAGGETT: Okay. Your Honor, I'm going to -- if it's appropriate, I'll have Mike Echols discuss this point because this is more his wheelhouse than mine.

THE COURT: Thank you, Mr. Echols. And then we'll also hear from Mr. Polsenberg because he is appellate counsel, most likely.

MR. ECHOLS: Thank you, Your Honor.

So the argument Mr. Kennedy has made is basically one that would apply to an appeal. And it's an important distinction here that we have a writ petition because when an appealable order is entered and there's an appeal, there's a divestiture of jurisdiction.

We did not see any cases in the briefing on divestiture of jurisdiction or writ petitions because it doesn't exist. And the Supreme Court actually doesn't take the question. It can still at any point during the writ proceeding decide that it does not want to entertain this question at all. In fact, Mr. Kennedy and I argued a case in April this year and -- to the Southern Nevada panel. It was transferred to the en banc court, and we got an order a couple of weeks ago where the en banc court just says we're not going to intervene in this case.

And so there's an important distinction, Your Honor, in writ cases that do not divest this Court of jurisdiction, and so we don't even have to follow the *Honeycutt* procedure where the Court is -- states that it's inclined to grant the motion and then we ask for a partial remand from the Supreme Court, et cetera. So the way we see this happening is, if the Court, indeed, grants our motion to reconsider, we would notify the courts that an oral ruling has been made. We'd probably do that today or tomorrow. And then once we have the written

order filed -- signed by the Court and filed, then we would just withdraw our writ petition, which we're entitled to do, and then RJR would then be the aggrieved party, and they could file their own writ petition on the motion to reconsider.

But there's no reason for the Court to be inclined to grant our motion while waiting for the Supreme Court because now, if we switch the -- if we turn the tables, then RJR would be required to demonstrate why it would be entitled to extraordinary relief instead of us, and so it's a different burden. It would be the same question, but the burdens would be switched.

And so that -- I'm happy to answer any questions the Court may have, but that's our response to Mr. Kennedy's argument.

THE COURT: Thank you, Mr. Echols.

Mr. Polsenberg.

MR. POLSENBERG: Yes, Your Honor. I would agree with Dennis. And I agree on some of the principles with Micah as well. The case you just heard, it was a *Honeycutt* case coincidently and followed the procedures in *Foster versus Dingwall*. I think you articulated the right standard: Why should you change this if it's in front of the Supreme Court right now and briefed and waiting for them to decide?

Because if they change their mind and decide not to hear the case, then, yeah, you could take it up. But what

Micah is suggesting is that you change Judge Earley's ruling, withdraw the petition now, and then file another petition and brief it all over again. I think it would be judicial economy if we kept the case in front of the Supreme Court and tried to get an answer from the Supreme Court.

You wouldn't be reversed in that writ petition because that was Judge Earley's decision, and -- but as long as it's up in front of the Supreme Court, I think it makes the most sense to ask the Supreme Court to go ahead and decide it instead of adding months or maybe even a year to the appellate process by changing who's the respondent and who's the petitioner.

THE COURT: Thank you, Mr. Polsenberg.

MR. POLSENBERG: If you have any questions, Judge, I'd be happy to answer them.

THE COURT: Thank you, Mr. Polsenberg.

Mr. Russell.

Before we get back to any rebuttal, does any counsel that hasn't spoken want to speak?

MR. RUSSELL: I apologize, Judge. I was trying to get my mute button off. Nothing from us, Your Honor.

THE COURT: Okay. Mr. Kennedy?

MR. KENNEDY: I just have one point to make, Your Honor. This is not a jurisdictional argument. The question of whether or not to grant a rehearing is committed to the Court's

discretion. The Nevada Supreme Court said that repeatedly.

What we're saying is, because the matter is fully briefed on this issue in this case, now sitting in front of the Supreme Court, that the Court should do what the Court just said it was inclined to do, and that is exercise its discretion to stay this matter and see what the Supreme Court does. That's our point.

THE COURT: Thank you.

The Court is going to stay the matter for 60 days --

MR. CLAGGETT: Your Honor -- I'm sorry, Your Honor. This is Sean Claggett.

One of the concerns that exists -- and it's a real concern -- is if R.J. Reynolds is wanting to participate, all the discovery in this case is happening now. Critical depositions are happening. And if they're taking this position we're not going to allow them to participate -- they wouldn't have a position to participate in the discovery process, and so when they're talking about delays, what we don't want is for them to come back and say, "Well, now we need to redo all the discovery because we didn't get to participate."

We believe that they should be participating in the discovery so that we don't delay it. And what we don't want for them to do is say, "Well" -- like, for example, our client can't speak. Her deposition is going to be taken. She's going to have to write out every one of her answers. What we don't

want is for R.J. Reynolds to come back and say, "Well, we want to redepose this very sick woman because we didn't have the opportunity to do it because we weren't a party in the case at that time because we didn't get -- you didn't get the decision reversed and the Supreme Court has yet to rule on it. Therefore, we're going to delay this out." That's a very real concern here.

So when you're talking about prejudice, they need to be careful what they're asking for because they may -- they may get it, but I don't think -- I don't want this court or any other court to fall for their trick to delay the trial and to cause the plaintiff to undergo the second deposition, especially when she's so ill she can't even speak. And so that's the bigger concern and reality in this case, that R.J. Reynolds -- regardless of what the Court does, I think they need to, at a bare minimum, continue to participate if they want to, but they should be precluded from arguing later that they could not participate because they prevailed on the motion and, therefore, delay the proceedings.

THE COURT: Thank you. Mr. Kennedy.

MR. KENNEDY: Your Honor, Dennis Kennedy for R.J. Reynolds.

I -- that's not an issue, I don't think, before the Court. Right now we've been dismissed, and we're waiting for the Nevada Supreme Court to make a decision. If there's an

issue on discovery that comes up later, we'll have to take it up then because we don't know what the Nevada Supreme Court is going to say.

MR. CLAGGETT: And we don't have to wait for the Nevada Supreme Court to rule, Your Honor. That's exactly why you can rule today, fix this problem, keep R.J. Reynolds in this very time-sensitive, very sick plaintiff case and have them litigate. This is exactly why you don't need to wait for the Supreme Court, and this is exactly what RJ Reynolds is wanting to do, is to delay the discovery, delay the trial, and hopefully have our plaintiff dead by the time trial comes, and we don't want that to happen.

And so this is exactly why the Court can take -- it has the ability to do the right thing, go with your original inclination, grant the motion, and keep R.J. Reynolds here, and let's get this discovery done.

THE COURT: So, Mr. Claggett, you would say even though R.J. Reynolds is out, you would still allow them to participate in discovery?

MR. CLAGGETT: We want them to because we believe we're correct on this issue. I think the Court believes we're correct on this issue. I don't believe that waiting for the Supreme Court -- who knows how long that could take. The trial date could be done by then.

The issue -- the issue on this, Your Honor, is that

granting the motion keeps them in and we go through the trial, and then at the end, they have the right to appeal. If you are right and Judge Earley was wrong -- which I think that your inclinations are correct, that Judge Earley was wrong -- but just clearly wrong on the law, then we're going to have to redo the whole trial as it relates to R.J. Reynolds because we're going to do the trial as it relates to Philip Morris and Ligget. And so it doesn't -- I mean, when we're talking about judicial economy, there is -- that argument makes no sense to me because there's no economy in not granting the motion.

