

**In the Supreme Court of Nevada**

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF  
CLARK; and the HONORABLE VERONICA M.  
BARISICH,

Respondents,

and

DOLLY ROWAN, AS AN INDIVIDUAL, AS SPECIAL  
ADMINISTRATOR OF THE ESTATE OF NOREEN THOMPSON;  
NAVONA COLLISON, AS AN INDIVIDUAL; RUSSELL  
THOMPSON, AS AN INDIVIDUAL; R.J. REYNOLDS TOBACCO  
COMPANY, A FOREIGN CORPORATION; 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 LIMITED LIABILITY  
COMPANY; AND JERRY'S NUGGET, A DOMESTIC  
CORPORATION,

Real Parties in Interest

Electronically Filed  
Jun 02 2022 09:40 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. \_\_\_\_\_

District Court  
Case No. A-19-807653-C

**PHILIP MORRIS USA INC.'S PETITION FOR  
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX  
VOL. 1**

D. Lee Roberts, Jr., Esq.  
Nevada Bar No. 8877  
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GUNN & DIAL, LLC  
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USA Inc.*

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**Service of Process  
Transmittal**

02/27/2020

CT Log Number 537282607

**TO:** DIANNE WATKINS  
Altria Client Services, LLC  
6601 W BROAD ST  
RICHMOND, VA 23230-1723

**RE: Process Served in Nevada**

**FOR:** Philip Morris USA Inc. (Domestic State: VA)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** NOREEN THOMPSON, PLTF. vs. PHILIP MORRIS USA, INC., ETC., ET AL., DFTS.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Summons, Demand, Complaint

**COURT/AGENCY:** Clark County District Court, NV  
Case # A20811091C

**NATURE OF ACTION:** Product Liability Litigation - Personal Injury - Cigarettes Tabacco (See Documents for additional information)

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Carson City, NV

**DATE AND HOUR OF SERVICE:** By Process Server on 02/27/2020 at 11:15

**JURISDICTION SERVED :** Nevada

**APPEARANCE OR ANSWER DUE:** Within 20 days after this Summons is served on you, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** Sean K. Claggett  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89107  
702-655-2346

**ACTION ITEMS:** CT has retained the current log, Retain Date: 02/27/2020, Expected Purge Date: 03/03/2020

Image SOP

Email Notification, Altria Docket Altria.Docket@Altria.com

Email Notification, Ann Zmijewski Ann.E.Zmijewski@altria.com

Email Notification, DIANNE WATKINS dianne.watkins@altria.com

**SIGNED:** C T Corporation System

**ADDRESS:** 155 Federal St Ste 700  
Boston, MA 02110-1727

**For Questions:** 800-448-5350  
MajorAccountTeam1@wolterskluwer.com

1 **SUMM**  
 2 Sean K. Claggett, Esq.  
 3 Nevada Bar No. 008407  
 4 Matthew S. Granda, Esq.  
 5 Nevada Bar No. 012753  
 6 Micah S. Echols, Esq.  
 7 Nevada Bar No. 008437  
 8 **CLAGGETT & SYKES LAW FIRM**  
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 15 [micah@claggettlaw.com](mailto:micah@claggettlaw.com)  
 16 *Attorneys for Plaintiff*

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

11 **NOREEN THOMPSON,**

12 **Plaintiff,**

13 **v.**

14 **PHILIP MORRIS USA, INC.,** a foreign  
 15 corporation; **R.J. REYNOLDS TOBACCO**  
 16 **COMPANY,** a foreign corporation,  
 17 individually, and as successor-by-merger to  
 18 **LORILLARD TOBACCO COMPANY** and as  
 19 successor-in-interest to the United States  
 20 tobacco business of **BROWN &**  
 21 **WILLIAMSON TOBACCO CORPORATION,**  
 22 which is the successor-by-merger to **THE**  
 23 **AMERICAN TOBACCO COMPANY;**  
 24 **LIGGETT GROUP, LLC,** a foreign  
 25 corporation; **QUICK STOP MARKET, LLC,** a  
 26 domestic limited liability company; **JOE'S**  
 27 **BAR, INC.,** a domestic corporation; **THE**  
 28 **POKER PALACE,** a domestic corporation;  
**SILVER NUGGET GAMING, LLC d/b/a**  
**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.**

**CASE NO.: A-20-811091-C**

**DEPT. NO.: XVI**

**SUMMONS - PHILIP MORRIS USA, INC.**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT(S): PHILIP MORRIS USA, INC.**



1 A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the  
2 Complaint.

3 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
4 you, exclusive of the day of service, you must do the following:

5 (a) File with the Clerk of this lawsuit, whose address is shown below, a formal  
6 written response to the Complaint in accordance with the rules of the Court, with the appropriate  
7 filing fee.

8 (b) Serve a copy of your response upon the attorney whose name address is shown  
9 below.

10 2. Unless you respond, your default will be entered upon application of the Plaintiff(s)  
11 and failure to so respond will result in a judgment of default against you for the relief demanded in  
12 the Complaint, which could result in the taking of money or property or other relief requested in the  
13 Complaint.

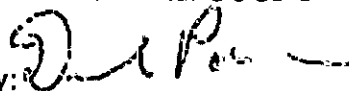
14 3. If you intend to seek the advise of an attorney in this matter, you should do so  
15 promptly so that your response may be filed on time.

16 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board  
17 members, commission members and legislators each have 45 days after service of this Summons  
18 within which to file an Answer or other responsive pleading to the Complaint.

19 Submitted by:


20 CLAGGETT & SYKES LAW FIRM

STEVEN D. GRIERSON,  
CLERK OF THE COURT

By:  -2/26/2020

Deputy Clerk Date  
Clark County Courthouse  
200 Lewis Avenue  
Las Vegas, NV 89155  
Demond Palmer

21  
22   
23 Sean K. Claggett, Esq.  
24 Nevada Bar No. 008407  
25 Matthew S. Granda, Esq.  
26 Nevada Bar No. 012753  
27 Micah S. Echols, Esq.  
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16 *Attorneys for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 NOREEN THOMPSON,

13 Plaintiff,

14 v.

15 PHILIP MORRIS USA, INC., a foreign  
16 corporation; R.J. REYNOLDS TOBACCO  
17 COMPANY, a foreign corporation,  
18 individually, and as successor-by-merger to  
19 LORILLARD TOBACCO COMPANY and as  
20 successor-in-interest to the United States  
21 tobacco business of BROWN &  
22 WILLIAMSON TOBACCO CORPORATION,  
23 which is the successor-by-merger to THE  
24 AMERICAN TOBACCO COMPANY;  
25 LIGGETT GROUP, LLC., a foreign  
26 corporation; QUICK STOP MARKET, LLC, a  
27 domestic limited liability company; JOE'S  
28 BAR, INC., a domestic corporation; THE  
POKER PALACE, a domestic corporation;  
SILVER NUGGET GAMING, LLC d/b/a  
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.

CASE NO.: A-20-811091-C

DEPT. NO.: XVI

**PLAINTIFF'S DEMAND FOR JURY  
TRIAL**

**CLAGGETT & SYKES LAW FIRM**  
4101 Meadows Lane, Suite 100  
Las Vegas, Nevada 89107  
702-655-2346 • Fax 702-655-3763

1  
2 COMES NOW, Plaintiff, NOREEN THOMPSON, by and through their attorneys, SEAN K.  
3 CLAGGETT, ESQ. of CLAGGETT & SYKES LAW FIRM, and demands a jury trial of all of the  
4 issues in the above captioned matter.  
5

6 DATED this 25<sup>th</sup> day of February 2020.

7 CLAGGETT & SYKES LAW FIRM

8  
9 /s/ Sean K. Claggett

10 Sean K. Claggett, Esq.

11 Nevada Bar No. 008407

12 Matthew S. Granda, Esq.

13 Nevada Bar No. 012753

14 Micah S. Echols, Esq.

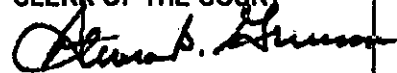
15 Nevada Bar No. 008437

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17 Las Vegas, Nevada 89107

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19 *Attorneys for Plaintiff*  
20  
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28



CASE NO: A-20-811091-C  
Department 16

**COMP**

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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**NOREEN THOMPSON,**

**Plaintiff,**

**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; 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 limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive**

**CASE NO.:**

**DEPT. NO.:**

**COMPLAINT**

**JURY TRIAL DEMAND**

**CLAGGETT & SYKES LAW FIRM**  
4101 Meadows Lane, Suite 100  
Las Vegas, Nevada 89107  
702-655-2346 • Fax 702-655-3763

1 Defendants.

2  
3 COMES NOW, NOREEN THOMPSON, by and through her attorneys of record, CLAGGETT  
4 & SYKES LAW FIRM, complaining of Defendants and allege as follows:  
5

6 **JURISDICTION, VENUE, AND PARTIES**

7 1. This Court has jurisdiction over this matter under NRS 14.065 and NRS 4.370(1), as  
8 the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess of  
9 \$15,000.00. Venue is proper pursuant to NRS 13.040, as Defendants, or any one of them, reside and/or  
10 conduct business in Clark County, Nevada at the commencement of this action.

11 2. Plaintiff, NOREEN THOMPSON (hereinafter "Plaintiff"), was and is at all times  
12 relevant herein, a resident of Clark County, Nevada.  
13

14 3. Plaintiff is informed and believe and thereon allege that at all times relevant herein,  
15 Defendant PHILIP MORRIS USA, Inc. (hereinafter "PHILIP MORRIS"), was and is a corporation  
16 authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized,  
17 created, and existing under and by virtue of the laws of the State of Virginia with its principal place of  
18 business located in the State of Virginia. Defendant, PHILIP MORRIS, resides and/or conducts  
19 business in every county within the State of Nevada and did so during all times relevant to this action.  
20

21 4. Plaintiff is informed and believe and thereon allege that at all times relevant herein,  
22 Defendant R.J. REYNOLDS TOBACCO COMPANY, Inc. (hereinafter "R.J. REYNOLDS"), was and  
23 is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was  
24 duly organized, created, and existing under and by virtue of the laws of the State of North Carolina  
25 with its principal place of business located in the State of North Carolina. Defendant, R.J.  
26 REYNOLDS, resides and/or conducts business in every county within the State of Nevada and did so  
27 during all times relevant to this action.  
28

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

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

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

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

25           9.     Plaintiff is informed and believes, and thereon allege that Defendant, QUICK STOP  
26 MARKET, LLC (hereafter "QUICK STOP") was and is a domestic limited liability  
27 company authorized to do business within this jurisdiction of Clark County, Nevada, and was duly  
28

1 organized, created, and existing under and by virtue of the laws of the State of Nevada. QUICK STOP  
2 owns and operates a store that sells tobacco and cigarette products located at 3401 E. Lake Mead Blvd,  
3 North Las Vegas NV 89030. QUICK STOP is a retailer of tobacco and cigarette products and is  
4 registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public,  
5 including Plaintiff, NOREEN THOMPSON.  
6

7 10. Plaintiff is informed and believes, and thereon allege that Defendant, JOE'S BAR,  
8 INC. (hereafter "JOE'S BAR") was and is a domestic corporation authorized to do business within this  
9 jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue  
10 of the laws of the State of Nevada. JOE'S BAR owns and operates a store that sells tobacco and  
11 cigarette products located at 8984 Spanish Ridge Ave, Las Vegas NV 89148. JOE'S BAR is a retailer  
12 of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco  
13 retailer, selling such items to the public, including Plaintiff, NOREEN THOMPSON.  
14

15 11. Plaintiff is informed and believes, and thereon allege that Defendant, THE POKER  
16 PALACE, was and is a domestic corporation authorized to do business within this jurisdiction of Clark  
17 County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the  
18 State of Nevada. THE POKER PALACE owns and operates a casino that sells tobacco and cigarette  
19 products located at 2757 Las Vegas Blvd N. N. Las Vegas, NV 89030. THE POKER PALACE is a  
20 retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed  
21 tobacco retailer, selling such items to the public, including Plaintiff, NOREEN THOMPSON.  
22

23 12. Plaintiff is informed and believes, and thereon allege that Defendant, SILVER  
24 NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO (hereafter "SILVER NUGGET") was  
25 and is a domestic limited liability company authorized to do business within this jurisdiction of Clark  
26 County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the  
27 State of Nevada. SILVER NUGGET owns and operates a casino that sells tobacco and cigarette  
28

1 products located at 650 S. Main Street, Las Vegas, NV 89191. SILVER NUGGET is a retailer of  
2 tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer,  
3 selling such items to the public, including Plaintiff, NOREEN THOMPSON.

4 13. Plaintiff is informed and believes, and thereon allege that Defendant, JERRY'S  
5 NUGGET, was and is a domestic corporation authorized to do business within this jurisdiction of Clark  
6 County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the  
7 State of Nevada. JERRY'S NUGGET owns and operates a casino that sells tobacco and cigarette  
8 products located at 7251 Amigo Street, Suite 210, Las Vegas NV 89119. JERRY'S NUGGET is a  
9 retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed  
10 tobacco retailer, selling such items to the public, including Plaintiff, NOREEN THOMPSON.

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

16 15. Plaintiff does not know the true names of Defendants Does I through X and sue said  
17 Defendants by fictitious names. Upon information and belief, each of the Defendants designated  
18 herein as Doe is legally responsible in some manner for the events alleged in this Complaint and  
19 actually, proximately, and/or legally caused injury and damages to Plaintiff.

20 16. Plaintiff does not know the true names of Defendants Roe Business Entities XI through  
21 XX and sue said Defendants by fictitious names. Upon information and belief, each of the Defendants  
22 designated herein as Roe Business Entities XI through XX, are predecessors-in-interest, successors-  
23 in-interest, and/or agencies otherwise in a joint venture with, and/or serving as an alter ego of, any  
24 and/or all Defendants named herein; and/or are entities responsible for the supervision of the  
25 individually named Defendants at the time of the events and circumstances alleged herein; and/or are



1 entities employed by and/or otherwise directing the individual Defendants in the scope and course of  
2 their responsibilities at the time of the events and circumstances alleged herein; and/or are entities  
3 otherwise contributing in any way to the acts complained of and the damages alleged to have been  
4 suffered by the Plaintiff herein. Upon information and belief, each of the Defendants designated as a  
5 Roe Business Entity is in some manner negligently, vicariously, and/or statutorily responsible for the  
6 events alleged in this Complaint and actually, proximately, and/or legally caused damages to Plaintiff.  
7

8 17. Plaintiff will seek leave of the Court to amend this Complaint to substitute the true and  
9 correct names for these fictitious names upon learning that information.

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

12 **FACTS COMMON TO ALL CLAIMS**

13 19. Plaintiff repeats and realleges each and every allegation set forth in the preceding  
14 paragraphs, as if fully set forth herein.

15 20. Plaintiff, NOREEN THOMPSON, was diagnosed on or about April 8, 2019 with lung  
16 cancer, which was caused by smoking Pall Mall brand cigarettes, Camel brand cigarettes, Viceroy  
17 brand cigarettes, and Pyramid brand cigarettes, to which she was addicted and smoked continuously  
18 from approximately 1954 until 2019.  
19

20 21. Plaintiff, NOREEN THOMPSON, began smoking in 1954 when she was  
21 approximately 14 years old.  
22

23 22. At all times material, Pall Mall cigarettes were and are designed, manufactured, and  
24 sold by Defendant, R.J. REYNOLDS TOBACCO COMPANY, who is the successor-in-interest to the  
25 United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which  
26 is the successor-by-merger to THE AMERICAN TOBACCO COMPANY.  
27  
28

1           23.     At all times material, Viceroy cigarettes were and are designed, manufactured, and sold  
2 by Defendant, R.J. REYNOLDS TOBACCO COMPANY, who is the successor-in-interest to the  
3 United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which  
4 is the successor-by-merger to THE AMERICAN TOBACCO COMPANY.  
5

6           24.     At all times material, Camel cigarettes were and are designed, manufactured, and sold  
7 by Defendant, R.J. REYNOLDS TOBACCO COMPANY.  
8

9           25.     At all times material, Pyramid cigarettes were and are designed, manufactured, and  
10 sold by Defendant, LIGGETT.  
11

12           26.     Plaintiff, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,  
13 and Pyramid cigarettes from QUICK STOP in sufficient quantities to be a substantial contributing  
14 cause of her lung cancer.  
15

16           27.     Plaintiff, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,  
17 and Pyramid cigarettes from JOE'S in sufficient quantities to be a substantial contributing cause of her  
18 lung cancer.  
19

20           28.     Plaintiff, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,  
21 and Pyramid cigarettes from THE POKER PALACE in sufficient quantities to be a substantial  
22 contributing cause of her lung cancer.  
23

24           29.     Plaintiff, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,  
25 and Pyramid cigarettes from SILVER NUGGET in sufficient quantities to be a substantial contributing  
26 cause of her lung cancer.  
27

28           30.     Plaintiff, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,  
and Pyramid cigarettes from JERRY'S NUGGETT in sufficient quantities to be a substantial  
contributing cause of her lung cancer.

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

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

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

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

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

22           36.     At all times material to this action, Defendants' knew or should have known the  
23 following:

- 24           a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as  
25 COPD, which includes emphysema and chronic bronchitis, lung cancer, including  
26 squamous cell carcinoma, small cell carcinoma, adenocarcinoma, and large cell  
27 carcinoma;  
28

- 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;
- 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);

- 1 n. It is possible to develop safe cigarettes free of nicotine, carcinogens, and other deadly  
2 and poisonous compounds;
- 3 o. "The thing Defendants' sell most is nicotine" (Concealed Document 1980);
- 4 p. Filtered, low tar, low nicotine, and "light" cigarettes are more dangerous than "regular"  
5 cigarettes;
- 6 q. "Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and  
7 would almost certainly fail" (Concealed Document 1966);
- 8 r. "Without the nicotine, the cigarette market would collapse, and Defendants' would all  
9 lose their jobs and their consulting fees" (Concealed Document 1977);
- 10 s. "Carcinogens are found in practically every class of compounds in smoke" (Concealed  
11 Document 1961);
- 12 t. "Cigarettes have certain unattractive side effects . . . they cause lung cancer"  
13 (Concealed Document 1963).

14  
15  
16 37. Defendants' tortious and unlawful conduct caused consumers, including NOREEN  
17 THOMPSON, to suffer dangerous diseases and injuries.

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

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

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

24 40. Lung cancer is a disease manufactured and created by the cigarette industry, including  
25 Defendants' herein.

26 41. Prior to 1900, lung cancer was virtually unknown as a cause of death in the United  
27 States.  
28

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

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

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

8           **Studies of clinical data tend to confirm the relationship between heavy smoking**  
9 **and prolonged smoking and incidence of cancer of the lung.**  
10

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

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

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

21           48. This conspiracy was formed in December of 1953 at the Plaza Hotel in New York City.  
22 Paul Hahn, president of American Tobacco, sent telegrams to presidents of the seven largest tobacco  
23 companies and one tobacco growers' organization, inviting them to meet at the Plaza Hotel.  
24  
25  
26  
27  
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49. 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.

50. 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 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."

51. 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.

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

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

4           54. The Frank Statement was signed by the following domestic cigarette and tobacco  
5 product manufacturers, including Defendants' herein, organizations of leaf tobacco growers, and  
6 tobacco warehouse associations that made up TIRC: American Tobacco by Paul Hahn, President;  
7 B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip  
8 Morris by O. Parker McComas, President; Defendant, R.J Reynolds by Edward A. Darr, President;  
9 Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S.  
10 Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley  
11 Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company,  
12 Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton,  
13 General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco  
14 Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson,  
15 President.

16           55. In their Frank Statement to Cigarette Smokers, Defendants' knowingly and  
17 intentionally mislead Plaintiff, the public, and the American government when they disingenuously  
18 promised to "safeguard" the health of smokers, support allegedly "disinterested" research into  
19 smoking and health, and reveal to the public the results of their purported "objective" research.

20           56. For the next five decades, TIRC/CTR worked diligently, and quite successfully, to  
21 rebuff the public's concern about the dangers of cigarettes. Defendants', through TIRC/CTR,  
22 invented the false and misleading notion that there was an "open question" regarding cigarette  
23 smoking and health. They appeared on television and radio to broadcast this message.  
24  
25  
26  
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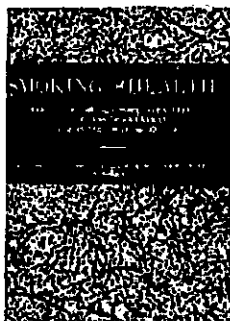


1 57. TIRC/CTR hired fake scientists and spokespeople to attack genuine, legitimate  
2 scientific studies. Virtually none of the so-called "research" funded by TIRC/CTR centered on the  
3 immediate questions relating to carcinogenesis and tobacco. Rather than addressing the compounds  
4 and carcinogens in cigarette smoke and their hazardous effect on the human body, TIRC/CTR  
5 instead directed its resources to alternative theories of the origins of cancer, centering on genetic  
6 factors and environmental risks.  
7

8 58. The major initiative of TIRC/CTR, through their Scientific Advisory Board (SAB),  
9 was to, "create the appearance of [Defendants'] devoting substantial resources to the problem  
10 without the risk of funding further 'contrary evidence.'"

11 59. TIRC/CTR's efforts worked brilliantly and cigarette consumption rapidly increased.

12 60. In 1964 there was another dip in the consumption of cigarettes because the United  
13 States Surgeon General reported, "cigarette smoking is causally related to lung cancer in men . . .  
14 the data for women, though less extensive, points in the same direction."  
15



22 61. The cigarette industry's *public* response, through TIRC, to the 1964 Surgeon General  
23 Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry  
24 would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were  
25 any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements.  
26 As a result, cigarette consumption again began to rise.  
27  
28

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

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

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

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

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

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

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

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

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

23                   **"We have deliberately played down the role of nicotine"** (Concealed  
24 Document 1972).

25                   **"Very few consumers are aware of the effects of nicotine, i.e., it's addictive**  
26 **nature and that nicotine is a poison"** (Concealed Document 1978).

27                   **"Determine minimum nicotine required to keep normal smoker 'hooked.'"**  
28 **(Concealed Document 1965).**

**"The thing we sell most is nicotine"** (Concealed Document 1980).

1           **"Without the nicotine, the cigarette market would collapse, and**  
2           **Defendants' would all lose their jobs and their consulting fees" (Concealed**  
3           **Document 1977).**

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

8           65. Defendants' sole priority was to make as much money as quickly as possible, with no  
9           concern about the safety and well-being of their customers.

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

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

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

17          69. However, internally, in Defendants' previously concealed, hidden documents,  
18          discussions regarding the true nature of filtered cigarettes was revealed – filters were just as harmful,  
19          dangerous, and hazardous as unfiltered cigarettes; In fact, they were more dangerous. In a previously  
20          secret document from 1976, Emie Pepples from Brown & Williamson states, "the smoker of a filter  
21          cigarette was getting as much or more nicotine and tar as he would have gotten from a regular  
22          cigarette."

23          70. Throughout the 1960s, 1970s, 1980s and 1990s, the cigarette industry, including  
24          Defendants herein, spent two-hundred and fifty-billion-dollars in marketing efforts to promote the  
25          sale of cigarettes.  
26  
27  
28

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

3           72. Cigarette smoking was glamorized – celebrities smoked, athletes smoked, doctors  
4 smoked, politicians smoked – everyone smoked cigarettes.

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

7                   **"School days are here. And that means BIG TOBACCO BUSINESS for**  
8 **somebody . . . line up the most popular students"** (Concealed Document  
9 1927).

10                   **"SUMMER SCHOOL IS STARTING . . . lining up these students . . . as**  
11 **consumers"** (Concealed Document 1928).

12                   **"Today's teenager is tomorrow's potential regular customer"** (Concealed  
13 Document 1981).

14                   **"The 14-24 age group . . . represent tomorrow' cigarette business"**  
15 (Concealed Document 1974).

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

18           75. Cigarettes were the number one most heavily advertised product on television until the  
19 United States Government banned television advertisements in 1972.

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



11  
12           77. Meanwhile, internally Defendants' were praising themselves for accomplishing this  
13 "brilliantly conceived" conspiracy which deceived NOREEN THOMPSON, millions of Americans,  
14 the government, and the public health community.

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

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

22           79. The cigarette industry, including Defendants' herein, opposed these warning labels and  
23 throughout the 1980s, despite the warning labels being placed on their cigarettes, spoke publicly  
24 through their representatives in the Tobacco Institute (TI) that it was allegedly still unknown whether  
25 smoking cigarettes caused cancer or was addictive because, apparently, "more research was  
26 needed."  
27  
28

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

4           81. In response, the cigarette industry, including Defendants' herein, issued a press release  
5 knowingly and disingenuously stating, "Claims that cigarettes are addictive is irresponsible and  
6 scare tactics."  
7

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

11           83. In 1994 CEOs from the seven largest cigarette companies, including Defendants'  
12 herein, testified under oath before the United States Congress that it was their opinion that it had not  
13 been proven that cigarettes were addictive, caused disease, or caused one single person to die.  
14



22           84. Despite their own intensive research and (millions of) internal documents describing  
23 the dangers and addictive qualities of cigarettes, Defendants' negligently, willfully, maliciously, and  
24 intentionally made false and misleading statements to Congress, the public, and Plaintiff, NOREEN  
25 THOMPSON.  
26

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

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

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

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

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

19           90. As recently as 2019, Defendants' do not admit or acknowledge that nicotine in their  
20 cigarette smoke "is" addictive.  
21

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

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

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

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

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

9  
10           96. This conspiracy is memorialized through Defendants' own documents authored by  
11 their own executives and scientists, including over fourteen million previously concealed records.

12                           **FIRST CLAIM FOR RELIEF**

13   **(NEGLIGENCE)**

14   **NOREEN THOMPSON Against Defendants R.J. Reynolds and Liggett**

15  
16           97. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 96  
17 and incorporate the same herein by reference.

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

22  
23           99. Plaintiff was exposed to and did inhale smoke from cigarettes which were designed,  
24 manufactured, marketed, distributed, and/or sold by Defendants.

25           100. Each exposure to Defendants cigarettes caused Plaintiff to inhale smoke which caused  
26 him to become addicted to cigarettes, and further caused him to develop pharyngeal cancer and suffer  
27 severe bodily injuries.  
28



1           101. Defendants were negligent in all the following respects, same being the proximate  
2 and/or legal cause of NOREEN THOMPSON's injuries and disabilities, including but not limited  
3 to:

- 4           a. designing and manufacturing an unreasonably dangerous and deadly product;
- 5           b. designing and manufacturing cigarettes to be addictive;
- 6           c. designing and manufacturing cigarettes to be inhalable;
- 7           d. manipulating the level of nicotine in cigarettes to make them more addictive;
- 8           e. genetically modifying nicotine in tobacco plants;
- 9           f. blending different types of tobacco to obtain a desired amount of nicotine;
- 10          g. engineering cigarettes to be rapidly inhaled into the bloodstream;
- 11          h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and  
12             other deadly, poisonous compounds to cigarettes;
- 13          i. adding and/or manipulating compounds such as ammonia and diammonium phosphate  
14             to Defendants' cigarettes to "free-base" nicotine;
- 15          j. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and  
16             low tar;
- 17          k. adding "onserts" to packages of cigarettes even after the United States government  
18             banned marketing of "light" and "ultra-light" cigarettes;
- 19          l. manipulating levels of pH in Defendants' cigarettes;
- 20          m. targeting children who could not understand or comprehend the seriousness or  
21             addictive nature of nicotine and smoking;
- 22          n. targeting minority populations such as African Americans, Hispanics, and women,  
23             such as Plaintiff NOREEN THOMPSON, to obtain a greater market share to increase  
24             their profits;
- 25             their profits;
- 26             their profits;
- 27             their profits;
- 28             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, 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.

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

- a. failing to warn and/or adequately warn foreseeable users, such as NOREEN THOMPSON, of the dangerous and deadly nature of cigarettes;
- b. failing to warn foreseeable users, such as NOREEN THOMPSON, that they could develop fatal injuries including, but not limited to, emphysema, COPD, throat 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 NOREEN THOMPSON, 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 NOREEN THOMPSON, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;

1 e. failing to disclose to consumers of cigarettes, such as NOREEN THOMPSON, the  
2 results of genuine scientific research conducted by and/or known to Defendants' that  
3 cigarettes were dangerous, defective, and addictive.

4 103. Defendants breached said aforementioned duties of due and reasonable care in that they  
5 produced, designed, manufactured, sold, and/or marketed defective cigarettes and/or any of its  
6 component parts which contained risks of harm to the user/consumer and which were reasonably  
7 foreseeable to cause harm in the use or exercise of reasonable and/or ordinary care.  
8

9 104. As a direct and proximate and/or legal result of Defendants aforementioned negligence,  
10 NOREEN THOMPSON was severely injured when she was exposed to Defendants' cigarettes.  
11 Each exposure to Defendants cigarettes caused NOREEN THOMPSON to become addicted to  
12 cigarettes and to inhale smoke which caused her to develop lung cancer, in addition to other related  
13 physical conditions which resulted in and directly caused her to suffer severe bodily injuries. Each  
14 exposure to such products was harmful and caused or contributed substantially to NOREEN  
15 THOMPSON's aforementioned injuries.  
16

17 105. NOREEN THOMPSON's aforementioned injuries arose out of and were connected to  
18 and incidental to the way Defendants designed, manufactured, marketed, distributed, and/or sold its  
19 products.  
20

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

26 107. Defendants, prior to selling and/or distributing the cigarettes to which NOREEN  
27 THOMPSON was exposed, knew or should have known that exposure to cigarette smoke was  
28

1 harmful and caused injuries including, but not limited to, lung cancer, laryngeal cancer, pharyngeal  
2 cancer, emphysema, COPD, heart disease, other forms of cancer, and/or result in death.

3 108. As a direct and proximate and/or legal cause of Defendants aforesaid negligence,  
4 NOREEN THOMPSON was injured and experienced great pain to her body and mind, sustaining  
5 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).  
6

7 109. As a further direct and proximate and/or legal cause of Defendants aforesaid  
8 negligence, NOREEN THOMPSON has incurred damages, both general and special, including  
9 medical expenses as a result of the necessary treatment of her injuries, and will continue to incur  
10 damages for future medical treatment necessitated by smoking-related injuries she has suffered, in  
11 a sum in excess of Fifteen Thousand Dollars (\$15,000.00).  
12

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

20 111. Defendants actions were taken knowingly, wantonly, willfully, and/or maliciously.

21 112. Defendants conduct was despicable and so contemptible that it would be looked down  
22 upon and despised by ordinary decent people and was carried on by Defendants with willful and  
23 conscious disregard for the safety of NOREEN THOMPSON.