All of the judicial economy favors granting the motion because it's going to keep all the parties in and keep the case going. And we have a trial coming up in, I think, roughly six months or so in this case. We may as well get this case tried with all the parties in it. And so, you know, this argument of judicial economy doesn't make much sense. And it's a lot easier to have a defendant in and do an appeal than to get rid of the claims and the Supreme Court say, "You know what? Those claims should have been there, that party should have been there, go redo the whole trial as it relates to them," which we can do. But that's not judicial economy for Your Honor to have to sit through two lengthy tobacco trials on the same case.

What makes sense is to go with your original inclination, grant the motion. Let's get this set back to

where it should be and not rely upon the Supreme Court to rule on this. I mean, you know, we all know the Supreme Court is overwhelmed, and it could take another year for them to rule on this writ. Who knows? They could rule on the writ after the trial.

And so, really, what makes sense is to get this case back in order and go with your original legal analysis which is the correct analysis and get this case, judicial economy and everything else, moving forward in a positive direction.

Thank you.

MR. KENNEDY: Fine. Then here's R.J. Reynolds' answer to Mr. Claggett's concern about discovery. The Court can stay it and say R.J. Reynolds can participate in the discovery if it wishes to do so, even though it has been dismissed from the case and it can participate or not participate. And if it doesn't participate, then in the future, it may be precluded from taking certain positions.

THE COURT: But the Court wouldn't have any jurisdiction to say R.J. Reynolds has to participate and would be precluded from arguing because they were out of the case, that they had to participate. Because R.J. Reynolds complained that they weren't actually in the case, so why would they have to participate?

MR. KENNEDY: No. What I'm saying is you can say to R.J. Reynolds, "You've been dismissed, but you still retain the

right to participate in the discovery if you wish to do so. And you won't later be allowed to say, 'We couldn't participate in the discovery because we've been dismissed.'"

You can say, "You can still participate because the matter is pending in the Supreme Court if you elect to do so. And if you elect not to do so, you won't be heard to come back later and say, 'We didn't participate because we didn't have the right to do so.'"

THE COURT: So are you arguing that R.J. Reynolds will not come back and say that they didn't have -- that they want to continue discovery or redo discovery because they weren't technically in the case?

MR. KENNEDY: No, that's right. If the Court says, "Look, this is pending in the Supreme Court and I'm going to enter a stay because I want to see what the Supreme Court says on this issue, but you can still participate in the discovery in this case if you elect to do so, and if you don't, if you say, 'Well, we're just not going to participate,' you will not be allowed to come back later and say, 'Well, we didn't do the discovery because we weren't allowed to do so.'"

The Court can say, "As a condition of the stay, you can still stay in the case and do the discovery." It may be the Supreme Court says, "No, the dismissal was proper and then, you know, the timing spent on the discovery is your own," but we're willing to accept that. That will satisfy Mr. Claggett's

concern.

THE COURT: Thank you. Mr. Claggett, what's your response to that?

MR. CLAGGETT: Yeah. Your Honor, I want -- first of all, there can't be a stay of anything. These depositions are set to take place imminently, and they need to get done because of the health of our plaintiff. And what I'm hearing is -- and I've seen this happen, Your Honor. And Mr. Kennedy is a fantastic lawyer and it always makes me nervous when I hear these things because he's very sophisticated in the words he chooses.

We need them to agree on the record that they're waiving all due process arguments, which I don't know that they can do. I don't think you can waive a due process argument. That's my concern. That's what they're setting up here. They're saying, "Oh, yeah, we're okay with it," but down the road, they'll be, like, "Your Honor, due process requires us to have an expert," and then they'll argue that at the Supreme Court.

And this is the play that I see happening and I see where it's going to end up, and it's a slippery slope. I think this is not wise, from my opinion, for them to say, "Well, we may participate; we may not. You know, we're fine if the Court rules that way." They're not saying that they're waiving their right to an expert. They're not saying they're waiving their

right -- unless they want to go on record and say they agree that they will retain no expert, they will take no depositions, they will participate nothing, and they agree to go to trial without any depositions and any experts and that's their agreement today, and they will never raise due process arguments, then I guess then we'll have to see what happens down the road if they do that. But it would be -- I still think they could argue due process is the problem. I don't think you can ever waive due process.

MR. KENNEDY: Your Honor, we're not saying any of that, and we're not asking to stay the case. We're asking to stay the motion for reconsideration until the Supreme Court rules. And as a condition of that stay, the Court will say to R.J. Reynolds, "You still may participate in the discovery in the case to the extent that you want to do so, and you won't be heard later to say we didn't have the right to do discovery."

Mr. Claggett says he wants us to stipulate we'll go to trial with no expert. That has nothing to do with what we're talking about here. What we're talking about is a stay of the motion to reconsider pending the Supreme Court decision on this issue, and saying, as a condition of the stay, even though R.J. Reynolds has been dismissed from the case, it still has the right to engage in the discovery as if it was still a party. That's all we're saying that's agreeable to us.

THE COURT: Thank you, Mr. Kennedy. Does anyone have

anything to argue before the Court issues its ruling?

And, Mr. Claggett, you can go last. So aside from Mr. Claggett, does anyone else have anything to argue?

Hearing none, Mr. Claggett, go ahead. You'll have the last word before the Court issues its ruling.

MR. CLAGGETT: Right. Thank you, Your Honor. Sean Claggett.

So what Mr. Kennedy is saying -- and, again, listen to his words -- he says "you may." You know, and it's these wishy-washy words that are concerning versus "You must participate in discovery," which is you're still a party. If they're not a party, you can't require them to participate if they're not a party, which, as it stands currently, unless the Court reconsiders Judge Earley's ruling, they're not a party, and that's where that word "may," that very critical word that he chose, "may," becomes extremely problematic down the road, and they will be arguing everything that they suggest that they would not be. But they're leaving that opening there because of the word "may."

And so I think it's just -- you're better off, Your Honor, going with your initial inclination, going with what you believe the clear state of the law is, and reconsidering.

Thank you, Judge.

THE COURT: Thank you. The Court understands all the arguments from all of the parties, but the Court does not

believe it has the authority to require R.J. Reynolds to participate in discovery if they are not a party to the case, and pursuant to Mr. Kennedy's representations, he still -- R.J. Reynolds Reynolds would be lacking in due process if they weren't able to hire an expert or properly defend the case, so the Court doesn't believe it has jurisdiction to preclude R.J. Reynolds Reynolds from participating in discovery fully.

So plaintiff's motion to reconsider is hereby granted.

MR. CLAGGETT: Thank you, Your Honor. Plaintiff will prepare the order and pass it by counsel.

THE COURT: Thank you. Thank you so much, Counsel.

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: Thank you, Mr. Polsenberg.

Thank you, Mr. Kennedy.

(Proceeding concluded 9:51 a.m.)

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Dana L. Williams
Transcriber

EXHIBIT 21

EXHIBIT 21

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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	CASE NO. A-19-807650-C DEPT. NO. IV **ORDER GRANTING PLAINTIFFS' MOTION TO RECONSIDER ORDER GRANTING DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(b)(5)**

SMOKES & VAPORS, a domestic corporation; DOES 1-X; and ROE BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Date of Hearing: September 23, 2021

Time of Hearing: 9:00 a.m.

The Court, having reviewed (1) Plaintiffs' Motion to Reconsider Order Granting R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(b)(5) (filed on May 25, 2021); (2) Defendant R.J. Reynolds Tobacco Company's ("R.J. Reynolds") Opposition (filed on June 22, 2021); and (3) Plaintiffs' Reply (filed on August 3, 2021), and having heard the argument of counsel at the time of the hearing on September 23, 2021, hereby ORDERS as follows:

1. Plaintiffs' Motion to Reconsider is hereby GRANTED.

2. The effect of this Order is that Plaintiffs' claims for (1) violation of the Nevada Deceptive Trade Practices Act ("NDTPA") and (2) civil conspiracy against R.J. Reynolds are hereby reinstated.