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

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

4 115. Defendants actions have forced the Plaintiff to retain counsel to represent her in the  
5 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as  
6 attorney fees and costs of suit.  
7

8 **SECOND CLAIM FOR RELIEF**

9 **(GROSS NEGLIGENCE)**

10 **Noreen Thompson Against Defendants R.J Reynolds and Liggett**

11 116. Plaintiffs repeat and reallege the allegations as contained in paragraphs 1 through 96  
12 and 97-115 and incorporate the same herein by reference.

13 117. Defendants manufactured and created an unreasonably dangerous, addictive, and  
14 defective product that caused NOREEN THOMPSON to develop lung cancer.  
15

16 118. Upon information and belief, through an examination of Defendants' own previously  
17 secret internal documents, Defendants had reason to know facts which could lead a reasonable  
18 person to realize that their cigarettes could cause an unreasonable risk of bodily harm to others and  
19 involved a high probability that substantial harm would result. Specifically, Defendants had reason  
20 to know facts that their cigarettes caused diseases including but not limited to lung cancer, COPD,  
21 emphysema, heart disease, pharyngeal cancer, laryngeal cancer, oral cavity cancer.  
22

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

26 120. Defendants willfully, purposefully, and knowingly did not make safer cigarettes and in  
27 fact manipulated the compounds in cigarettes to make them more addictive, deadly, and dangerous.  
28

1           121. Defendants and their co-conspirators also purposefully and knowingly manipulated the  
2 public including NOREEN THOMPSON by marketing and promoting their filter, "light" and "low-  
3 tar" cigarettes as safer, despite knowing these cigarettes are in fact more dangerous.

4           122. Defendants' actions in creating, manufacturing, and selling cigarettes despite having  
5 knowledge that these actions created an unreasonable risk of bodily harm and involved a high  
6 probability that substantial harm would result, was an extreme departure from the ordinary duty of  
7 care owed and constitutes gross negligence.  
8

9           123. NOREEN THOMPSON'S aforementioned injuries arose out of and were connected to  
10 and incidental to the way Defendants' designed, manufactured, marketed, distributed, and/or sold  
11 its products.

12           124. The aforementioned damages of NOREEN THOMPSON were directly and  
13 proximately and/or legally caused by Defendants' gross negligence, in that it produced, sold,  
14 manufactured, and/or otherwise placed into the stream of intrastate and interstate commerce,  
15 cigarettes which it knew, or in the exercise of ordinary care should have known, were deleterious  
16 and highly harmful to NOREEN THOMPSON'S health and well-being.  
17

18           125. As a direct and proximate and/or legal result of Defendants' aforementioned gross  
19 negligence, NOREEN THOMPSON was severely injured when he was exposed to Defendant's  
20 cigarettes. Each exposure to Defendant's cigarettes caused NOREEN THOMPSON to become  
21 addicted to cigarettes and to inhale smoke which caused her to develop lung cancer, in addition to  
22 other related physical conditions which resulted in and directly caused her to suffer severe bodily  
23 injuries. Each exposure to such products was harmful and caused or contributed substantially to  
24 NOREEN THOMPSON'S aforementioned injuries.  
25  
26  
27  
28

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

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

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

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

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

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

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

4           133. Defendants' actions have forced Plaintiff to retain counsel to represent her in the  
5 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as  
6 attorney fees and costs of suit.  
7

8                           **THIRD CLAIM FOR RELIEF**

9                           **(STRICT PRODUCTS LIABILITY)**

10                   **Noreen Thompson Against Defendants R.J. Reynolds and Liggett**

11           134. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 96  
12 and incorporate the same herein by reference.

13           135. Upon information and belief, at all times material, Defendants were/are in the business  
14 of designing, engineering, manufacturing, distributing, marketing, selling, and/or otherwise placing  
15 cigarettes into the stream of commerce.  
16

17           136. The products complained of were cigarettes designed, manufactured, marketed,  
18 distributed, and/or sold by Defendants and used by NOREEN THOMPSON.

19           137. The aforesaid products were distributed, sold, manufactured, and/or otherwise placed into  
20 the stream of commerce by Defendants.  
21

22           138. Defendants defective and unreasonably dangerous cigarettes reached NOREEN  
23 THOMPSON without substantial change from that in which such products were when within the  
24 possession of Defendants.

25           139. Defendants cigarettes were dangerous beyond the expectation of the ordinary  
26 user/consumer when used as intended or in a manner reasonably foreseeable by Defendants.  
27  
28



1 140. The nature and degree of danger of Defendants cigarettes were beyond the expectation  
2 of the ordinary consumer, including NOREEN THOMPSON, when used as intended or in a  
3 reasonably foreseeable manner.

4 141. Defendants cigarettes were unreasonably dangerous because a less dangerous design  
5 and/or modification was economically and scientifically feasible.

6 142. Defendants cigarettes were defective and unreasonably dangerous in the following  
7 ways, including but not limited to:  
8

- 9 a. designing and manufacturing an unreasonably dangerous and deadly product;
- 10 b. designing and manufacturing cigarettes to be addictive;
- 11 c. designing and manufacturing cigarettes to be inhalable;
- 12 d. manipulating levels of nicotine in cigarettes to make them more addictive;
- 13 e. genetically modifying nicotine in tobacco plants;
- 14 f. blending different types of tobacco to obtain a desired amount of nicotine;
- 15 g. engineering cigarettes to be rapidly inhaled into the lungs;
- 16 h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and  
17 other deadly, poisonous compounds to cigarettes;
- 18 i. adding and/or manipulating compounds such as ammonia and diammonium phosphate  
19 to Defendants' cigarettes to "free-base" nicotine;
- 20 j. manipulating levels of pH in Defendants' cigarettes;
- 21 k. utilizing deadly and harmful additives, compounds, and ingredients in their cigarette  
22 design and manufacturing process when alternative, less dangerous materials were  
23 available;
- 24 l. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and  
25 low tar;
- 26  
27  
28

- 1 m. adding "onserts" to packages of cigarettes even after the United States government  
2 banned marketing of "light" and "ultra-light" cigarettes;
- 3 n. prior to July 1, 1969, failing to warn and/or adequately warn foreseeable users, such as  
4 NOREEN THOMPSON, of the dangerous and deadly nature of cigarettes;
- 5 o. prior to July 1, 1969, failing to warn foreseeable users, such as NOREEN  
6 THOMPSON, that they could develop fatal injuries including, but not limited to,  
7 emphysema, throat cancer, lung cancer, and/or other forms of cancer, as a result of  
8 smoking and/or inhaling smoke from Defendants' cigarettes;
- 9 p. prior to July 1, 1969, failing to warn foreseeable users, such as NOREEN  
10 THOMPSON, that the use of cigarettes would more likely than not lead to addiction,  
11 habituation and/or dependence;
- 12 q. prior to July 1, 1969, failing to warn foreseeable users, such as NOREEN  
13 THOMPSON, that quitting and/or limiting use of cigarettes would be extremely  
14 difficult, particularly if users started smoking at an early age;
- 15 r. prior to July 1, 1969, failing to disclose to consumers of cigarettes, such as NOREEN  
16 THOMPSON, the results of scientific research conducted by and/or known to  
17 Defendants' that cigarettes may be dangerous, defective, and/or addictive.

18  
19  
20 143. NOREEN THOMPSON was unaware of the defective and unreasonably dangerous  
21 condition of Defendants cigarettes, and at a time when such products were being used for the  
22 purposes for which they were intended, was exposed to, breathed smoke from, and inhaled  
23 Defendants' cigarettes.  
24

25 144. Defendants knew their cigarettes would be used without inspection for defects, and by  
26 placing them on the market, represented that they would be safe.  
27  
28

1           145. NOREEN THOMPSON was unaware of the hazards and defects in Defendants  
2 cigarettes, to-wit: That exposure to said products would cause NOREEN THOMPSON to become  
3 addicted and develop lung cancer.

4           146. As a direct and proximate and/or legal cause of the aforesaid defective and  
5 unreasonably dangerous condition of Defendants cigarettes, NOREEN THOMPSON was injured.  
6 NOREEN THOMPSON thereby experienced great pain to her body and mind, and sustained injuries  
7 and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).  
8

9           147. As a further direct and proximate and/or legal cause of the defective and unreasonably  
10 dangerous condition of Defendants cigarettes, NOREEN THOMPSON has incurred damages, both  
11 general and special, including medical expenses as a result of the necessary treatment of her injuries,  
12 and will continue to incur damages for future medical treatment necessitated by smoking-related  
13 injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).  
14

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

22           149. Defendants actions were taken knowingly, wantonly, willfully, and/or maliciously.

23           150. Defendants conduct was despicable and so contemptible that it would be looked down  
24 upon and despised by ordinary decent people and was carried on by Defendants with willful and  
25 conscious disregard for the safety of NOREEN THOMPSON.  
26  
27  
28

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

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

7 153. Defendants actions have forced the Plaintiff to retain counsel to represent her in the  
8 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as  
9 attorney fees and costs of suit.

10  
11 **FOURTH CLAIM FOR RELIEF**  
12 **(FRAUDULENT MISREPRESENTATION)**  
13

14 **Noreen Thompson Against Defendants' R.J. Reynolds and Liggett**

15 154. Plaintiff repeats and realleges each and every allegation as contained in paragraphs 1  
16 through 96 and incorporate the same herein by reference.

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

22 156. Defendants made intentional misrepresentations, false promises, concealed  
23 information, and failed to disclose material information to NOREEN THOMPSON, the public, and  
24 the American government.

25 157. Defendants carried out its campaign of fraud, false statements, and/or  
26 misrepresentations in at least six ways:  
27  
28

- a. Defendants falsely represented to NOREEN THOMPSON 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.

158. 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.

159. Defendants made multiple misrepresentations to NOREEN THOMPSON including misrepresentations and misleading statements in advertisements, news programs and articles, media reports, and press releases.

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

4 161. These misrepresentations and false statements also include the following statements  
5 which were heard, read, and relied upon by Plaintiff, NOREEN THOMPSON, including but not  
6 limited to:  
7

- 8 a. In 1953, Cigarette manufacturers, including Defendants' herein, took out a full-page  
9 advertisement called the "Frank Statement to Cigarette Smokers" which falsely assured  
10 the public, the American government, and NOREEN THOMPSON, that the cigarette  
11 manufacturers, including Defendants' herein, would purportedly "safeguard" the  
12 health of smokers, support allegedly "disinterested" research into smoking and health,  
13 and reveal to the public the results of their alleged "objective" research;  
14
- 15 b. Beginning in 1953 and continuing for decades, Cigarette manufacturers, including  
16 Defendants' herein, falsely assured the public that TIRC/CTR was an "objective"  
17 research committee when internal company document reveal that TIRC/CTR  
18 functioned not for the promotion of scientific goals, but for public relations, politics,  
19 and positioning for litigation;  
20
- 21 c. In the 1950s and 1960s, Cigarette manufacturers, including Defendants' herein,  
22 sponsored, were quoted in, and helped publish articles to mislead the public including  
23 but not limited to the following: "Smoke-Cancer Tie Termed Obscure" (1955), "Study  
24 of Smoking is Inconclusive" (1956), "Cigarette Threat Called Unproven," (1962),  
25 "Tobacco Spokesmen Dispute Lung Study" (1962), "Tobacco Cancer Scare Fading in  
26 Smoke Ring (1964), and "Smokers Assured In Industry Study" (1962);  
27  
28

- 1 d. In response to the 1964 Surgeon General Report which linked cigarette smoking to  
2 health, the cigarette industry falsely assured the public that (i) cigarettes were not  
3 injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii)  
4 more research was needed, and (iv) if there were any bad elements discovered in  
5 cigarettes, the cigarette manufacturers would remove those elements;  
6
- 7 e. In the 1950s and 1960s, the Cigarette manufacturers, including Defendants' herein,  
8 advertised and promoted cigarettes on television and radio as safe and glamorous, to  
9 the extent that cigarette advertising was the number one most heavily advertised  
10 product on television;  
11
- 12 f. Falsely advertised and promoted "filtered" and "light" cigarettes as "low tar" and "low  
13 nicotine" through print advertisements in magazines and newspapers throughout the  
14 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;  
15
- 16 g. Knowingly made false and misleading statements to governmental entities, including  
17 in 1982 when the CEO of Defendant R.J. Reynolds, Edward Horrigan, disingenuously  
18 stated during a governmental hearing, "there is absolutely no proof that cigarettes are  
19 addictive;"  
20
- 21 h. In 1984, continuing to purposefully target children yet openly in press releases falsely  
22 claim, "We don't advertise to children . . . Some straight talk about smoking for young  
23 people;"  
24
- 25 i. In 1988, in response to the United States Surgeon General's report that cigarettes are  
26 addictive and nicotine is the drug in tobacco that causes addiction, issuing a press  
27 release knowingly and disingenuously stating, "Claims that cigarettes are addictive is  
28 irresponsible and scare tactics;"

- 1 j. Through representatives in the Tobacco Institute, making countless publicized  
2 appearances on television and radio disingenuously denying cigarettes were addictive  
3 and claimed smoking was a matter of free choice and smokers could quit smoking if  
4 they wanted to;  
5  
6 k. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein,  
7 knowingly providing false and misleading testimony under oath before the United  
8 States Congress that it had not been proven that cigarettes were addictive, caused  
9 disease, or caused one single person to die.

10 162. Defendants made intentional misrepresentations to Plaintiff, NOREEN THOMPSON,  
11 in the following ways:

- 12 a. The aforementioned representations were regarding material facts about cigarettes and  
13 were knowingly false;  
14  
15 b. Defendants knew said representations were false at the time they made such statements;  
16  
17 c. Defendants knew NOREEN THOMPSON did not hold sufficient information to  
18 understand or appreciate the dangers of cigarettes;  
19  
20 d. Defendants intended to induce NOREEN THOMPSON, and did indeed induce  
21 NOREEN THOMPSON, to rely upon the aforementioned false  
22 representations/acts/statements;  
23  
24 e. NOREEN THOMPSON was unaware of the falsity of Defendants aforementioned  
25 false representations/acts/statements;  
26  
27 f. CLEVELAND CALRK was justified in relying upon Defendants misrepresentations  
28 because they were made by Defendants who possessed superior knowledge regarding  
the health hazards and addictive nature of cigarettes;



1 g. As a direct and proximate and/or legal cause of Defendants intentional  
2 misrepresentations, NOREEN THOMPSON became addicted to cigarettes and  
3 developed lung cancer.

4 163. Furthermore, Defendants made false promises to Plaintiff, NOREEN THOMPSON, in  
5 the following ways:  
6

- 7 a. Defendants made false promises to the public, including NOREEN THOMPSON to (i)  
8 cooperate with public health, including the Surgeon General, (ii) conduct allegedly  
9 "objective" research regarding the addictive nature and health hazards of cigarettes, (ii)  
10 remove any harmful elements to cigarettes, if there were any, (iv) form purported  
11 "objective" research committees dedicated to undertaking an interest in health as its  
12 "basic responsibility paramount to every other consideration," (v) falsely pledging to  
13 provide aid and assistance to research cigarette use and health and others;  
14  
15 b. At all times material, Defendants did not intend to keep its promises;  
16  
17 c. Defendants made its promises with the intent to induce Plaintiff to begin and continue  
18 smoking;  
19  
20 d. Plaintiff was unaware of Defendants intention not to perform their promises;  
21  
22 e. Plaintiff acted in reliance upon Defendants promises;  
23  
24 f. Plaintiff was justified in relying upon Defendants promises;  
25  
26 g. As a direct and proximate and/or legal cause of Defendants false promises, NOREEN  
27 THOMPSON became addicted to cigarettes and developed lung cancer.  
28

164. As a direct and proximate and/or legal cause of Defendants fraudulent acts and  
misrepresentations, NOREEN THOMPSON was injured. NOREEN THOMPSON 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).

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

6  
7           166. As a further direct and proximate and/or legal cause of Defendants fraudulent acts and  
8 misrepresentations, NOREEN THOMPSON was required to, and did, employ physicians, surgeons,  
9 and other health care providers to examine, treat, and care for her and did incur medical and incidental  
10 expenses thereby. The exact amount of such expenses is unknown at this present time, but NOREEN  
11 THOMPSON alleges that she has suffered special damages in excess of Fifteen Thousand Dollars  
12 (\$15,000.00).

13  
14           167. Defendants actions were taken knowingly, wantonly, willfully, and/or maliciously.

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

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

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

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

1 **FIFTH CLAIM FOR RELIEF**

2 **(FRAUDULENT CONCEALMENT)**

3 **Noreen Thompson Against Defendants' R.J. Reynolds and Liggett**

4  
5 172. Plaintiff repeats and realleges each and every allegation as contained in paragraphs 1  
6 through 96 and paragraphs 153-170 and incorporate the same herein by reference.

7 173. Beginning at an exact time unknown to NOREEN THOMPSON, and continuing today,  
8 cigarette manufacturers, including Defendants' herein, have carried out, and continue to carry out, a  
9 campaign designed to deceive the public, including NOREEN THOMPSON, physicians, the  
10 government, and others as to the true danger of cigarettes.

11  
12 174. Cigarette manufacturers, including Defendants herein, carried out their plan by  
13 concealing and suppressing facts, information, and knowledge about the dangers of smoking,  
14 including addiction.

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

18  
19 176. Defendants also carried out such scheme by concealing its knowledge concerning, but  
20 not limited to, the following:

- 21 a. the highly addictive nature of nicotine cigarettes;
- 22 b. the design of cigarettes to make them more addictive and easier to inhale;
- 23 c. the manipulating and controlling of nicotine content of their products to create and
- 24 perpetuate users' addiction to cigarettes;
- 25 d. the manufacturing and engineering process of making cigarettes, including adding tar,
- 26 carcinogens, arsenal, polonium-210, formaldehyde, nitrosamines, and other
- 27 compounds;
- 28

- 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 Defendants' 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 lung cancer, esophageal cancer, other head and neck cancers, oral cancer, emphysema, COPD, 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.
177. Cigarette manufacturers, including Defendants herein, also concealed and/or made

1 fraudulent statements and misrepresentations to the public, including NOREEN THOMPSON,  
2 through their actions, funding, and involvement with TIRC/CTR, including but not limited to the  
3 following:

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

16  
17  
18 178. Defendants made false promises to Plaintiff, NOREEN THOMPSON, in the following  
19 ways:

- 20 a. Defendants assumed the responsibility to provide NOREEN THOMPSON, and the  
21 public, accurate and truthful information about their own products;
- 22 b. Defendants concealed and/or suppressed the aforementioned material facts about the  
23 dangers of cigarettes;
- 24 c. Defendants were under a duty to disclose material facts about the dangers of cigarettes  
25 to Plaintiff;
- 26 d. Defendants knew it was concealing material facts about the dangers of cigarettes from  
27  
28

1 Plaintiff;

2 e. Defendants intended to induce Plaintiff to smoke and become addicted to cigarettes;

3 f. Plaintiff was unaware of the dangerous and addictive nature of cigarettes, and would  
4 not have begun or continued to smoke had he known the aforementioned concealed  
5 and/or suppressed information Defendants possessed;

6 g. Plaintiff was unaware of the danger of Defendants cigarettes, the addictive nature of  
7 Defendants' cigarettes, and that low tar, low nicotine, "light," and/or filtered cigarettes  
8 were just as dangerous as unfiltered and "regular" cigarettes;

9 h. Plaintiff justifiably relied upon Defendants to disseminate the superior knowledge and  
10 information it possessed regarding the dangers of cigarettes;

11 i. The concealment and/or suppressed of material facts regarding the hazards of cigarettes  
12 caused Plaintiff to become addicted to cigarettes, and also caused her to develop lung  
13 cancer.  
14

15  
16 179. As a direct and proximate and/or legal cause of Defendants fraudulent concealment,  
17 NOREEN THOMPSON was injured and experienced great pain to her body and mind, sustaining  
18 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

19 180. As a further direct and proximate and/or legal cause of Defendants fraudulent  
20 concealment, NOREEN THOMPSON has incurred damages, both general and special, including  
21 medical expenses as a result of the necessary treatment of her injuries, and will continue to incur  
22 damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a  
23 sum in excess of Fifteen Thousand Dollars (\$15,000.00).  
24

25 181. As a further direct and proximate and/or legal cause of Defendants fraudulent  
26 concealment, NOREEN THOMPSON was required to, and did, employ physicians, surgeons, and  
27 other health care providers to examine, treat, and care for her and did incur medical and incidental  
28

1 expenses thereby. The exact amount of such expenses is unknown at this present time, but NOREEN  
2 THOMPSON alleges that she has suffered special damages in excess of Fifteen Thousand Dollars  
3 (\$15,000.00).

4 182. Defendants actions were taken knowingly, wantonly, willfully, and/or maliciously.

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

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

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

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

17 **SIXTH CLAIM FOR RELIEF**

18 **(CIVIL CONSPIRACY)**

19 **Noreen Thompson Against Defendants Philip Morris, R.J. Reynolds and Liggett**

20 187. Plaintiff repeats and realleges the allegations as contained in paragraphs 1-96,  
21 paragraphs 153-170, and paragraphs 171-186, and incorporate the same herein by reference.

22 188. Defendants acted in concert to accomplish an unlawful objective for the purposes of  
23 harming Plaintiff, NOREEN THOMPSON. Defendants actions include, but are not limited to the  
24 following:  
25  
26  
27  
28

- 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.

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

- a. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
- b. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- c. Marketing and/or advertising lights and ultra-light cigarettes as safer or less hazardous to health;
- d. Knowingly concealing from the public that filtered, low tar, lights, and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes;
- e. Adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;



1 f. Opposing, and continuing to oppose proposed FDA regulations to reduce or eliminate  
2 levels of nicotine in cigarettes;

3 g. Continuing to market and prey upon children and teenagers who are not able to  
4 understand or appreciate the risks and dangers associated with cigarette smoking.

5  
6 190. Defendants actions, as they relate to their acts in furtherance of their conspiracy as  
7 alleged in this complaint, continues through the present.

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

11 192. As a direct proximate and/or legal cause of Defendants concerted actions, NOREEN  
12 THOMPSON was injured and experienced great pain to her body and mind, sustaining injuries and  
13 damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

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

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

26 195. Defendants concerted actions were taken knowingly, wantonly, willfully, and/or  
27 maliciously.  
28

1           196. Defendants conduct was despicable and so contemptible that it would be looked down  
2 upon and despised by ordinary decent people and was carried on by Defendants with willful and  
3 conscious disregard for the safety of NOREEN THOMPSON.

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

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

10           199. Defendants actions have forced the Plaintiff to retain counsel to represent her in the  
11 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as  
12 attorney fees and costs of suit.  
13

14  
15                           **SEVENTH CLAIM FOR RELIEF**

16                   **(VIOLATION OF DECEPTIVE TRADE PRACTICES ACT – NRS 598.0903)**

17           **Noreen Thompson Against Defendants' Philip Morris, R.J. Reynolds, And Liggett**

18           200. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs  
19 herein and incorporate the same herein by reference.

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

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

24           203. Plaintiff brings this claim pursuant to NRS 41.600, which entitles any person who is  
25 the victim of consumer fraud to bring an action. A deceptive trade practice as defined in NRS 598.0915  
26 to 598.0925 constitutes consumer fraud.  
27  
28

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

3           \*\*\*\*

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

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

8           \*\*\*\*

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

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

16           \*\*\*\*

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

18           205.    Upon information and belief, Defendants knowingly violated NRS 598.0915 by  
19 making the following false and misleading statements and representations, including but not limited  
20 to:  
21

22           a. making countless publicized appearances on television and radio disingenuously  
23 denying cigarettes were addictive and claimed smoking was a matter of free choice and  
24 smokers could quit smoking if they wanted to;

25           b. representing to the public that it was not known whether cigarettes were harmful or  
26 caused disease;

27           c. falsely advertising and promoting cigarettes as safe, not dangerous, and not harmful;

28           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" which falsely assured the public, the American government, and NOREEN THOMPSON, 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.

206. As a direct and proximate and/or legal cause of Defendants aforementioned acts, NOREEN THOMPSON 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).

207. As a further direct and proximate and/or legal cause of Defendants aforementioned acts, NOREEN THOMPSON 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).

208. As a further direct proximate and/or legal cause of Defendants aforementioned acts, NOREEN THOMPSON 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.

1 The exact amount of such expenses is unknown at this present time, but NOREEN THOMPSON  
2 alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

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

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

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

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

15 213. Defendants actions have forced the Plaintiff to retain counsel to represent her in the  
16 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney  
17 fees and costs of suit.

18 **EIGHTH CLAIM FOR RELIEF**

19 **(STRICT PRODUCT LIABILITY)**

20 **Noreen Thompson Against Defendant Quick Stop Market, LLC**

21  
22 131. Plaintiff repeats and realleges the allegations contained in paragraphs 1 and 96 and  
23 paragraphs 134 through 152, and incorporates the same herein by reference.

24 132. Defendant, QUICK STOP MARKET, LLC, is in the business of distributing,  
25 marketing, selling, or otherwise placing cigarette into the stream of commerce.  
26

27 133. Defendant, QUICK STOP MARKET, LLC, sold cigarettes to the public, including  
28 Plaintiff, NOREEN THOMPSON.

1           134. The aforesaid products were distributed, sold and/or otherwise placed into the stream of  
2 commerce by Defendant, QUICK STOP MARKET, LLC..

3           135. Defendant, QUICK STOP MARKET, LLC, defective and unreasonably dangerous  
4 cigarettes reached NOREEN THOMPSON without substantial change from that in which such  
5 products were when within the possession of Defendant.

6           136. Defendant, QUICK STOP MARKET, LLC, cigarettes were dangerous beyond the  
7 expectation of the ordinary user/consumer when used as intended or in a manner reasonably  
8 foreseeable by Defendant.

9           137. The nature and degree of danger of Defendant, QUICK STOP MARKET, LLC,  
10 cigarettes were dangerous beyond the expectation of the ordinary consumer, including NOREEN  
11 THOMPSON, when used as intended or in a reasonably foreseeable manner.

12           138. Defendant, QUICK STOP MARKET, LLC, cigarettes were unreasonably dangerous  
13 because a less dangerous design and/or modification was economically and scientifically feasible.

14           139. As a direct and proximate and/or legal cause of the aforesaid defective and  
15 unreasonably dangerous condition of cigarette products sold by Defendant, QUICK STOP MARKET,  
16 LLC, NOREEN THOMPSON was injured. NOREEN THOMPSON thereby experienced great pain  
17 to her body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand  
18 Dollars (\$15,000.00).

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

24           141. As a further direct and proximate and/or legal cause of the aforementioned defective  
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1 and unreasonably dangerous condition of Defendant's cigarettes, NOREEN THOMPSON was  
2 required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,  
3 and care for her and did incur medical and incidental expenses thereby. The exact amount of such  
4 expenses is unknown at this present time, but NOREEN THOMPSON alleges that she has suffered  
5 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).  
6

7 142. Defendant's actions were taken knowingly, wantonly, willfully, and/or maliciously.

8 143. Defendant's conduct was despicable and so contemptible that it would be looked down  
9 upon and despised by ordinary decent people and was carried on by Defendant with willful and  
10 conscious disregard for the safety of NOREEN THOMPSON.

11 144. Defendant's outrageous and unconscionable conduct warrants an award of exemplary  
12 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an  
13 example of Defendant, and to deter similar conduct in the future.  
14

15 145. To the extent NRS 42.007 applies, Defendant is vicariously liable for punitive damages  
16 arising from the outrageous and unconscionable conduct of their employees, agents, apparent agents,  
17 independent contractors, and/or servants, as set forth herein.

18 146. Defendant's actions have forced the Plaintiff to retain counsel to represent her in the  
19 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney  
20 fees and costs of suit.  
21

22  
23 **NINTH CLAIM FOR RELIEF**

24 **(STRICT PRODUCT LIABILITY)**

25 **Noreen Thompson Against Defendant Joe's Bar, Inc.**  
26

27 131. Plaintiff repeats and realleges the allegations contained in paragraphs 1 and 96 and  
28 paragraphs 134 through 152, and incorporates the same herein by reference.



1           132. Defendant, JOE'S BAR, INC., is in the business of distributing, marketing, selling, or  
2 otherwise placing cigarette into the stream of commerce.

3           133. Defendant JOE'S BAR, INC., sold cigarettes to the public, including Plaintiff,  
4 NOREEN THOMPSON.

5           134. The aforesaid products were distributed, sold and/or otherwise placed into the stream of  
6 commerce by Defendant, JOE'S BAR, INC.

7           135. Defendant, JOE'S BAR, INC., defective and unreasonably dangerous cigarettes  
8 reached NOREEN THOMPSON without substantial change from that in which such products were  
9 when within the possession of Defendant.

10           136. Defendant, JOE'S BAR, INC., cigarettes were dangerous beyond the expectation of  
11 the ordinary user/consumer when used as intended or in a manner reasonably foreseeable by  
12 Defendant.

13           137. The nature and degree of danger of Defendant, JOE'S BAR, INC., cigarettes were  
14 dangerous beyond the expectation of the ordinary consumer, including NOREEN THOMPSON, when  
15 used as intended or in a reasonably foreseeable manner.

16           138. Defendant, JOE'S BAR, INC., cigarettes were unreasonably dangerous because a less  
17 dangerous design and/or modification was economically and scientifically feasible.

18           139. As a direct and proximate and/or legal cause of the aforesaid defective and  
19 unreasonably dangerous condition of cigarette products sold by Defendant, JOE'S BAR, INC.,  
20 NOREEN THOMPSON was injured. NOREEN THOMPSON thereby experienced great pain to her  
21 body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand Dollars  
22 (\$15,000.00).

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

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

11       142. Defendant's actions were taken knowingly, wantonly, willfully, and/or maliciously.

12       143. Defendant's conduct was despicable and so contemptible that it would be looked down  
13 upon and despised by ordinary decent people and was carried on by Defendant with willful and  
14 conscious disregard for the safety of NOREEN THOMPSON.

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

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

21       146. Defendant's actions have forced the Plaintiff to retain counsel to represent her in the  
22 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney  
23 fees and costs of suit.

24                                   **TENTH CLAIM FOR RELIEF**  
25                                   **(STRICT PRODUCT LIABILITY)**  
26

**Noreen Thompson Against Defendant The Poker Palace**

147. Plaintiff repeats and realleges the allegations contained in paragraphs 1 and 96 and paragraphs 134 through 152, and incorporates the same herein by reference.

148. Defendant, THE POKER PALACE, is in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

149. Defendant, THE POKER PALACE, sold cigarettes to the public, including Plaintiff, NOREEN THOMPSON.

150. The aforesaid products were distributed, sold and/or otherwise placed into the stream of commerce by Defendant, THE POKER PALACE.