3. The Court first notes that according to NRCP 54(b), it has the right to reconsider the prior Order Granting Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(b)(5) (filed on August 27, 2020). *See, e.g., In re Manhattan W. Mechanic's Lien Litig.*, 131 Nev. 702, 707 n.3, 359 P.3d 125, 128 n.3 (2015) ("[The petitioner] argues that the district court erred in reconsidering the motion. [The petitioner's] argument is without merit because NRCP 54(b) permits the district court to revise a judgment that adjudicates the rights of less than all the parties until it enters judgment adjudicating the rights of all the parties.").

4. The prior August 27, 2020, Order Granting Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss is clearly erroneous for several reasons:

a. Plaintiffs' claim for violation of the NDTPA is based upon the plain language of the several statutory provisions. Yet, the prior August 27, 2020, Order erroneously adds language to the statutory requirements of the NDTPA by requiring Plaintiffs to "purchase or use" an R.J. Reynolds' product. Ord. at 2. The prior August 27, 2020, Order also erroneously required Plaintiffs to have a "legal relationship" with R.J. Reynolds. These requirements

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improperly exceed the statutory requirements of NRS 41.600 and NRS Chapter 598. *See, e.g.,* NRS 598.0915; NRS 598.094. *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 451, 117 P.3d 171, 174 (2005) ("[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done."). Thus, the Court grants reconsideration and concludes that Plaintiffs have properly alleged a claim for violation of the NDTPA against R.J. Reynolds to survive a challenge under NRCP 12(b)(5).

b. The Court's construction of NRS 41.600 and NRS Chapter 598 in granting reconsideration is consistent with the Supreme Court's clarification in *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 232 P.3d 433 (2010) that an NDTPA claim is easier to establish than common law fraud. The Court of Appeals also more recently confirmed, "Because the NDTPA is a remedial statutory scheme," this Court should "afford [it] liberal construction to accomplish its beneficial intent." *Poole v. Nevada Auto Dealership Investments, LLC*, 135 Nev. 280, 286–287, 449 P.3d 479, 485 (Ct. App. 2019) (citing *Welfare Div. of State Dep't of Health, Welfare & Rehab. v. Washoe Cty. Welfare Dep't*, 88 Nev. 635, 637 (1972)). Thus, the Court concludes that Plaintiffs have standing and have sufficiently alleged a claim for violation of the NDTPA against R.J. Reynolds to survive a challenge under NRCP 12(b)(5).

c. Since the Court has reinstated Plaintiffs' claim for violation of the NDTPA against R.J. Reynolds, this claim provides the necessary predicate for the Court to also reinstate Plaintiffs' conspiracy claim against R.J. Reynolds. In Nevada, "an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud." *Jordan v. State ex rel. Dept. of Motor Vehicles & 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).

5. On the issue of discovery, the Court notes that there is an upcoming jury trial date of August 1, 2022. Despite R.J. Reynolds' offer at the hearing that it could participate in discovery as a non-party (viewing itself as dismissed under the prior August 27, 2020, Order), the Court does not have the authority to compel a non-party to participate in discovery. Thus, as a practical matter, if

the Court were to leave R.J. Reynolds dismissed under the erroneous August 27, 2020, Order, the discovery in this case would have to be duplicated upon the reinstatement of Plaintiffs' claims against R.J. Reynolds. Thus, the Court's decision to grant Plaintiffs' motion to reconsider and reinstate Plaintiffs' claims against R.J. Reynolds more fully supports judicial economy than R.J. Reynolds' offer to voluntarily participate in discovery, while remaining dismissed from the case. Now that Plaintiffs' claims against R.J. Reynolds are reinstated, R.J. Reynolds can participate in discovery as a party to this litigation.

IT IS SO ORDERED.

Dated this 3rd day of November, 2021

3F8 F16 93CB E87D
Nadia Krall
District Court Judge

Respectfully Submitted by:
Dated this 2nd day of November 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett

Sean K. Claggett, Esq.
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Dated this ____ day of _____ 2021.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Sandra Camacho, Plaintiff(s) vs. Philip Morris USA Inc, Defendant(s)	CASE NO: A-19-807650-C DEPT. NO. Department 4

AUTOMATED CERTIFICATE OF SERVICE

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EXHIBIT 22

EXHIBIT 22

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Attorneys for Plaintiffs

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 corporation; and ASM NATIONWIDE 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

NOTICE OF ENTRY OF ORDER

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PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and filed on November 3, 2021.

A copy of which is attached hereto.

DATED this 4th day of November, 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett
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Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of November 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

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VIA E-SERVICE ONLY: *Kelly Anne Luther, Esq.* *KASOWITZ BENSON TORRES LLP* *1441 Brickwell Avenue, Suite 1420* *Miami, FL 33131* *Email: kluther@kasowitz.com* *Attorneys for Defendant Liggett Group, LLC*	

/s/ Lindsay S. Cortez
An Employee of Claggett & Sykes Law Firm

ORDR

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Attorneys for Plaintiffs

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	CASE NO. A-19-807650-C DEPT. NO. IV **ORDER GRANTING PLAINTIFFS' MOTION TO RECONSIDER ORDER GRANTING DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(b)(5)**

SMOKES & VAPORS, a domestic corporation; DOES 1-X; and ROE BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Date of Hearing: September 23, 2021

Time of Hearing: 9:00 a.m.

The Court, having reviewed (1) Plaintiffs' Motion to Reconsider Order Granting R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(b)(5) (filed on May 25, 2021); (2) Defendant R.J. Reynolds Tobacco Company's ("R.J. Reynolds") Opposition (filed on June 22, 2021); and (3) Plaintiffs' Reply (filed on August 3, 2021), and having heard the argument of counsel at the time of the hearing on September 23, 2021, hereby ORDERS as follows:

1. Plaintiffs' Motion to Reconsider is hereby GRANTED.

2. The effect of this Order is that Plaintiffs' claims for (1) violation of the Nevada Deceptive Trade Practices Act ("NDTPA") and (2) civil conspiracy against R.J. Reynolds are hereby reinstated.

3. The Court first notes that according to NRCP 54(b), it has the right to reconsider the prior Order Granting Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(b)(5) (filed on August 27, 2020). *See, e.g., In re Manhattan W. Mechanic's Lien Litig.*, 131 Nev. 702, 707 n.3, 359 P.3d 125, 128 n.3 (2015) ("[The petitioner] argues that the district court erred in reconsidering the motion. [The petitioner's] argument is without merit because NRCP 54(b) permits the district court to revise a judgment that adjudicates the rights of less than all the parties until it enters judgment adjudicating the rights of all the parties.").