151. Defendant, THE POKER PALACE, defective and unreasonably dangerous cigarettes reached NOREEN THOMPSON without substantial change from that in which such products were when within the possession of Defendant.

152. Defendant, THE POKER PALACE, cigarettes were dangerous beyond the expectation of the ordinary user/consumer when used as intended or in a manner reasonably foreseeable by Defendant.

153. The nature and degree of danger of Defendant, THE POKER PALACE, cigarettes were dangerous beyond the expectation of the ordinary consumer, including NOREEN THOMPSON, when used as intended or in a reasonably foreseeable manner.

154. Defendant, THE POKER PALACE, cigarettes were unreasonably dangerous because a less dangerous design and/or modification was economically and scientifically feasible.

155. As a direct and proximate and/or legal cause of the aforesaid defective and unreasonably dangerous condition of cigarette products sold by Defendant, THE POKER PALACE, NOREEN THOMPSON was injured. NOREEN THOMPSON thereby experienced great pain to her body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand Dollars

1 (\$15,000.00).

2 156. As a further direct and proximate and/or legal cause of the defective and unreasonably  
3 dangerous condition of Defendant's cigarettes, NOREEN THOMPSON has incurred damages, both  
4 general and special, including medical expenses as a result of the necessary treatment of her injuries,  
5 and will continue to incur damages for future medical treatment necessitated by smoking-related  
6 injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).  
7

8 157. As a further direct and proximate and/or legal cause of the aforementioned defective  
9 and unreasonably dangerous condition of Defendant's cigarettes, NOREEN THOMPSON was  
10 required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,  
11 and care for her and did incur medical and incidental expenses thereby. The exact amount of such  
12 expenses is unknown at this present time, but NOREEN THOMPSON alleges that she has suffered  
13 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).  
14

15 158. Defendant's actions were taken knowingly, wantonly, willfully, and/or maliciously.

16 159. Defendant's conduct was despicable and so contemptible that it would be looked down  
17 upon and despised by ordinary decent people and was carried on by Defendant with willful and  
18 conscious disregard for the safety of NOREEN THOMPSON.

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

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

26 162. Defendant's actions have forced the Plaintiff to retain counsel to represent her in the  
27 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney  
28

1 fees and costs of suit.

2 **ELEVENTH CLAIM FOR RELIEF**

3 **(STRICT PRODUCT LIABILITY)**

4 **Noreen Thompson Against Defendant Silver Nugget**

5  
6 131. Plaintiff repeats and realleges the allegations contained in 1 and 96 and paragraphs 134  
7 through 152, and incorporate the same herein by reference.

8 132. Defendant, SILVER NUGGET, is in the business of distributing, marketing, selling,  
9 or otherwise placing cigarette into the stream of commerce.

10 133. Defendant, SILVER NUGGET, sold cigarettes to the public, including Plaintiff,  
11 NOREEN THOMPSON.

12 134. The aforesaid products were distributed, sold and/or otherwise placed into the stream of  
13 commerce by Defendant, SILVER NUGGET.

14 135. Defendant, SILVER NUGGET, defective and unreasonably dangerous cigarettes  
15 reached NOREEN THOMPSON without substantial change from that in which such products were  
16 when within the possession of Defendant.

17 136. Defendant, SILVER NUGGET, cigarettes were dangerous beyond the expectation of  
18 the ordinary user/consumer when used as intended or in a manner reasonably foreseeable by  
19 Defendant.

20 137. The nature and degree of danger of Defendant, SILVER NUGGET, cigarettes were  
21 dangerous beyond the expectation of the ordinary consumer, including NOREEN THOMPSON, when  
22 used as intended or in a reasonably foreseeable manner.

23 138. Defendant, SILVER NUGGET, cigarettes were unreasonably dangerous because a less  
24 dangerous design and/or modification was economically and scientifically feasible.

25 139. As a direct and proximate and/or legal cause of the aforesaid defective and  
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1 unreasonably dangerous condition of cigarette products sold by Defendant, SILVER NUGGET,  
2 NOREEN THOMPSON was injured. NOREEN THOMPSON thereby experienced great pain to her  
3 body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand Dollars  
4 (\$15,000.00).

5  
6 140. As a further direct and proximate and/or legal cause of the defective and unreasonably  
7 dangerous condition of Defendant's cigarettes, NOREEN THOMPSON has incurred damages, both  
8 general and special, including medical expenses as a result of the necessary treatment of her injuries,  
9 and will continue to incur damages for future medical treatment necessitated by smoking-related  
10 injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

11  
12 141. As a further direct and proximate and/or legal cause of the aforementioned defective  
13 and unreasonably dangerous condition of Defendant's cigarettes, NOREEN THOMPSON was  
14 required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,  
15 and care for her and did incur medical and incidental expenses thereby. The exact amount of such  
16 expenses is unknown at this present time, but NOREEN THOMPSON alleges that she has suffered  
17 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

18 142. Defendant's actions were taken knowingly, wantonly, willfully, and/or maliciously.

19  
20 143. Defendant's conduct was despicable and so contemptible that it would be looked down  
21 upon and despised by ordinary decent people and was carried on by Defendant with willful and  
22 conscious disregard for the safety of NOREEN THOMPSON.

23 144. Defendant's outrageous and unconscionable conduct warrants an award of exemplary  
24 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an  
25 example of Defendant, and to deter similar conduct in the future.

26 145. To the extent NRS 42.007 applies, Defendant is vicariously liable for punitive damages  
27 arising from the outrageous and unconscionable conduct of their employees, agents, apparent agents,  
28

1 independent contractors, and/or servants, as set forth herein.

2           146. Defendant's actions have forced the Plaintiff to retain counsel to represent her in the  
3 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney  
4 fees and costs of suit.  
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**TWELFTH CLAIM FOR RELIEF**

**(STRICT PRODUCT LIABILITY)**

**Noreen Thompson Against Defendant Jerry's Nugget**

147. Plaintiff repeats and realleges the allegations contained in paragraphs 1 and 96 and paragraphs 134 through 152, and incorporate the same herein by reference.

148. Defendant, JERRY'S NUGGET, is in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

149. Defendant, JERRY'S NUGGET, sold cigarettes to the public, including Plaintiff, NOREEN THOMPSON.

150. The aforesaid products were distributed, sold and/or otherwise placed into the stream of commerce by Defendant, JERRY'S NUGGET.

151. Defendant, JERRY'S NUGGET, defective and unreasonably dangerous cigarettes reached NOREEN THOMPSON without substantial change from that in which such products were when within the possession of Defendant.

152. Defendant, JERRY'S NUGGET, cigarettes were dangerous beyond the expectation of the ordinary user/consumer when used as intended or in a manner reasonably foreseeable by Defendant.

153. The nature and degree of danger of Defendant, JERRY'S NUGGET, cigarettes were dangerous beyond the expectation of the ordinary consumer, including NOREEN THOMPSON, when used as intended or in a reasonably foreseeable manner.

154. Defendant, JERRY'S NUGGET, cigarettes were unreasonably dangerous because a less dangerous design and/or modification was economically and scientifically feasible.

155. As a direct and proximate and/or legal cause of the aforesaid defective and unreasonably dangerous condition of cigarette products sold by Defendant, JERRY'S NUGGET,



1 NOREEN THOMPSON was injured. NOREEN THOMPSON thereby experienced great pain to her  
2 body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand Dollars  
3 (\$15,000.00).

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

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

15 158. Defendant's actions were taken knowingly, wantonly, willfully, and/or maliciously.

16 159. Defendant's conduct was despicable and so contemptible that it would be looked down  
17 upon and despised by ordinary decent people and was carried on by Defendant with willful and  
18 conscious disregard for the safety of NOREEN THOMPSON.

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

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

1           162. Defendant's actions have forced the Plaintiff to retain counsel to represent her in the  
2 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney  
3 fees and costs of suit.

4           WHEREFORE, Plaintiff, NOREEN THOMPSON expressly reserving the right to amend this  
5 Complaint at the time of trial to include all items of damage not yet ascertained, demand judgment  
6 against Defendants', PHILIP MORRIS USA, INC.; R.J. REYNOLDS TOBACCO COMPANY,  
7 individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-  
8 in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO  
9 CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY;  
10 LIGGETT GROUP, LLC.; QUICK STOP MARKET, LLC; JOE'S BAR, INC.; THE POKER  
11 PALACE; SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO; JERRY'S  
12 NUGGET; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, as follows:  
13  
14

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

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

19           4. For exemplary and punitive damages in excess of Fifteen Thousand Dollars  
20 (\$15,000.00);  
21

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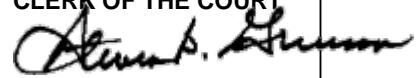
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Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
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Las Vegas, Nevada 89118  
(702) 938-3838



**MTD**

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Facsimile: (702) 938-3864

*Attorney for Defendant*

*Philip Morris USA Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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 limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Case No.: A-20-811091-C

Dept. No.: XVI

**HEARING REQUESTED**

**DEFFENDANT PHILIP MORRIS USA  
INC.'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT  
UNDER NRCP 12(b)(5)**

1 Defendant Philip Morris USA Inc., by and through its counsel of record, hereby files this  
2 Motion to Dismiss Plaintiff's Complaint Under NRCP 12(b)(5) (the "Motion").<sup>1</sup>

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

6 Dated: April 2, 2020

7 WEINBERG, WHEELER, HUDGINS,  
8 GUNN & DIAL, LLC

9 /s/ D. Lee Roberts, Jr.

10 D. Lee Roberts, Jr., Esq.

11 Nevada Bar No. 8877

12 6385 S. Rainbow Boulevard, Suite 400

13 Las Vegas, Nevada 89118

14 *Attorney for Defendant Philip Morris*  
15 *USA Inc.*

## 16 **MEMORANDUM OF POINTS AND AUTHORITY**

### 17 **I. INTRODUCTION**

18 Plaintiff Noreen Thompson alleges that she was addicted to Pall Mall, Camel, Viceroy,  
19 and Pyramid brand cigarettes—which she smoked continuously from approximately 1954 until  
20 2019—and that, as a result of that addiction, she was diagnosed with lung cancer in April 2019.  
21 Plaintiff has alleged a variety of causes of action against three tobacco manufacturers, five retail  
22 shops, and other unnamed defendants, including negligence, strict products liability, fraudulent  
23 misrepresentation, fraudulent concealment, civil conspiracy to defraud, and violations of the  
24 Nevada Deceptive Trade Practices Act. Of these claims, only two are asserted against Defendant  
Philip Morris USA Inc. ("PM USA"): (1) violations of the Nevada Deceptive Trade Practices  
Act and (2) civil conspiracy to defraud.<sup>2</sup>

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25 <sup>1</sup> Philip Morris USA Inc. adopts in full and incorporates by reference Defendant R.J. Reynolds  
26 Tobacco Company's Motion to Dismiss Counts I–V of Plaintiff's Complaint under NRCP 12(b)(5) (filed  
27 contemporaneously herewith). The filing of this Motion should not be construed as a waiver of any  
28 argument set forth in Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss or any deficiency  
of Plaintiff's Complaint described therein.

<sup>2</sup> Plaintiff's Complaint asserts the following causes of action: (1) negligence (against R.J.  
Reynolds Tobacco Company ("Reynolds") and Liggett Group LLC ("Liggett")); (2) gross negligence  
(against Reynolds and Liggett); (3) strict products liability (against Reynolds and Liggett); (4) fraudulent

1 Yet, Plaintiff's Complaint makes clear that PM USA *did not manufacture, distribute, or*  
2 *sell* the cigarettes that she smoked. Despite the fact that this is a product liability action based on  
3 allegedly defective cigarettes, Plaintiff's Complaint does not assert that she ever smoked  
4 cigarettes manufactured by PM USA, let alone that any such cigarettes caused her injuries.  
5 There is no relationship of any kind between Plaintiff and PM USA, and PM USA owed Plaintiff  
6 no duty that could support a fraud claim or a civil conspiracy claim.

7 In Nevada, it is well-established that product use is a fundamental requirement in any  
8 product liability action. *See Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF), 2009 WL  
9 749532, at \*4 (D. Nev. Mar. 20, 2009) (applying Nevada state law and recognizing that  
10 "[a]mong manufacturers of products, liability rests only with the manufacturer of the product  
11 that actually caused the alleged injury because that manufacturer profited from sales of the  
12 product and controlled its safety" (citing *Allison v. Merck & Co.*, 110 Nev. 762, 767–68, 878  
13 P.2d 948, 952 (1994))); *see also Baymiller v. Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302,  
14 1309–11 (D. Nev. 2012) (similar).

15 In this product liability action, while Plaintiff has not asserted a traditional product  
16 liability claim against PM USA, her claims alleging deceptive trade practices and civil  
17 conspiracy to defraud (like all of her claims) center on allegedly defective products: specifically,  
18 Pall Mall, Camel, Viceroy, and Pyramid brand cigarettes. To permit Plaintiff to pursue these  
19 claims against PM USA, which undisputedly did not manufacture the products that allegedly  
20 harmed her, runs contrary to both the central objectives of the deceptive trade practices statute  
21 and bedrock legal principles in the product liability context. For this reason alone, Plaintiff's  
22 claims for deceptive trade practices and civil conspiracy to defraud asserted against PM USA  
23 should be dismissed.

24 In addition, Plaintiff's claim alleging deceptive trade practices as to PM USA fails as a  
25 matter of law: The Court should dismiss this claim for the independent reason that Plaintiff

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26 misrepresentation (against Reynolds and Liggett); (5) fraudulent concealment (against Reynolds and  
27 Liggett); (6) civil conspiracy to defraud (against PM USA, Reynolds, and Liggett); (7) violations of the  
28 Nevada Deceptive Trade Practices Act (against PM USA, Reynolds, and Liggett); and (8) strict products  
liability (against Defendants Quick Stop Market, LLC; Joe's Bar, Inc.; The Poker Palace; Silver Nugget;  
and Jerry's Nugget). *See generally* Compl. at p. 21–64.

1 cannot satisfy the essential elements of causation and reliance required for such a claim because  
2 she never smoked cigarettes manufactured by PM USA.

3 Moreover, because Plaintiff's cause of action for civil conspiracy to defraud is predicated  
4 on the underlying torts of fraudulent misrepresentation and fraudulent concealment under  
5 Nevada law—and Plaintiff did not and cannot allege facts showing that PM USA owed her any  
6 duty—Plaintiff's civil conspiracy to defraud claim likewise fails as to PM USA.

7 For these reasons, set forth more fully below, as well as those appearing in Defendant  
8 R.J. Reynolds Tobacco Company's Motion to Dismiss Counts I–V of Plaintiff's Complaint  
9 under NRCP 12(b)(5) (filed contemporaneously herewith), PM USA respectfully requests that  
10 the Court enter an order dismissing Plaintiff's Complaint as to PM USA.

## 11 **II. ARGUMENT**

### 12 **A. Standard of Review**

13 A party may move for the dismissal of a pleading on the grounds that the pleading fails to  
14 state a claim upon which relief may be granted. *See* NRCP 12(b)(5). For purposes of a Rule  
15 12(b)(5) motion, the “court accepts the plaintiffs’ factual allegations as true, but the allegations  
16 must be legally sufficient to constitute the elements of the claim asserted.” *Sanchez v. Wal-Mart*  
17 *Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009); *see also, e.g., Simpson v. Mars*  
18 *Inc.*, 113 Nev. 188, 192, 929 P.2d 966, 968 (1997) (affirming dismissal on the pleadings of all  
19 but one of plaintiff's claims). “The test for determining whether the allegations of a cause of  
20 action are sufficient to assert a claim for relief is whether the allegations give fair notice of the  
21 nature and basis of the claim and the relief requested.” *Ravera v. City of Reno*, 100 Nev. 68, 69,  
22 675 P.2d 407, 408 (1984).

23 To survive a motion to dismiss for failure to state a claim, a plaintiff's complaint must  
24 allege facts sufficient to establish all necessary elements of each cause of action upon which  
25 recovery is sought. *Danning v. Lum's, Inc.*, 86 Nev. 868, 870, 478 P.2d 166, 167 (1970). If it  
26 appears from the pleadings that plaintiff can prove no set of facts that can entitle her to relief, the  
27 complaint should be dismissed. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720,  
28 734 (2003) (citing *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985)).

1           **B.       Plaintiff’s Claims Against PM USA Fail for Lack of Product Use.**

2           Plaintiff has brought a product liability action to recover for injuries allegedly caused by  
3 a product: cigarettes. Product use is a fundamental requirement in a Nevada product liability  
4 action. *See Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF), 2009 WL 749532, at \*4–5  
5 (D. Nev. Mar. 20, 2009); *Baymiller v. Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302, 1309–11  
6 (D. Nev. 2012). And, it remains a fundamental requirement in an action for damages allegedly  
7 caused by a product “*regardless of whether Plaintiff characterizes her claims as*  
8 *misrepresentation/fraud or claims arising in product liability.*” *Moretti*, 2009 WL 749532, at  
9 \*4 (emphasis added); *see also Beattie v. Thomas*, 99 Nev. 579, 584, 668 P.2d 268, 272 (1983)  
10 (“The requested instruction on the concept of increased risk of harm was an attempt by Beattie to  
11 lighten his burden of showing that MedaSonic’s breach, if any, of its duty to warn was a  
12 proximate cause of the eventual high amputation of Beattie’s leg.”). Because the claims Plaintiff  
13 has asserted in this case relate to injuries caused by an allegedly defective product (*i.e.*, Pall  
14 Mall, Camel, Viceroy, and Pyramid brand cigarettes), Nevada law requires a relationship  
15 between Plaintiff and PM USA. *See id.*

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18           In *Baymiller*, plaintiffs brought a variety of claims against a brand-name manufacturer  
19 (GlaxoSmithKline (“GSK”)) and other pharmaceutical manufacturers, including causes of action  
20 for fraud. 894 F. Supp. 2d at 1303–05. There, similar to here, it was undisputed that the relevant  
21 plaintiff only had purchased and used the generic medication, which was manufactured and sold  
22 by GSK’s competitors—not by GSK itself. *Id.* at 1305 (“It is undisputed that [GSK] is the  
23 manufacturer of the brand name medication . . . that [the relevant plaintiff] did *not* purchase or  
24 use.” (emphasis in original)). The court granted summary judgment in favor of GSK on all of  
25 plaintiffs’ claims, each for the fundamental reason that the relevant plaintiff had neither  
26 purchased nor used a GSK product. *Id.* at 1309–11. Unable to meet the essential burden of  
27 proving that the plaintiff had purchased or used a GSK product (and therefore to demonstrate  
28



1 that GSK could have caused the alleged injuries), the claims against GSK failed as a matter of  
2 law. *See id.*

3 The court’s decision in *Moretti*, cited and relied upon in *Baymiller*, similarly stands for  
4 the proposition that, in a product liability action against multiple product manufacturers, only the  
5 manufacturer of the product ***that actually harmed the plaintiff*** may be held liable. *See* 2009 WL  
6 749532, at \*4 (“Among manufacturers of products, liability rests only with the manufacturer of  
7 the product that actually caused the alleged injury because that manufacturer profited from sales  
8 of the product and controlled its safety.” (citing *Allison v. Merck & Co.*, 110 Nev. 762, 767–68,  
9 878 P.2d 948, 952 (1994))). The court noted that the result was the same whether the actual  
10 causes of action were framed as traditional product liability claims or as misrepresentation or  
11 fraud claims, because allegations of misrepresentation are simply “an effort to recover for  
12 injuries caused by a product without meeting the requirements the law imposes in products  
13 liability actions.” *Id.* (quoting *Foster v. Am. Home Prod. Corp.*, 29 F.3d 165, 168 (4th Cir.  
14 1994)). Here, because Plaintiff’s Complaint does not allege any connection between Plaintiff  
15 and PM USA, she has failed to state a claim as to PM USA in this product liability action.  
16  
17

18 Moreover, any effort to re-plead would be futile as PM USA does not—and has never—  
19 manufactured the cigarette brands that Plaintiff alleges she smoked. *See* Compl. ¶ 20 (“Plaintiff,  
20 NOREEN THOMPSON, was diagnosed on or about April 8, 2019 with lung cancer, which was  
21 caused by smoking Pall Mall brand cigarettes, Camel brand cigarettes, Viceroy brand cigarettes,  
22 and Pyramid brand cigarettes, to which she was addicted and smoked continuously from  
23 approximately 1954 until 2019.”). Indeed, Plaintiff concedes this exact fact in her Complaint.  
24 *Id.* at ¶¶ 22–25 (alleging that “[a]t all times material,” Pall Mall, Viceroy, Camel, and Pyramid  
25 brand cigarettes “were . . . designed, manufactured, and sold” by Reynolds or Liggett).  
26

27 For this reason alone, the Court should dismiss with prejudice all of Plaintiff’s claims  
28 asserted against PM USA.

1           **C.     Plaintiff’s Claim for Deceptive Trade Practices (Seventh Claim for Relief)**  
2           **Fails Under Nevada Law As To PM USA Because Plaintiff Never Used a PM**  
3           **USA-Brand Product.**

4           Plaintiff alleges that PM USA engaged in various levels of misconduct that constitute  
5           “deceptive trade practice” under Nevada law. *See* Compl. ¶¶ 200–13. Section 41.600(1),  
6           Nevada Revised Statutes, provides that “[a]n action may be brought by any person who is a  
7           victim of consumer fraud.” Nev. Rev. Stat. § 41.600(1). A deceptive trade practices claim  
8           brought pursuant to section 41.600(1) requires proof that *the defendant committed* consumer  
9           fraud *causing damage to the plaintiff*. *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657 (D.  
10          Nev. 2009). To succeed on this claim, a plaintiff must show that “(1) an act of consumer fraud  
11          by the defendant (2) caused (3) damage to the plaintiff.” *Id.* at 658; *see also* Nev. Rev. Stat. §  
12          41.600(2)(e).

13          In her Complaint, Plaintiff does not include PM USA in her claims for fraudulent  
14          concealment or fraudulent misrepresentation. Plaintiff cannot state a cause of action for fraud or  
15          deception against PM USA because it owed no duty to Plaintiff that could support a fraud claim:

16               The duty to disclose requires, at a minimum, some form of relationship between  
17               the parties. *See Mackintosh [v. Jack Matthews & Co.]*, 109 Nev. [628,] 634–35,  
18               855 P.2d [549,] 553 [(1993)] (disclosure mandated in context of dealings between  
19               parties); *Villalon [v. Bowen]*, 70 Nev. [456,] 467–68, 273 P.2d [409,] 415  
20               [(1954)] (same); *see also In re Temporomandibular Joint (TMJ) Implants Prods.*  
21               *Liab. Litig.*, 113 F.3d 1484, 1497 (8th Cir. 1997) [hereinafter *TMJ Implants*]  
22               (without some kind of relationship, there can be no duty to disclose). Absent such  
23               a relationship, no duty to disclose arises, and as a result, no liability for fraudulent  
24               concealment attaches to the nondisclosing party.

25               It is undisputed that Dow Chemical did not have a fiduciary relationship, a special  
26               relationship, or a relationship of any kind with the Mahlums. Instead, the  
27               Mahlums claim that Dow Chemical’s duty to disclose arose because it possessed  
28               superior knowledge about the dangers of using silicone within the human body.  
Dow Chemical had no duty to disclose to the Mahlums any superior knowledge it  
may have had regarding the safety of silicone products, however, because it was  
not directly involved in the transaction from which this lawsuit arose, or any other  
transaction with the Mahlums. Accordingly, we conclude that the portion of the  
judgment holding Dow Chemical liable for fraudulent misrepresentation was not  
supported by evidence of any relationship between the parties and must be  
reversed.

*Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1487, 970 P.2d 98, 110–11 (1998), *abrogated on*  
*other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

1 In this case, Plaintiff does not allege that she ever purchased or smoked cigarettes  
2 manufactured by PM USA. *See generally* Compl. Indeed, she unambiguously pleaded that her  
3 alleged lung cancer “was caused by smoking Pall Mall brand cigarettes, Camel brand cigarettes,  
4 Viceroy brand cigarettes, and Pyramid brand cigarettes, to which she was addicted and smoked  
5 continuously from approximately 1954 until 2019.” *Id.* at ¶ 20. Thus, since Plaintiff never  
6 purchased or smoked cigarettes manufactured by PM USA, there simply is no connection  
7 between PM USA’s alleged deceptive trade practices as they relate to the health risk of its  
8 products and Plaintiff’s alleged lung cancer. Plaintiff has not stated and cannot state a cause of  
9 action for fraud against PM USA and, for the same reason, cannot state a claim for the predicate  
10 consumer fraud required to properly allege “deceptive trade practice” under Nevada law.

11 For these reasons, Plaintiff has failed to state a claim against PM USA for deceptive trade  
12 practices, and the Court should dismiss the claim with prejudice as to PM USA.

13 **D. Plaintiff’s Claim for Civil Conspiracy To Defraud (Sixth Claim for Relief)**  
14 **Fails Under Nevada Law As To PM USA Because Plaintiff Did Not (And**  
15 **Cannot) Plead the Underlying Torts As To PM USA.**

16 The allegations in Plaintiff’s Complaint attempt to assert a claim for civil conspiracy to  
17 defraud. When determining whether a plaintiff properly has pleaded such a claim, a court should  
18 look to “[t]he substance of [the] allegations,” irrespective of how a plaintiff chooses to “title” her  
19 claim for relief in the complaint. *See Goodwin v. Exec. Trustee Servs., LLC*, 680 F. Supp. 2d  
20 1244, 1255 (D. Nev. 2010) (applying Nevada law, finding that plaintiff failed to state a claim for  
21 civil conspiracy to defraud, and noting that while the title for plaintiff’s claim stated  
22 “‘Conspiracy to Commit Fraud and Conversion’ . . . [t]he substance of this claim’s allegations  
23 focuses on the fraud underlying the alleged conspiracy, not conversion”).<sup>3</sup> The allegations of  
24 civil conspiracy to defraud are nothing more than an attempt to impose liability on PM USA for  
25 harm allegedly caused by a product, even though no product liability claim can be stated against  
26

---

27 <sup>3</sup> To the extent Plaintiff responds that the conspiracy claim relates to the NDTPA claim, a claim  
28 arising under the NDTPA is a fraud-based claim. *See Chattem v. BAC Home Loan Servicing LP*, No.  
2:11-cv-1727-KJD-RJJ, 2012 WL 2048199, at \*2 (D. Nev. June 5, 2012) (“A claim under the NDTPA  
sounds in fraud . . .” (citations and internal quotation marks omitted)).

1 it under Nevada law: Product use is a fundamental requirement in a Nevada product liability  
2 action “*regardless of whether Plaintiff characterizes her claims as misrepresentation/fraud or*  
3 *claims arising in product liability.*” *Moretti*, 2009 WL 749532, at \*4 (citing *Kite v. Zimmer US,*  
4 *Inc.*, No. 2:06-cv-0745-RCJ (RJJ), 2006 WL 3386765, at \*4 (D. Nev. Nov. 22, 2006))  
5 (explaining that “because defendant ‘did not supply the Device, it cannot be liable for negligent  
6 product liability or negligent misrepresentation because it did not owe the Plaintiffs a duty of  
7 care’”).

8  
9 Just as a plaintiff cannot assert a claim for product liability if she cannot establish that a  
10 particular manufacturer’s product caused an alleged injury, a plaintiff similarly cannot sustain a  
11 civil conspiracy claim against a manufacturer whose product did not harm the plaintiff. In  
12 *Chavers v. Gatke Corporation*, 107 Cal. App. 4th 606, 612, 132 Cal. Rptr. 2d 198, 201  
13 (2003), *as modified* (Apr. 25, 2003), the plaintiff asserted a conspiracy claim and product  
14 liability causes of action based on allegations that Gatke was part of an industry-wide effort to  
15 suppress information concerning the hazards of asbestos. However, the plaintiff was unable to  
16 prove that a product Gatke manufactured caused the injury. The court explained that “[a] duty,  
17 however, independent of the conspiracy itself, must exist in order for substantive liability to  
18 attach.” *Id.* at 202. Without sufficient product identification evidence, the defendant owed no  
19 duty to the plaintiff, and without such a duty, no basis existed to find the manufacturer liable for  
20 conspiracy. *Id.* “[B]efore one can be held liable for civil conspiracy, he must be capable of  
21 being *individually liable for the underlying wrong as a matter of substantive tort law*. And that  
22 requirement, of course, means he must have owed a legal duty of care to the plaintiff, one that  
23 was breached to the latter’s injury.” *Id.* at 201 (emphasis in original); *see also Applied Equip.*  
24 *Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514, 869 P.2d 454, 459 (1994) (“Conspiracy is  
25 not an independent tort; it cannot create a duty or abrogate an immunity. It allows tort recovery  
26 only against a party who already owes the duty and is not immune from liability based on  
27  
28

1 applicable substantive tort law principles.”).

2 These California cases are particularly persuasive because Nevada drew its elements of  
3 the cause of action for civil conspiracy from California law. *See Collins v. Union Fed. Sav. &*  
4 *Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (citing *Wise v. S. Pac. Co.*, 223 Cal.  
5 App. 2d 50, 35 Cal. Rptr. 652 (1963)).

6 Under Nevada law, an actionable claim for civil conspiracy to defraud exists when the  
7 following elements are present: “(1) a conspiracy agreement, *i.e.*, a combination of two or more  
8 persons who, by some concerted action, intend to accomplish an unlawful objective for the  
9 purpose of harming another; (2) an overt act of fraud in furtherance of the conspiracy; and (3)  
10 resulting damages to the plaintiff.” *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub.*  
11 *Safety*, 121 Nev. 44, 74–75, 110 P.3d 30, 51 (2005), *overruled on other grounds*, 124 Nev. 224,  
12 181 P.3d 670 (2008). “[A]n underlying cause of action for fraud is a **necessary predicate** to a  
13 cause of action for conspiracy to defraud.” *Id.* at 51 (emphasis added); *see also Sommers v.*  
14 *Cuddy*, No. 2:08-cv-78-RCJ-RJJ, 2012 WL 359339, \*5 (D. Nev. Feb. 2, 2012) (applying Nevada  
15 law and recognizing that a cause of action for civil conspiracy to defraud requires a viable  
16 underlying cause of action for fraud); *Goodwin*, 680 F. Supp. 2d at 1253–54 (same).