4. The prior August 27, 2020, Order Granting Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss is clearly erroneous for several reasons:

a. Plaintiffs' claim for violation of the NDTPA is based upon the plain language of the several statutory provisions. Yet, the prior August 27, 2020, Order erroneously adds language to the statutory requirements of the NDTPA by requiring Plaintiffs to "purchase or use" an R.J. Reynolds' product. Ord. at 2. The prior August 27, 2020, Order also erroneously required Plaintiffs to have a "legal relationship" with R.J. Reynolds. These requirements

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improperly exceed the statutory requirements of NRS 41.600 and NRS Chapter 598. *See, e.g.,* NRS 598.0915; NRS 598.094. *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 451, 117 P.3d 171, 174 (2005) ("[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done."). Thus, the Court grants reconsideration and concludes that Plaintiffs have properly alleged a claim for violation of the NDTPA against R.J. Reynolds to survive a challenge under NRCP 12(b)(5).

b. The Court's construction of NRS 41.600 and NRS Chapter 598 in granting reconsideration is consistent with the Supreme Court's clarification in *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 232 P.3d 433 (2010) that an NDTPA claim is easier to establish than common law fraud. The Court of Appeals also more recently confirmed, "Because the NDTPA is a remedial statutory scheme," this Court should "afford [it] liberal construction to accomplish its beneficial intent." *Poole v. Nevada Auto Dealership Investments, LLC*, 135 Nev. 280, 286–287, 449 P.3d 479, 485 (Ct. App. 2019) (citing *Welfare Div. of State Dep't of Health, Welfare & Rehab. v. Washoe Cty. Welfare Dep't*, 88 Nev. 635, 637 (1972)). Thus, the Court concludes that Plaintiffs have standing and have sufficiently alleged a claim for violation of the NDTPA against R.J. Reynolds to survive a challenge under NRCP 12(b)(5).

c. Since the Court has reinstated Plaintiffs' claim for violation of the NDTPA against R.J. Reynolds, this claim provides the necessary predicate for the Court to also reinstate Plaintiffs' conspiracy claim against R.J. Reynolds. In Nevada, "an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud." *Jordan v. State ex rel. Dept. of Motor Vehicles & 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).

5. On the issue of discovery, the Court notes that there is an upcoming jury trial date of August 1, 2022. Despite R.J. Reynolds' offer at the hearing that it could participate in discovery as a non-party (viewing itself as dismissed under the prior August 27, 2020, Order), the Court does not have the authority to compel a non-party to participate in discovery. Thus, as a practical matter, if

the Court were to leave R.J. Reynolds dismissed under the erroneous August 27, 2020, Order, the discovery in this case would have to be duplicated upon the reinstatement of Plaintiffs' claims against R.J. Reynolds. Thus, the Court's decision to grant Plaintiffs' motion to reconsider and reinstate Plaintiffs' claims against R.J. Reynolds more fully supports judicial economy than R.J. Reynolds' offer to voluntarily participate in discovery, while remaining dismissed from the case. Now that Plaintiffs' claims against R.J. Reynolds are reinstated, R.J. Reynolds can participate in discovery as a party to this litigation.

IT IS SO ORDERED.

Dated this 3rd day of November, 2021

3F8 F16 93CB E87D
Nadia Krall
District Court Judge

Respectfully Submitted by:
Dated this 2nd day of November 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett

Sean K. Claggett, Esq.
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Attorneys for Plaintiffs

Reviewed as to Form and Content:
Dated this ____ day of _____ 2021.

BAILEY KENNEDY

Submitting Competing Order

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Sandra Camacho, Plaintiff(s) vs. Philip Morris USA Inc, Defendant(s)	CASE NO: A-19-807650-C DEPT. NO. Department 4

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARTIN TULLY, individually, and DEBRA TULLY, 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 corporation; JAMEZ LLC (d/b/a JAMEZ SMOKES & CIGARS), a limited liability corporation; RED ROCK SMOKE SHOP INC., a domestic corporation; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive.

Defendants.

CASE NO.: A-19-807657-C

DEPT. NO.: VI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and filed on July 8, 2020.

A copy of which is attached hereto.

DATED this 9th day of July, 2020.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of July 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

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/s/ Moises Garcia
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DISTRICT COURT
CLARK COUNTY, NEVADA

MARTIN TULLY, individually, and DEBRA TULLY, 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 corporation; JAMEZ LLC (d/b/a JAMEZ SMOKES & CIGARS), a limited liability corporation; RED ROCK SMOKE SHOP INC., a domestic corporation; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive.

Defendants.

CASE NO.: A-19-807657-C

DEPT. NO.: VI

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

Case Number: A-19-807657-C

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On June 16, 2020, the Court issued a Minute Order regarding Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(B)(5). The Court, having considered Defendants' Motion, the Opposition, and Reply thereto, hereby finds as follows:

THE COURT HEREBY FINDS that Defendants' Motion is **DENIED.**

After reviewing the motions, oppositions, joinders and replies, the Court has made the decisions detailed below. This decisions was reached in accordance with precautions being taken due to COVID-19 and the Administrative Order 20-01, which states that certain nonessential matters may be decided on the pleadings without an in court hearing.

Defendant Philip Morris USA Inc., Jamez, LLC, and Red Rock Smoke Shop, Inc.'s Motion to Dismiss Plaintiffs Amended Complaint under NRCP 12(b)(5) is hereby DENIED. To survive a motion to dismiss under NRCP 12(b)(5), a complaint must contain some set of facts which, if true, would entitle the plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181P.3d 670, 672 (2008). When reviewing a NRCP 12(b)(5) motion, all factual allegations in the complaint must be regarded as true. *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002). In fact, the court must accept as true the complaint's allegations and draw all reasonable inferences in [plaintiff s] favor. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 635, 137 P.3d 1171, 1180 (2006).

Plaintiffs have not alleged any claims that are pre-empted by federal law. Federal law pre-empts claims that challenge the adequacy of post-1969 warning labels. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 524 (1992). However, here Plaintiffs are only alleging failures to warn prior to July 1, 1969.

Federal law also pre-empts claims that the Defendant is negligent for merely continuing to manufacture cigarettes. *Liggett Grp., Inc. v. Davis*, 973 So. 2d 467, 472 (Fla. Dist. Ct. App. 2007) (interpreting *Cipollone*, 505 U.S. at 523 to hold that a design defect claim is not pre-empted by Congress). Here, Plaintiffs are alleging that cigarettes are unreasonably dangerous and defective and that the defect was a direct cause of Plaintiffs' addiction. They are not alleging that Defendants are merely negligent for continuing to manufacture cigarettes. Furthermore, the Ninth Circuit Court of Appeals, applying Nevada law, has held that Plaintiffs' strict liability failure to warn and fraudulent

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concealment claims were not barred by Federal pre-emption. *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1148-49 (9th Cir. 2005).

NRCP 8(a) requires a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief. The Nevada Supreme Court has interpreted that so long as the pleading gives fair notice of the nature and basis of the claim a pleading of conclusions is sufficient. *Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979). Plaintiffs' Amended Complaint meets the requirements of NRCP 8(a). Plaintiffs have plead facts with sufficient specificity to show that they are entitled to relief. *See, e.g.,* Amended Complaint, 134.

To survive a defendant's NRCP 12(b)(5) motion, all factual assertions in the complaint will be regarded as true. Here, Plaintiffs assert that Defendant created a duty by making false and misleading promises to public through marketing campaigns and public statements. This is an issue to be decided by a jury and survives the NRCP 12(b) standard. Additionally, Plaintiffs have plead sufficient facts supporting multiple, specific examples of how Defendants defective and unreasonably dangerous cigarettes lead to Mr. Tully's injury. *See, e.g.,* Amended Complaint, 134. The Amended Complaint also survives the consumer expectation test laid out in *Rivera*. *Rivera*, 395 F.3d at 1148-49.

The civil conspiracy claims survive the motion because their underlying fraud claims and conspiracy claims were plead with particularity. NRCP 9 sets out additional requirements for pleading special matters such as fraud. The marketing efforts allegedly used by defendants, combined, with the assertion that defendants created a false perception and mislead the public regarding the concerns related to cigarettes meet the requirements. *See, e.g.,* Amended Complaint, 154-56, 173.

The Nevada Deceptive Trade Practices Act claim was also plead with sufficient particularity. The Nevada Federal District Court held that to prevail under an NDTPA claim, a plaintiff must show: (1) the defendant engaged in a consumer fraud of which the plaintiff was a victim, (2) causation, and (3) the plaintiff sustained damages as a result. *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657 (D. Nev. 2009). The Plaintiff sets out with particularity the false and misleading statements to meet the NRCP 9 requirements. *See, e.g.*, Amended Complaint, 201-03.

Defendant R.J. Reynold Tobacco Company s Motion to Dismiss Plaintiff's Amended Complaint under NRCP 12(b)(5) is hereby also **DENIED** for the reason detailed above.

DATED this ____ day of June 2020.

Dated this 8th day of July, 2020

DISTRICT COURT JUDGE NL

Respectfully Submitted By: Dated this 17th June 2020 CLAGGETT & SYKES LAW FIRM */s/ Sean K. Claggett* _____ Sean K. Claggett, Esq. Nevada Bar No. 008407 4101 Meadows Lane, Suite 100 Las Vegas, Nevada 89107 *Attorneys for Plaintiff*	Reviewed as to Form and Content: 27A 654 BAC8 5F69 Jacqueline M. Bluth Dated this 17th day of June 2020 WEINBERG WHEELER HUDGINS GUN & DIAL */s/ Lindsey Heinz* _____ D. Lee Roberts, Jr., Esq. Nevada Bar No. 8877 6385 South Rainbow Boulevard, Suite 400 Las Vegas, Nevada 89118 Lindsey K. Heinz, Esq. *Admitted Pro Hac Vice* Shook, Hardy & Bacon L.L.P. 2555 Grand Boulevard Kansas City, MO 64108 (816) 474-6550 *Attorneys for Defendant, Philip Morris USA. Inc., Jamez LLC, and Red Rock Smoke Shop Inc.*
Reviewed as to Form and Content: Dated this 17th June 2020 BAILEY KENNEDY */s/ Joseph Liebman* _____ Dennis L. Kennedy, Esq. Joseph Liebman, Esq. 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148 *Attorneys for Defendant, R.J. Reynolds Tobacco Company*	Reviewed as to Form and Content: Dated this 17th day of June 2020 LEWIS ROCA ROTHGERBER CHRISTIE */s/ Christopher J. Jorgensen* _____ Daniel F. Polsenberg, Esq. Christpher J. Jorgensen, Esq. 3993 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169 *Attorneys for Defendant, Liggett Group, LLC*

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Moises Garcia

From: Joseph Liebman <JLiebman@baileykennedy.com>
Sent: Wednesday, June 17, 2020 8:57 AM
To: Kimberly Wald
Cc: Kearney, Ryan; Heinz, Lindsey (SHB); Henninger, Ursula; Diamond, Spencer; Kelly Anne Luther (KLuther@kasowitz.com); Jackson, Brian (SHB); Kenyon, Jennifer (SHB); Jorgensen, J. Christopher; Roberts, Lee; Maria H. Ruiz; Tepikian, Bruce (SHB); Dennis Kennedy; Matt Granda; Moises Garcia; Deana Foster
Subject: Re: Tully, Martin v. Philip Morris, et al.

Follow Up Flag: Follow up
Flag Status: Flagged

If Ryan approved it it's good with me.

Sent from my iPhone

> On Jun 17, 2020, at 8:56 AM, Kimberly L. Wald <klw@kulaw.com> wrote:
>
> Ryan, do we have approval on behalf of your local counsel to use their electronic signature?
>
> Kimberly L. Wald, Esq.
> 500 N. Federal Highway, Suite 200
> Fort Lauderdale, FL 33301
> www.kulaw.com
>
> tollfree: 888.522.6601
> tel: 954.522.6601
> fax: 954.522.6608
> email: klw@kulaw.com
>
> ---
>
> **From:** Kearney, Ryan <RKearney@KSLAW.com>
> **Sent:** Wednesday, June 17, 2020, 11:53 AM
> **To:** Kimberly L. Wald; Heinz, Lindsey (SHB); Henninger, Ursula; Diamond, Spencer; Joseph Liebman; Kelly Anne Luther (KLuther@kasowitz.com); Jackson, Brian (SHB); Kenyon, Jennifer (SHB); Jorgensen, J. Christopher; Roberts, Lee; Maria H. Ruiz; Tepikian, Bruce (SHB); Dennis Kennedy
> **Cc:** Matt Granda; Moises Garcia
> **Subject:** RE: Tully, Martin v. Philip Morris, et al.
>
> Yes, thanks.
>
> Ryan T. Kearney
>
> King & Spalding LLP
> 1180 Peachtree Street NE
> Atlanta, GA 30309
> Direct Dial: (404) 572-4656<tel:(404)%20572-4656>

rkearney@kslaw.com<mailto:rkearney@kslaw.com>

-------- Original message --------
From: "Kimberly L. Wald" <klw@kulaw.com>
Date: 6/17/20 11:52 AM (GMT-05:00)
To: "Heinz, Lindsey (SHB)" <LHEINZ@shb.com>, "Henninger, Ursula" <uhenninger@KSLAW.com>, "Diamond, Spencer" <SDiamond@KSLAW.com>, "Kearney, Ryan" <RKearney@KSLAW.com>, Joseph Liebman <JLiebman@baileykennedy.com>, "Kelly Anne Luther (KLuther@kasowitz.com)" <KLuther@kasowitz.com>, "Jackson, Brian (SHB)" <BJACKSON@shb.com>, "Kenyon, Jennifer (SHB)" <JBKENYON@shb.com>, "Jorgensen, J. Christopher" <CJorgensen@lrrc.com>, "Roberts, Lee" <LRoberts@wwhgd.com>, "Maria H. Ruiz" <MRuiz@kasowitz.com>, "Tepikian, Bruce (SHB)" <BTEPIKIAN@shb.com>, Dennis Kennedy <DKennedy@baileykennedy.com>
Cc: Matt Granda <MGranda@claggettlaw.com>, Moises Garcia <MGarcia@claggettlaw.com>
Subject: Re: Tully, Martin v. Philip Morris, et al.

External Sender
Thank you. Counsel for Reynolds please let me know if you approve.
[cid:image949331.png@E7D28D1B.E99D7F6C]<http://www.kelleyuustal.com/>

Kimberly L. Wald , Esq.

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_____
From: Heinz, Lindsey (SHB) <LHEINZ@shb.com>
Sent: Wednesday, June 17, 2020 11:41:29 AM
To: Kimberly L. Wald <klw@kulaw.com>; Henninger, Ursula <uhenninger@KSLAW.com>; Diamond, Spencer <SDiamond@KSLAW.com>; Kearney, Ryan <RKearney@KSLAW.com>; Joseph Liebman <JLiebman@baileykennedy.com>; Kelly Anne Luther (KLuther@kasowitz.com)

<KLuther@kasowitz.com>; Jackson, Brian (SHB) <BJACKSON@shb.com>; Kenyon, Jennifer (SHB) <JBKENYON@shb.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Roberts, Lee <LRoberts@wwhgd.com>; Maria H. Ruiz <MRuiz@kasowitz.com>; Tepikian, Bruce (SHB) <BTEPIKIAN@shb.com>; Dennis Kennedy <DKennedy@baileykennedy.com>
Cc: Matt Granda <MGranda@claggettlaw.com>; Moises Garcia <MGarcia@claggettlaw.com>
Subject: RE: Tully, Martin v. Philip Morris, et al.

Kim,

Approved for PM.