17 Plaintiff likely will contend that *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979  
18 (1963), is not in accord with this California authority. *Short* is distinguishable on its facts. In  
19 *Short*, the Nevada Supreme Court recognized that while “an act done by an individual is not  
20 actionable because justified by his rights, though harmful to another, such [an] act becomes  
21 actionable when done in pursuance of combination of persons actuated by malicious motives and  
22 not having same justification as the individual.” *Id.* at 106. The plaintiff in *Short* alleged that  
23 several entities had participated in an “unlawful conspiracy,” *id.* at 98, by individually acting to  
24 collectively “obstruct[] and interfer[e]” with his employment as the conductor of a relief band  
25 with a contract to perform at a defendant hotel. *Id.* at 95. However, the defendants—the hotel, a  
26  
27  
28

1 union, and another conductor who also served as chairman of the union’s trial board—each had a  
2 relationship with and acted in a manner ultimately injurious to the plaintiff, even though the  
3 defendants asserted that their actions independently were lawful. *See id.* at 95–100. Here, no  
4 relationship exists between PM USA and Plaintiff. Plaintiff’s Complaint never alleges that PM  
5 USA manufactured, distributed, or sold the cigarettes that she purportedly smoked. PM USA did  
6 not—and does not—owe any duty of care to Plaintiff, unlike the *Short* defendants, who  
7 maintained contractual, employment, and union membership-based relationships with the  
8 plaintiff.  
9

10 For these reasons, the Court should dismiss with prejudice Plaintiff’s cause of action  
11 asserting civil conspiracy to defraud against PM USA.

### 12 **III. CONCLUSION**

13  
14 For the foregoing reasons, as well as for the reasons set forth in Defendant R.J. Reynolds  
15 Tobacco Company’s Motion to Dismiss Counts I–V of Plaintiff’s Complaint under NRCP  
16 12(b)(5) (filed contemporaneously herewith), Philip Morris USA Inc. respectfully requests that  
17 the Court enter an order dismissing Plaintiff’s Complaint with prejudice as to the claims asserted  
18 against it.  
19

20 Dated: April 2, 2020

21 WEINBERG, WHEELER, HUDGINS,  
22 GUNN & DIAL, LLC

23 /s/ D. Lee Roberts, Jr.

24 Lee Roberts, Jr., Esq.

25 Nevada Bar No. 8877

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**CERTIFICATE OF SERVICE**

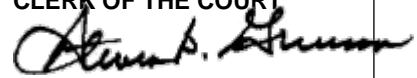
I hereby certify that on the 20th day of March, 2020, a true and correct copy of the foregoing **DEFENDANTS PHILIP MORRIS USA INC., LIGGETT GROUP LLC, AND ASM NATIONWIDE CORPORATION'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(b)(5)** was electronically filed and served on counsel 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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DISTRICT COURT  
CLARK COUNTY, NEVADA

NOREEN THOMPSON,

Plaintiff,

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; 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 limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive

Defendants.

CASE NO. A-20-811091-C

DEPT. NO. XXXII

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT PHILIP MORRIS USA  
INC.'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT UNDER  
NRCP 12(b)(5)**

**Hearing Date: May 12, 2020**

**Hearing Time: 09:30 a.m.**



**MEMORANDUM OF POINTS AND AUTHORITIES<sup>1</sup>**

**I. INTRODUCTION**

This case arises out of one of the most egregious, expensive, decades-long acts of fraud and conspiracy this country has ever seen. This sophisticated and complex conspiracy involved false and misleading claims regarding the health hazards and highly addictive nature of cigarettes and was perpetrated by the cigarette industry, including Defendant herein. Plaintiff, NOREEN THOMPSON, was one of the millions of Americans who was deceived by the cigarette industry. Mrs. Thompson began smoking cigarettes in approximately 1954 when she was 14 years old and continued to smoke until approximately 2019. In 2019 Mrs. Thompson developed lung cancer as a result of smoking cigarettes manufactured by Defendants R.J. Reynolds Tobacco Company (“R.J. Reynolds”) and Liggett Group LLC (“Liggett”). Mrs. Thompson purchased cigarettes from Defendants, QUICK STOP MARKET, LLC (“Quick Stop”), JOE’S BAR, INC. (Joe’s”), THE POKER PALACE (“Poker Palace”), SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, (“Silver Nugget”), and JERRY’S NUGGET, (“Jerry’s”) in sufficient quantities to be a substantial contributing cause of her lung cancer. Defendants, R.J. Reynolds and Liggett conspired with Defendant PHILIP MORRIS USA INC. (“Philip Morris”) to conceal the true nature of the health hazards and deadly and addictive nature of cigarettes from the American public, including NOREEN THOMPSON.

Mrs. Thompson brings this action alleging claims of negligence and strict liability based on the Defendants’ manufacture and sale of cigarettes that it purposefully designed to be unreasonably dangerous, as well as counts of deceptive trade practice and civil conspiracy based on the decades-long campaign Defendants waged to deceive the public and smokers such as Mrs. Thompson.

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<sup>1</sup> Plaintiff hereby adopts and incorporates all arguments presented in Plaintiff’s Opposition to Defendant R.J. Reynolds Tobacco Company’s Motion to Dismiss filed contemporaneously with the filing of this pleading.

Contrary to Defendants arguments, as explained below, Plaintiff has sufficiently pleaded each of her claims and thus Defendant's motion should be denied in its entirety.

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

### **A. CIGARETTE INDUSTRY'S TWO HUNDRED AND FIFTY BILLION DOLLAR CONSPIRACY**

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

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

**B. DEFENDANTS' CONCERTED ACTIONS HARMED NOREEN THOMPSON**

Defendants concerted efforts and mass marketing campaign harmed Plaintiff, NOREEN THOMPSON, who began smoking cigarettes in 1954 when she was 14 years old. Mrs. Thompson became addicted to nicotine in cigarettes and as a result developed lung cancer. Mrs. Thompson's continued smoking lead to her addiction, which ultimately lead to her lung cancer. Mrs. Thompson continued to smoke cigarettes for over 60 years was because, she, along with millions and millions of Americans, did not know cigarettes were harmful, addictive, or could cause disease and death. And when Mrs. Thompson finally learned about the true nature of cigarettes, she unfortunately was too addicted to the powerful drug – nicotine – that she was not able to quit smoking.

Mrs. Thompson did not know about the true nature of cigarettes because R.J. Reynolds, Philip Morris, and Liggett did not want Mrs. Thompson to know. The ongoing debate regarding whether cigarettes were safe or whether they were not safe was not a one-off marketing campaign or a singular advertisement or appearance on television. This was one of the largest, most expensive and wide-spread marketing efforts this county has ever seen. Unlike Defendants imply in their motion to dismiss, R.J. Reynolds did not act alone. They needed help and cooperation from Philip Morris and Liggett and others, to perpetuate this very expensive, massive campaign. The conspiracy and the public perception about cigarettes would never have flourished unless all of the cigarette manufacturers worked together to spread the same message. Thus, as a result of the concerted efforts of R.J. Reynolds, Philip Morris, and Liggett, Mrs. Thompson began smoking cigarettes, continued to smoke for over 60 years, became addicted to nicotine in cigarettes, and ultimately developed lung cancer as a result of her smoking.

**C. THIS IDENTICAL MOTION WAS DENIED BY JUDGE JIM CROCKETT LAST MONTH**

Just last month on March 10, 2020 Judge Crockett ruled upon the identical issues raised in this Motion to Dismiss in the *Clark v. R.J. Reynolds et al.*, Case No. A-19-802987 matter. The Complaint

and the Motions to Dismiss in the *Clark* matter were substantively the same, involving similar counts of Negligence, Strict Liability, Fraudulent Concealment, Fraudulent Misrepresentation, Civil Conspiracy, and Deceptive Trade Practices. After extensive briefings and a hearing before Judge Crocket, the Court denied both Defendant R.J. Reynolds’s Motion to Dismiss as well as Defendants Philip Morris and Liggett’s Motion to Dismiss.<sup>2</sup> Furthermore, similar motions to dismiss have likewise been denied in courts across the County including in Florida, Massachusetts, Portland, and others.<sup>3</sup>

### **III. LEGAL ARGUMENT**

#### **A. LEGAL STANDARD FOR MOTIONS TO DISMISS**

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

The pleading of a conclusion, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim. *Crucil*, 95 Nev. at 585, 600 P. 2d at 217 (1979) (citing

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

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

1 *Taylor v. State and Univ.*, 73 Nev. 151, 152, 311 P. 2d 733, 734 (1957)). “Because Nevada is a notice-  
2 pleading jurisdiction, [its] courts liberally construe pleadings to place into issue matters which are  
3 fairly noticed to the adverse party.” *Hay*, 100 Nev. at 198, 678 P. 2d at 674 (citing *Chavez v. Robberson*  
4 *Steel Co.*, 94 Nev. 597, 599, 584 P. 2d 159, 160 (1978)).

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

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24  
25 **B. PLAINTIFF’S CLAIMS DO NOT FAIL FOR LACK OF PRODUCT USE**

26 Defendant first alleges Plaintiff’s conspiracy and deceptive trade practice claims fail because  
27 lack of “product use.” This theory is not supported by any statute or case law and is a baseless, made-  
28

up requirement. Nevada Standard Jury Instructions lay out the specific elements a Plaintiff must prove in order to prevail on a claim for civil conspiracy. *There is no “product-use” requirement in the standard jury instruction.*

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

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

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

In *Picus*, the Nevada District Court held that to prevail under a 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. *Id.* As explained in Plaintiff’s Opposition to Defendant R.J. Reynolds Tobacco Company’s Motion to Dismiss, Plaintiff adequately plead sufficient facts to prove each of these elements – i.e. how the cigarette industry’s efforts as a whole, including Defendants Philip Morris and Liggett, caused or contributed to Mrs. Thompson’s beginning smoking, continuing smoking, becoming addicted to cigarettes, and ultimately contributing to her development of lung cancer.

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

8  
9 Defendant clearly and blatantly misstates the law and the holdings in *Baymiller* which is, in  
10 fact, a completely unrelated and unhelpful case. First of all, the court in *Baymiller* was deciding a  
11 Motion for Summary Judgment, not a NRCP 12(b)(5) Motion to Dismiss. Secondly, the facts of  
12 *Baymiller* are lightyears apart from the facts in Mrs. Thompson’s case. In *Baymiller* the disputed issues  
13 involved one pharmaceutical company manufacturing one drug -- opposed to the entire cigarette  
14 industry spending two-hundred-and-fifty-billion dollars for over 50 years engineering a massive  
15 campaign to deceive the American public, including Mrs. Thompson. Furthermore, the Defendant in  
16 *Baymiller*, Glaxo, argued that Plaintiff’s negligence, strict products liability, fraud and negligent  
17 misrepresentation, and elder abuse claims fail because Glaxo did not manufacture or sell the product  
18 to Plaintiff. *Nowhere in Baymiller does the court address any civil conspiracy or deceptive trade*  
19 *practice claim. Id.* at 1306-1307 (“The issue in this case is whether Nevada law recognizes negligent  
20 misrepresentation/fraud claims against brand-name manufacturers who did not manufacture or sell the  
21 generic drug that allegedly caused Plaintiff’s injuries.”). In fact, the words “conspiracy” and  
22 “deceptive trade practice” are nowhere to be found in the entire *Baymiller* opinion. Importantly, Mrs.  
23 Thompson is *only* alleging civil conspiracy and deceptive trade practice against Philip Morris— and  
24 has not pleaded any of the claims *Baymiller* actually addresses! Thus, any reliance on *Baymiller* is  
25 misguided and should not be considered.  
26  
27  
28

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

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

Next, Defendant alleges Plaintiff's NDTPA claim fails because there is no "causation" between Philip Morris' actions and Mrs. Thompson. As discussed above and throughout Plaintiffs' Amended Complaint, Philip Morris acted through concerted actions with R.J. Reynolds, Liggett, and others to deceive the American public, including Mrs. Thompson. But for all of the cigarette manufacturers, acting in unison with one single message, the massive conspiracy and public deception would never have worked. But for the billions of dollars the cigarette industry spent, the mass marketing campaign would never have been as successful as it was. It was the Defendants ***combined actions*** that caused the public, including Mrs. Thompson, to continue to smoke cigarettes which, unbeknownst to her, were specifically manufactured and designed to be highly addictive, dangerous, and deadly, and eventually caused her to develop lung cancer. Thus, it would be contrary to public



1 policy if this Court were to hold that co-conspirator Philip Morris could effectively escape liability for  
2 its role in this massive, nation-wide conspiracy.

3 This is comparable to a drag racing scenario where two cars are involved in a race. Car A  
4 crashes into a pedestrian and kills him. Car B never touches the pedestrian. According to Philip Morris'  
5 logic, Car B can completely escape liability and never be held responsible for causing the pedestrian's  
6 death. This drag racing scenario is a miniscule microcosm of the scenario in Plaintiffs' Complaint – a  
7 two-hundred-and-fifty-billion-dollar conspiracy spanning over half a century involving the most  
8 sophisticated, powerful corporations in our country. Philip Morris' actions and participation in this  
9 conspiracy was directly involved in Mrs. Thompson beginning to smoke cigarettes, continuing to  
10 smoke cigarettes for over 60 years, becoming addicted to cigarettes, and eventually developing lung  
11 cancer. Thus, Defendant's motion should be denied.

12  
13 **D. PLAINTIFFS PROPERLY PLEADED THE UNDERLYING CONSPIRACY CLAIMS**

14 Finally, Defendant argues Plaintiff's civil conspiracy claim fails because she did not plead  
15 underlying fraud claims against Philip Morris. Defendant cites to *Jordan v. State ex rel Dept of Motor*  
16 *Vehicle and Public Safety*, 121 Nev. 44 (2005) to support its proposition, yet it neglects to point out  
17 that *Jordan* only speaks to conspiracy to defraud claims and does not impose any umbrella requirement  
18 for "all civil conspiracy" causes of action. The conspiracy count in this action is supported by the  
19 underlying count of violation of deceptive trade practices which, as explained above, is adequately  
20 and properly plead. Specifically, Plaintiff's Complaint states that Plaintiff is bringing the deceptive  
21 trade practice claim pursuant to NRS 41.600, which is a consumer fraud action. It is well known and  
22 understood that a civil conspiracy can be based on consumer fraud and thus, Defendant's argument  
23 fails.

24 Furthermore, the reason the court in *Jordan* dismissed the cause of action for civil conspiracy  
25 is because there was *no evidence, whatsoever, of any underlying fraud*. Here Plaintiff's Complaint  
26  
27  
28

1 clearly allege multiple instances of Defendants' co-conspirators committing multiple, egregious acts  
2 of fraud. Moreover, as explained above, Plaintiff has plead an underlying fraud count of consumer  
3 fraud against Defendants Philip Morris. Thus, it would be contrary to public policy if this Court were  
4 to hold that co-conspirator Philip Morris could effectively escape liability for its role in this massive,  
5 nation-wide conspiracy.

#### 6 IV. CONCLUSION

7  
8 Thus, based on the foregoing, none of Plaintiff has far exceeded the pleading requirements  
9 under Nevada law and have alleged *prima facie* elements for all of their claims. Therefore, Plaintiff  
10 respectfully request the Court deny Defendant's Motion in its entirety.

11 DATED this 14<sup>th</sup> day of April, 2020.

12 CLAGGETT & SYKES LAW FIRM

13 /s/ Matthew S. Granda

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28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT on the 14<sup>th</sup> day of April, 2020, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT PHILIP MORRIS USA INC.'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPAINT UNDER NRCP 12(B)(5)** on the following person(s) by electronic service pursuant to NRCP 5(b) and NEFCR 9:

**VIA E-SERVICE ONLY:**

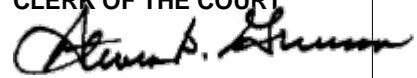
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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 limited liability company; JERRY'S NUGGET, a domestic corporation; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Case No.: A-20-811091-C

Dept. No.: XXXII

**DEFENDANT PHILIP MORRIS USA INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT UNDER NRCP 12(b)(5)**

**Hearing Date: May 14, 2020**

**Hearing Time: 1:30 p.m.**

///





1 Defendant Philip Morris USA Inc., by and through its counsel of record, hereby files this  
2 Reply to Plaintiff's Opposition to Defendant Philip Morris USA Inc.'s Motion to Dismiss  
3 Plaintiff's Complaint Under NRCP 12(b)(5) ("Pl.'s Opp.").<sup>1</sup>

4 This Reply is made and based upon the pleadings and papers on file here, the following  
5 Memorandum of Points and Authorities, and any oral argument allowed at the time of hearing on  
6 this matter.