Thank you,

Lindsey

From: Kimberly L. Wald <klw@kulaw.com>
Sent: Wednesday, June 17, 2020 10:40 AM
To: Heinz, Lindsey (SHB) <LHEINZ@shb.com>; Henninger, Ursula <uhenninger@KSLAW.com>; Diamond, Spencer <SDiamond@KSLAW.com>; Kearney, Ryan <RKearney@KSLAW.com>; Joseph Liebman <JLiebman@baileykennedy.com>; Kelly Anne Luther (KLuther@kasowitz.com) <KLuther@kasowitz.com>; Jackson, Brian (SHB) <BJACKSON@shb.com>; Kenyon, Jennifer (SHB) <JBKENYON@shb.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Roberts, Lee <LRoberts@wwhgd.com>; Maria H. Ruiz <MRuiz@kasowitz.com>; Tepikian, Bruce (SHB) <BTEPIKIAN@shb.com>; Dennis Kennedy <DKennedy@baileykennedy.com>
Cc: Matt Granda <MGranda@claggettlaw.com>; Moises Garcia <MGarcia@claggettlaw.com>; Kimberly L. Wald <klw@kulaw.com>
Subject: RE: Tully, Martin v. Philip Morris, et al.

EXTERNAL

Can counsel for Philip Morris and Liggett please send me your authorization to submit these with your electronic signatures?

Thank you,

Kim

[cid:image005.png@01D64493.D53F1210]<http://www.kelleyuustal.com/>

Moises Garcia

From: Jorgensen, J. Christopher <CJorgensen@lrrc.com>
Sent: Wednesday, June 17, 2020 8:52 AM
To: Kimberly Wald
Cc: Heinz, Lindsey (SHB); Henninger, Ursula; Diamond, Spencer; Kearney, Ryan; Joseph Liebman; Kelly Anne Luther (KLuther@kasowitz.com); Jackson, Brian (SHB); Kenyon, Jennifer (SHB); Roberts, Lee; Maria H. Ruiz; Tepikian, Bruce (SHB); Dennis Kennedy; Matt Granda; Moises Garcia
Subject: Re: Tully, Martin v. Philip Morris, et al.

Follow Up Flag: Follow up
Flag Status: Flagged

You have my authorization to use my signature and file on behalf of Liggett.
Thank you.
Chris Jorgensen

Sent from my iPhone

On Jun 17, 2020, at 8:40 AM, Kimberly L. Wald <klw@kulaw.com> wrote:

[EXTERNAL]

Can counsel for Philip Morris and Liggett please send me your authorization to submit these with your electronic signatures?

Thank you,
Kim

Kimberly L. Wald, Esq.
500 N. Federal Highway, Suite 200
Fort Lauderdale, FL 33301
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From: Kimberly L. Wald
Sent: Wednesday, June 17, 2020 11:24 AM
To: Heinz, Lindsey (SHB) <LHEINZ@shb.com>; Henninger, Ursula <uhenninger@KSLAW.com>; Diamond, Spencer <SDiamond@KSLAW.com>; Kearney, Ryan <RKearney@KSLAW.com>; Joseph Liebman <JLiebman@baileykennedy.com>; Kelly Anne Luther (KLuther@kasowitz.com) <KLuther@kasowitz.com>; Jackson, Brian (SHB) <BJACKSON@shb.com>; Kenyon, Jennifer (SHB) <JBKENYON@shb.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Roberts, Lee <LRoberts@wwhgd.com>; Maria H. Ruiz <MRuiz@kasowitz.com>; Tepikian, Bruce (SHB) <BTEPIKIAN@shb.com>; Dennis Kennedy <DKennedy@baileykennedy.com>
Cc: NVtobacco <NVtobacco@kulaw.com>; Tobacco <tobacco@integrityforjustice.com>; Matt Granda <MGranda@claggettlaw.com>; Micah Echols <Micah@claggettlaw.com>; Sean Claggett <Sean@claggettlaw.com>; Moises Garcia <MGarcia@claggettlaw.com>
Subject: RE: Tully, Martin v. Philip Morris, et al.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Martin Tully, Plaintiff(s) vs. Philip Morris USA Inc, Defendant(s)	CASE NO: A-19-807657-C DEPT. NO. Department 6

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/8/2020

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EXHIBIT 24

EXHIBIT 24

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Coral Gables, FL 33134
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE CLARK, individually, and as Personal Representative of the Estate of CLEVELAND CLARK, individually, Plaintiffs, v.	CASE NO.: A-19-802987-C DEPT NO.: VIII **NOTICE OF ENTRY OF ORDER**

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.

PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and filed on April 20, 2021.

A copy of which is attached hereto.

DATED this 22nd day of April, 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett

Sean K. Claggett, Esq.
Nevada Bar No. 008407
Matthew S. Granda, Esq.
Nevada Bar No. 012753
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of April, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

Dennis L. Kennedy, Esq. Joseph A. Liebman, Esq. BAILEY KENNEDY 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302 *Attorneys for R.J. Reynolds Tobacco Company, MJ Smoke Shop + LLC, Lakhvir Hira d/b/a John's Smoke Shop, and Surjit Singh as Executor of The Estate of Harjinder S. Hira d/b/a John's Smoke Shop & Gift Shop*	D. Lee Roberts, Jr., Esq. Phillip N. Smith, Jr., Esq. Daniela LaBounty, Esq. WEINBERG WHEELER HUDGINS GUNN & DIAL 6385 South Rainbow Boulevard, Suite 400 Las Vegas, Nevada 89118 *Attorneys for Philip Morris USA, Inc.*
Ursula Marie Henninger, Esq. KING & SPALDING 300 S. Tryon Street Charlotte, North Carolina 28202 *Attorneys for R.J. Reynolds Tobacco Company, MJ Smoke Shop + LLC, Lakhvir Hira d/b/a John's Smoke Shop, and Surjit Singh as Executor of The Estate of Harjinder S. Hira d/b/a John's Smoke Shop & Gift Shop*	Valentin Leppert, Esq. Spencer M. Diamond, Esq. Jason Edward Keehfus, Esq. Philip Robbins Green, Esq. KING & SPALDING 1180 Peachtree Street Atlanta, GA 30309-3521 *Attorneys for R.J. Reynolds Tobacco Company, MJ Smoke Shop + LLC, Lakhvir Hira d/b/a John's Smoke Shop, and Surjit Singh as Executor of The Estate of Harjinder S. Hira d/b/a John's Smoke Shop & Gift Shop*
Kelly Anne Luther, Esq. Maria H. Ruiz, Esq. KASOWITZ BENSON TORRES LLP 1441 Brickwell Avenue, Suite 1420 Miami, FL 33131 *Attorneys for Defendant Liggett Group, LLC*	Daniel F. Polsenberg, Esq. J. Christopher Jorgensen, Esq. LEWIS ROCA ROTHGERBER CHRISTIE 3993 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169 *Attorneys for Liggett Group, LLC*
Jennifer Blues Kenyon, Esq. Bruce R. Tepikian, Esq. SHOOK, HARDY & BACON, LLP 2555 Grand Boulevard Kansas City, MO 64108 *Attorneys for Philip Morris USA, Inc.*	

/s/ Moises Garcia

An Employee of Claggett & Sykes Law Firm

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

YVONNE CLARK, individually, and as Personal Representative of the Estate of CLEVELAND 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: VIII

ORDER DENYING DEFENDANTS PHILIP MORRIS USA INC.'S AND LIGGETT GROUP LLC'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

This matter came on for hearing before the Court on March 9, 2021. The Court, having considered Defendants' Motion, the Opposition, and Reply thereto, and hearing the oral arguments of counsel, hereby finds as follows:

//

NRCP 8(a) requires a complaint to contain a short and plain statement of the claim showing that the pleader is entitled to relief. The Nevada Supreme Court has interpreted that, so long as the pleading gives fair notice of the nature and basis of the claim, a pleading of conclusions is sufficient. *Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979). NRCP 9 sets out additional requirements for pleading special matters such as fraud.

A motion to dismiss a complaint pursuant to NRCP 12(b)(5) is rigorously reviewed, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. See *Fitzgerald v. Mobile Billboards, LLC*, 134 Nev., Adv. Op. 30, 416 P.3d 209, 210 (2018). A complaint should not be dismissed unless "it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [him] to relief." *Id*. at 210-11 (alterations in original) (quoting *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)).

Plaintiff asserts that Defendants caused Mr. Clark to begin and continue smoking by concealing information about the dangers of smoking. Of specific import in this case, the allegations are that all of the tobacco companies acted together to keep the harmful effects of cigarette smoking from the public, and absent all of the companies acting together, no one company could have succeeded in keeping this information from the public.

Defendants Phillip Morris and Liggett argue that they cannot be held liable because Mr. Clark never smoked any cigarettes manufactured by these Defendants.[1] Specifically, Defendants Liggett and Phillip Morris argue that it has been conclusively established that Mr. Clark only smoked KOOL Brand cigarettes, which were manufactured by R.J. Reynolds.

At the hearing, the parties asked the Court to read the following cases: *Chavers v. Gatke Corp*., 107 Cal. App. 4th 606 (2003), *as modified* (Apr. 25, 2003); *Moretti v. Wyeth, Inc.*, No. 2:08-CV-00396-JCMGWF, 2009 WL 749532, at *4 (D. Nev. Mar. 20, 2009); and *Poole v. Nevada Auto Dealership Invs., LLC*, 135 Nev. 280, 449 P.3d 479 (Nev. App. 2019).

//

[1] The Court notes the split of authority within the Eight Judicial District Court regarding this argument. Judge Bluth found that use was unnecessary to prevail in A807657, whereas Judge Early granted a motion to dismiss based on the same argument in A807650 (however, this decision is currently the subject of an appeal with the Nevada Supreme Court).

The Court has reviewed the foregoing cases as well as multiple cases from other jurisdictions that have dealt with the exact factual issue in this case. Based on a comprehensive review of those cases, and for the reasons set forth below, the Court **DENIES** Defendants' Motion.

1. Defendants Liggett Group, LLC and Phillip Morris USA, Inc. seek dismissal of the following claims: Violation of Nevada Deceptive Trade Practices Act and civil conspiracy.
2. The allegations in the Complaint against Phillip Morris and Liggett are not predicated solely on Plaintiff's use of cigarettes, but rather on the marketing campaign embarked upon by all Defendants, including Liggett and Phillip Morris to allegedly deceive the public, including the Plaintiff, about the true nature of cigarettes.
3. The *Chavers* (manufacturers of friction brake pads), *Moretti* (manufacturers of drugs), and *Pool*e (deceptive trade practices of a certified pre-owned truck) cases Defendants asked the Court to review and rely upon are distinguishable from the instant case.

I. Deceptive Trade Practices Claim

4. NRS 41.600(1) allows any person to bring an action for a deceptive trade practice as defined pursuant to the Nevada Deceptive Trade Practices Act ("NDTPA") NRS 598.0915 to 598.0925.
5. NRS 598.0915 provides multiple bases upon which a person can be found to have engaged in a deceptive trade practice.
6. Specifically relevant is NRS 598.0915(5), which provides in pertinent part as follows:

> A person engages in a "deceptive trade practice" if, in the course of his or her business or occupation, he or she… [k]nowingly 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. NRS 41.600(1) allows any person to bring an action for a deceptive trade practice as defined pursuant to the Nevada Deceptive Trade Practices Act ("NDTPA") NRS 598.0915 to 598.0925.

8. Plaintiff's Second Amended Complaint sets out with particularity specific deceptive trade practices that all of the Defendants engaged in and specifically alleges that Defendants made false representations as to the characteristics, alterations, and ingredients in cigarettes. *See, e.g.*, Second Amended Complaint, Paragraphs 180; 369 a-p.

9. Reading the allegations in the light most favorable to Plaintiff, and taking them as true, the Court cannot say Plaintiff will be unable at the time of trial to establish a factual basis, which, if true, would entitle Plaintiff to relief.

II. Civil Conspiracy Claim

10. Civil conspiracy liability may attach where two or more persons undertake some concerted action with the intent to commit an unlawful objective, not necessarily a tort. *Vandalay Enterprises, Inc. v. Herrin*, 133 Nev. 1086, 390 P.3d 959 (2017). Civil Conspiracy is a derivative claim in Nevada.

11. Plaintiff's Civil Conspiracy claim alleges that Defendants unlawfully agreed to conceal and/or omit and did in fact omit and/or conceal, the health hazards of smoking with the intention that smokers and the public would rely on this information to their detriment.

12. Plaintiff's allegations in support of the civil conspiracy claim are premised on both violations of the NDTPA and the separate allegations of fraud; both were pled with particularity. The marketing efforts used by Defendants, combined with the assertion that Defendants created a false perception and misled the public regarding the health concerns related to cigarettes, meet the requirements of NRCP 8 and 9. *See, e.g.*, Second Amended Complaint, Paragraphs 334, 335, 339-341; 348, 352-354.

//

13. This Court's review of the smoking related cases that allege fraudulent concealment and conspiracy to commit fraud, lead to the inescapable conclusion that to prevail on these claims, a Plaintiff must show that he or she detrimentally relied on the statements made by the manufacturers of cigarettes in connection with their agreement to conceal or omit material information concerning the health effects or addictive nature of cigarettes See *R.J Reynolds Tobacco Co. v. Hamilton*, WL 509654, at *4 (Fla. Dist. Ct. App. Feb 10, 2021) (in order for Plaintiff to prevail on his conspiracy to commit fraud by concealment claim, he was required to prove that Mrs. Hamilton detrimentally relied on an act or statement made in furtherance of RJR's agreement to conceal or omit material information concerning the health effects or addictive nature of cigarettes); *R.J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060, 1069–70 (Fla. Dist. Ct. App. 2010) (the record contains abundant evidence from which the jury could infer Mr. Martin's reliance on pervasive misleading advertising campaigns for the Lucky Strike brand in particular and for cigarettes in general, and on the false controversy created by the tobacco industry during the years he smoked aimed at creating doubt among smokers that cigarettes were hazardous to health); *Bullock v. Philip Morris USA, Inc.*, 159 Cal.App.4th 655, 71 Cal.Rptr.3d 775, 792 (2008) (plaintiff was not required to prove actual reliance on tobacco company's specific misrepresentation where there was evidence that the company sustained a broad-based public campaign for many years disseminating misleading information and creating a controversy over the adverse health effects of smoking intending that current and potential smokers would rely on the misinformation); *Burton v. R.J. Reynolds Tobacco Co.*, 208 F.Supp.2d 1187, 1203 (D.Kan.2002) (jury could infer plaintiff's reliance where evidence showed RJR and co-conspirators "represented to the public that they would take it upon themselves to investigate and determine whether there were health consequences of smoking," but despite evidence of

//

cigarettes' harmful effects RJR "engaged in a publicity campaign telling the public that whether there were negative health consequences from smoking remains an 'open question.'").

14. Plaintiff has alleged with particularity that he detrimentally relied on the claims of the Defendants to both begin and continue smoking. *See, e.g.,* Second Amended Complaint, Paragraphs 210-219.

15. At this stage of the litigation, reading the allegations in the light most favorable to Plaintiff, and taking them as true, the Court cannot say Plaintiff will be unable at the time of trial to establish a factual basis, which, if true, would entitle Plaintiff to relief.

BASED ON THE FOREGOING,

IT IS HEREBY ORDERED that Defendants Phillip Morris' and Liggett's Motion to Dismiss Plaintiff's IX, X, XI, and XII claims for relief contained in Plaintiff's Second Amended Complaint is hereby DENIED.

Dated this 20th day of April, 2021

Jessica K Peterson

9D9 D3E 0A70 6602
Jessica K. Peterson
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Cleveland Clark, Plaintiff(s) vs. Philip Morris USA Inc, Defendant(s)	CASE NO: A-19-802987-C DEPT. NO. Department 8

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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EXHIBIT 25

EXHIBIT 25

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Attorneys for Defendant Philip Morris USA Inc.

WEINBERG WHEELER HUDGINS GUNN & DIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of the Estate of NOREEN THOMPSON,

Plaintiff,

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; QUICK STOP MARKET, LLC, a domestic limited liability company; JOE'S BAR, INC., a domestic corporation; THE POKER PALACE, a domestic corporation; SILVER NUGGET GAMING, LLC d/b/a

Case No.: A-20-811091-C
Dept. No.: V

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PHILIP MORRIS USA INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT UNDER NRCP 12(b)(5)

SILVER NUGGET CASINO, a domestic limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES I–X; and ROE BUSINESS ENTITIES XI–XX, inclusive,

Defendants.

PLEASE TAKE NOTICE that an Order Granting Defendant Philip Morris USA Inc.'s Motion To Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5), was entered on September 8, 2021, in this matter. A copy is attached hereto.

Dated this 9th day of September, 2021.

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

/s/ Howard J. Russell
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Attorney for Defendant Philip Morris USA Inc.

WEINBERG WHEELER HUDGINS GUNN & DIAL

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PHILIP MORRIS USA INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT UNDER NRCP 12(b)(5)** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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Liggett Group, LLC

/s/ Kelly L. Pierce
An employee of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

Electronically Filed
09/08/2021 12:02 PM
CLERK OF THE COURT

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Attorneys for Defendant Philip Morris USA Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of the Estate of NOREEN THOMPSON,

Plaintiff,

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; QUICK STOP MARKET, LLC, a domestic limited liability company; JOE'S BAR, INC., a domestic corporation; THE POKER PALACE, a domestic corporation; SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, a domestic

Case No.: A-20-811091-C
Dept. No.: V

ORDER GRANTING DEFENDANT PHILIP MORRIS USA INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT UNDER NRCP 12(b)(5)

limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES I–X; and ROE BUSINESS ENTITIES XI–XX, inclusive,

Defendants.

On August 27, 2021, the Court issued a Minute Order regarding Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5). The Court, having considered Defendant's Motion, the Opposition, and Reply thereto, and arguments of counsel, hereby finds as follows:

THE COURT HEREBY FINDS that Philip Morris USA Inc.'s Motion is **GRANTED**.

NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief can be granted. The court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally sufficient claim and relief requested. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.3d 1258, 1260 (1993). Dismissal is proper "if it appears beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew*, 124 Nev. at 228, 181 P.3d 672. Additionally, NRCP 8(a) allows notice pleading, where all that is required in a complaint is a short and plain statement of the grounds for the court's jurisdiction, claim showing that the pleader is entitled to relief, a demand for the relief sought, and at least $15,000 in monetary damages sought.

"As a general rule, the court may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Id.* Additionally, "a document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1125 26 (9th Cir. 2002).

Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). If matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. NRCP 12(d). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CNA Ins. Companies.*, 109 Nev. 1075, 1078, 864 P.2d 288, 290 (1993).

There is no dispute that Plaintiff did not use cigarettes that were manufactured, marketed, or sold by Defendant Philip Morris. Since she did not purchase or use Philip Morris' cigarettes, Plaintiff cannot make a showing of alleged duty by Philip Morris. Thus, due to lack of showing of duty, all claims against Philip Morris fail, except as to civil conspiracy claim. However, the civil conspiracy claim against Philip Morris must also fail since this is a derivative claim. Although Plaintiff alleges that Philip Morris violated the Deceptive Trade Practices Act, which constitutes the underlying unlawful objective, since that claim is dismissed, the civil conspiracy claim must also necessarily be dismissed. Thus, Philip Morris' motion to dismiss must be granted.

THEREFORE, THE COURT hereby grants Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5).

IT IS HEREBY ORDERED that Plaintiff's Eleventh and Twelve Claims for Relief for Violation of Deceptive Trade Practices Act are DISMISSED with prejudice as to Defendant Philip Morris USA Inc.

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IT IS HEREBY ORDERED that Plaintiff's Ninth and Tenth Claims for Relief for Civil Conspiracy are DISMISSED with prejudice as to Defendant Philip Morris USA Inc.

Dated this 8th day of September, 2021

689 BC7 A0D5 2CB6
Veronica M. Barisich
District Court Judge

Respectfully Submitted By:

/s/ Howard J. Russell
D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
Phillip N. Smith, Jr., Esq.
Daniela LaBounty, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
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Las Vegas, Nevada 89118
Attorney for Defendant Philip Morris USA Inc.

Approved as to form and content:
Dated this 7th day of September, 2021.

/s/ Kimberly L. Wald
Kimberly L. Wald, Esq.
KELLEY UUSTAL
500 North Federal Highway, Suite 200
Fort Lauderdale, FL 33301

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CLAGGETT & SYKES LAW FIRM
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Attorneys for Plaintiff

Dated this 7th day of September, 2021.

/s/ J. Christopher Jorgensen
J. Christopher Jorgensen, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Defendant Liggett Group, LLC

Dated this 7th day of September, 2021.

/s/ Joseph A. Liebman
Dennis L. Kennedy, Esq.
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Attorneys for Defendants RJ Reynolds Tobacco Company, Quick Stop Market, LLC, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC d/b/a Silver Nugget Casino, and Jerry's Nugget

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Cc: Russell, Howard; Jackson, Brian (SHB); Kenyon, Jennifer (SHB); Tepikian, Bruce (SHB); Pierce, Kelly L.
Subject: RE: [EXTERNAL] Thompson (Clark County, NV) -- Draft Order on PM USA's MTD

This Message originated outside your organization.

Lindsey,
No objection for Plaintiff.

Kelley | Uustal
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Subject: [EXTERNAL] Thompson (Clark County, NV) -- Draft Order on PM USA's MTD

Counsel,

Attached please find a draft Order Granting PM USA's MTD in the Thompson case. Please review and confirm if you agree to the form and content.

Thanks,
Lindsey

Lindsey K. Heinz
Partner
Shook, Hardy & Bacon L.L.P.

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HARDY & BACON

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Subject: Re: Thompson v. Philip Morris USA Inc. - Proposed Order

Approved.

Sent from my iPhone

On Sep 3, 2021, at 2:39 PM, Pierce, Kelly L. <KPierce@wwhgd.com> wrote:

> Good Afternoon All,
>
> Please see the attached proposed Order Granting Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5). Plaintiff's counsel has already approved the attached order.
>
> Please review and let us know whether we have your approval to affix your e-signature.
>
> Thank you.
>
> <REVISEE-sig2020_b7a30d72-9d40-4ed5-bf26-e7fc27c0af64.png>
>
> Kelly L. Pierce, Legal Secretary
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> <Thompson - Proposed Order.pdf>

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Subject: RE: Thompson v. Philip Morris USA Inc. - Proposed Order

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Kelly,
You may use my signature on behalf of Liggett for the proposed Thompson Order.
Thank you
Chris

Christopher Jorgensen
Partner

cjorgensen@lewisroca.com
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Subject: RE: Thompson v. Philip Morris USA Inc. - Proposed Order

[EXTERNAL]

Hello Everyone,

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Noreen Thompson, Plaintiff(s) vs. Philip Morris USA Inc, Defendant(s)	CASE NO: A-20-811091-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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