7 Dated this 7th day of May, 2020.

8  
9 WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

10 /s/ D. Lee Roberts, Jr.

11 D. Lee Roberts, Jr., Esq.

12 Phillip N. Smith, Jr., Esq.

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14 6385 South Rainbow Blvd., Suite 400

15 Las Vegas, Nevada 89118

16 *Attorney for Defendant Philip Morris USA Inc.*

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22  
23  
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25  
26 <sup>1</sup> Philip Morris USA Inc. adopts in full and incorporates by reference Defendant R.J. Reynolds  
27 Tobacco Company's Reply in Support of its Motion to Dismiss Plaintiff's Complaint under NRCP  
28 12(b)(5) (filed contemporaneously herewith). The filing of this Reply should not be construed as a  
waiver of any argument set forth in Defendants' Motions to Dismiss or any deficiency of Plaintiff's  
Complaint described therein.



## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Noreen Thompson does not—and cannot—dispute that Defendant Philip Morris USA Inc. (“PM USA”) did not, and never has, manufactured Pall Mall, Camel, Viceroy, or Pyramid brand cigarettes, which allegedly caused Plaintiff’s lung cancer in April 2019. Under well-settled Nevada law and the laws of most American jurisdictions, recovery predicated on harm caused by a product requires proof of specific product causation. In other words, to recover from a specific defendant, Plaintiff must prove the following elements: (1) the use of that defendant’s product, and (2) causation of injury resulting from the use of the alleged product. *See, e.g., Holcomb v. Ga. Pac., LLC*, 128 Nev. 614, 621–23, 289 P.3d 188, 192–93 (2012) (“Regardless of the cause of action, causation—encompassing both medical causation and sufficient exposure—is a necessary element in proving appellants’ case . . . . [A]ppellants must demonstrate that a **particular defendant** sufficiently exposed [the appellants] to asbestos in order to establish adequate causation to hold that defendant liable.” (emphasis added) (citations omitted)). Plaintiff acknowledged as much: Her Complaint expressly excluded PM USA from her claims for negligence, strict products liability, fraudulent misrepresentation, and fraudulent concealment because she never—in her alleged 65-year smoking history—smoked cigarettes manufactured by PM USA.

However, Plaintiff attempts to avoid the requirement of specific product causation by arguing incorrectly that claims under the Nevada Deceptive Trade Practices Act (“NDTPA”) and for civil conspiracy do not require proof of specific product causation. There is no dispute that Plaintiff’s claim under NDTPA is based on fraud. *See* Pl.’s Opp. at 7 (“[T]he Nevada District Court held that to prevail under a 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.” (emphases added) (citing *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657 (D. Nev. 2009))); *see also* Compl. ¶¶ 181–82. Under Nevada law, a NDTPA fraud claim requires elements identical to those of the common law fraud tort. The sole difference between statutory and common law fraud lies in the burden of proof—NDTPA-based



1 fraud requires proof only by a preponderance of the evidence instead of by clear and convincing  
2 evidence, as common law fraud claims mandate. *See Betsinger v. D.R. Horton, Inc.*, 126 Nev.  
3 162, 164–67, 232 P.3d 433, 435–36 (Nev. 2010) (characterizing NDTPA claims as statutory  
4 fraud claims).

5 Accordingly, to allege statutory fraud under the NDTPA, Plaintiff must allege that,  
6 among other things, she justifiably relied to her detriment on PM USA’s knowing  
7 misrepresentation. *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110–11, 825 P.2d 588, 592 (1992);  
8 *see also, e.g., J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290–91, 89  
9 P.3d 1009, 1018 (2004); *see also Picus*, 256 F.R.D. at 658 (concluding that NDTPA causation  
10 “includes reliance”). Here, nothing in Plaintiff’s Complaint showed that she detrimentally relied  
11 on any misrepresentation made by PM USA to start or to continue smoking Pall Mall, Camel,  
12 Viceroy, and Pyramid brand cigarettes—none of which were or are manufactured by PM USA.  
13 If anything, Plaintiff admits in her Complaint PM USA’s utter lack of inducement—detrimental  
14 or otherwise—because she chose to smoke cigarette brands *not* manufactured, advertised, or  
15 promoted by PM USA. Consequently, Plaintiff’s claims against PM USA under the NDTPA fail  
16 as a matter of law.

17 *Second*, Plaintiff’s civil conspiracy claim also fails. Well-established Nevada law  
18 mandates that a civil conspiracy claim is viable *only* if supported by an actionable underlying tort  
19 or other “unlawful conduct.”<sup>2</sup> In this case, Plaintiff claims that the unlawful conduct is the  
20 underlying violation of the NDTPA, which Plaintiff acknowledges is an action based on  
21 “consumer fraud”. And there should be no dispute that a conspiracy to defraud requires an  
22 underlying overt act of fraud. *See, e.g., Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub.*

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25 <sup>2</sup> An actionable civil conspiracy “consists of a combination of two or more persons who, by  
26 some concerted action, intend to accomplish an unlawful objective for the purpose of harming  
27 another, and damage results from the act or acts.” *Consol. Generator-Nevada, Inc. v. Cummins*  
28 *Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). The Nevada Supreme Court has  
recently clarified that the “unlawful conduct” must give rise to a legal cause of action to support  
a conspiracy claim. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049,  
1053–54 (2015) (“... we agree with other states that such savings clauses do not create entirely  
new causes of action, such as civil conspiracy”).



1 *Safety*, 121 Nev. 44, 73–75, 110 P.3d 30, 51 (2005) (“[A]n underlying cause of action for fraud  
2 is a ***necessary predicate*** to a cause of action for conspiracy to defraud.” (emphasis added)),  
3 *overruled on other grounds*, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d  
4 670 (2008). Plaintiff’s NDTPA claims against PM USA cannot serve as the predicate for her  
5 civil conspiracy claim because she does not have a viable NDTPA claim against PM USA, as  
6 discussed above.

7 Finally, while Plaintiff has claimed that her fraudulent misrepresentation claim against  
8 Defendant R.J. Reynolds Tobacco Company (“Reynolds”) can serve as an alternative predicate  
9 for the civil conspiracy claim, this argument fails as both a matter of law and logic, because  
10 Plaintiff asserted that only Reynolds made fraudulent misrepresentations that she relied upon to  
11 her detriment. Accordingly, Plaintiff’s Complaint on its face has failed to allege an underlying  
12 actionable fraud by PM USA. Absent this necessary predicate, Plaintiff’s civil conspiracy claims  
13 against PM USA also fail as a matter of law.

14 PM USA acknowledges that Judge Crockett denied PM USA and Liggett Group, LLC’s  
15 (“Liggett”) Motion to Dismiss Plaintiffs’ Complaint Under NRCP 12(b)(5) in *Clark v. R.J.*  
16 *Reynolds Tobacco Company*, and, to the extent the motion sought a more definite statement  
17 regarding particular allegations, granted that request with respect to paragraphs 130 through 160  
18 of Plaintiffs’ Complaint. Order at 2, *Clark v. R.J. Reynolds Tobacco Co.*, No. A-19-802987-C  
19 (Nev. Dist. Ct. Feb. 13, 2020). However, PM USA respectfully requests that this Court consider  
20 for itself the arguments asserted in PM USA’s motion to dismiss and in this reply in light of the  
21 unique facts alleged in Plaintiff’s Complaint.<sup>3</sup>

22 For these reasons, articulated more fully below, as well as those appearing in Defendant  
23 Reynolds’ Reply in Support of its Motion to Dismiss Plaintiff’s Complaint under NRCP 12(b)(5)  
24 (filed contemporaneously herewith), PM USA respectfully requests that the Court enter an order  
25 dismissing Plaintiff’s Complaint as to each of the claims asserted against it.

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26  
27 <sup>3</sup> Even to the extent that Judge Crockett’s unpublished, non-precedential rulings are applicable to  
28 this case, PM USA respectfully submits the rulings were in error, especially to the extent that they permit  
a product liability action to proceed against PM USA even though the plaintiff never used a product  
manufactured by PM USA.





## II. ARGUMENT

### A. Plaintiff's Alternative Theories Are Nothing More than an Attempt to Avoid the Requirement to Show Specific Product Use Under Nevada Law.

It is well established that product use is a fundamental requirement in any product liability action. *See Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF), 2009 WL 749532, at \*4 (D. Nev. Mar. 20, 2009). Plaintiff asks this Court to disregard *Moretti* because the court in that case interpreted “Minnesota deceptive trade practice law.” Pl.’s Opp. at 9. This representation is puzzling at best, because the federal court itself framed the issue as “. . . *whether Nevada law recognizes Plaintiff’s misrepresentation/fraud claims* against Wyeth and Scharz, both brand name drug manufacturers who did not manufacture or sell the generic drug that allegedly caused Plaintiff’s injuries.” *Moretti*, 2009 WL 749532, at \*2 (emphasis added). Plaintiff herself recognized this issue in her opposition. *See* Pl.’s Opp. at 9. More importantly, the *Moretti* court relied on Nevada law for the premise that, “[a]mong manufacturers of products, *liability rests only with the manufacturer of the product that actually caused the alleged injury because that manufacturer profited from sales of the product and controlled its safety.*” *Id.* at \*4 (emphasis added) (citing *Allison v. Merck & Co.*, 110 Nev. 762, 766–68, 878 P.2d 948, 952 (1994)).

Plaintiff also asks this Court to ignore *Moretti* and the Nevada authority it relies upon, together with a similar holding in *Baymiller v. Ranbaxy Pharm., Inc.*, 894 F. Supp. 2d 1302, 1309–11 (D. Nev. 2012), because *Moretti* and *Baymiller* did not involve claims of civil conspiracy or deceptive trade practices. But, this argument ignores the fundamental point these cases make that is relevant to the claims at issue here—under Nevada law, *only the manufacturer of the product that actually harmed the plaintiff may be held liable*. *See, e.g., Allison*, 878 P.2d at 952. Further, a plaintiff may not escape the requirement to show specific product causation by pleading creative alternative theories rather than a traditional product liability cause of action, because alternative theories are nothing more than “an effort to recover for injuries caused by a product without meeting the requirements the law imposes in products liability actions.” *Moretti*, 2009 WL 749532, at \*4 (quoting *Foster v. Am. Home Prods. Corp.*,



29 F.3d 165, 168 (4th Cir. 1994)).

While Plaintiff tries to argue that her conspiracy and deceptive trade practice claims are dissimilar from the fraud and misrepresentation allegations in cases cited by PM USA, this simply is not the case under governing authorities. In the absence of underlying fraud, Plaintiff's conspiracy claims against PM USA fail. *See, e.g., Tuttle v. Lorillard Tobacco Co.*, 377 F.3d 917, 926 (8th Cir. 2004) ("Because the common law fraud claim is legally insufficient for want of proof that Tuttle relied on the smokeless tobacco manufacturers' and the STC's representations, we agree with the district court's ruling that the civil conspiracy claim, which depends on a viable underlying tort, must fail as well." (first citing *Harding v. Ohio Cas. Ins. Co.*, 41 N.W.2d 818, 824 (Minn. 1950) (declaring that "[t]he gist of the action is not the conspiracy charged, but the tort working damage to the plaintiff") (citation omitted); and then citing *D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. Ct. App. 1997) (holding "conspiracy count fails because it is not supported by an underlying tort")))). Here, Plaintiff does not even try to plead an underlying fraud claim against PM USA.

In the absence of product use, duty and causation do not exist in the context of conspiracy and deceptive trade practice claims. These fundamental requirements of tort law control Plaintiff's claims under the facts alleged here, where Plaintiff clearly alleges the manufacturer of the products she used—and none of them are manufactured by PM USA.

**B. Plaintiff's Claim for Deceptive Trade Practices (Seventh Claim for Relief Fails Because Plaintiff Never Used a PM USA-Brand Product.)**

Plaintiff alleged that PM USA engaged in various levels of misconduct that constitute "deceptive trade practice" under Nevada law. Section 41.600(1), Nevada Revised Statutes, provides that "[a]n action may be brought by any person who is a victim of consumer fraud." Nev. Rev. Stat. § 41.600(1). While Plaintiff asserted in her opposition that nothing in the NDTPA requires product use, she neglects the plain language of the statute, which requires claimants to fall *victim* to the alleged consumer fraud. In other words, a deceptive trade practices claim requires proof that the defendant committed consumer fraud causing damage to the plaintiff. *See Picus*, 256 F.R.D. at 652 (emphasis added). As Plaintiff acknowledged in her



1 opposition, to succeed on this claim, a plaintiff must show the following elements: “(1) an act of  
2 consumer fraud by the defendant (2) caused (3) damage to the plaintiff.” Pl.’s Opp. at 7 (citing  
3 *Picus*, 256 F.R.D. at 658); *see also Holcomb*, 289 P.3d at 193 (“Regardless of the cause of  
4 action, causation—encompassing both medical causation and sufficient exposure—is a necessary  
5 element in proving appellants’ case . . . . [A]ppellants must demonstrate that a **particular**  
6 **defendant** sufficiently exposed [the appellants] to asbestos in order to establish adequate  
7 causation to hold that defendant liable.” (emphasis added) (citations omitted)); Nev. Rev. Stat. §  
8 41.600(2)(e).

9 In *Betsinger v. D.R. Horton, Inc.*, the Nevada Supreme Court concluded that the  
10 difference between statutory fraud (such as that alleged by Plaintiff under the NDTPA) and  
11 common law fraud lies only in the standard of proof. 232 P.3d at 435–36 (“[T]he purpose of the  
12 consumer protection statute was to provide consumers with a cause of action that was easier to  
13 establish than common law fraud, and therefore, statutory fraud must only be proven by a  
14 preponderance of the evidence.” (emphasis added) (agreeing with the rationale in *Dunlap v.*  
15 *Jimmy GMC of Tucson, Inc.*, 666 P.2d 83, 88–89 (Ariz. Ct. App. 1983))). Thus, *Betsinger*  
16 recognized that statutory fraud has the same elements as common law fraud but carries a lower  
17 burden of proof. *Id.*

18 There is no dispute that under Nevada law, product causation is a necessary prerequisite  
19 to common law fraud and claims under the NDPTA. *Bulbman*, 825 P.2d at 592 (“These  
20 elements are: 1. A false representation made by the defendant; 2. Defendant’s knowledge or  
21 belief that the representation is false (or insufficient basis for making the representation); 3.  
22 Defendant’s intention to induce the plaintiff to act or to refrain from acting in reliance upon the  
23 misrepresentation; 4. Plaintiff’s justifiable reliance upon the misrepresentation; and 5. Damage to  
24 the plaintiff resulting from such reliance.” (quotation omitted)); *see also Picus*, 256 F.R.D. at  
25 658 ([T]he Court concludes **causation includes reliance in this [NDPTA] case.**” (emphasis  
26 added) (citation omitted)); *Chattem v. BAC Home Loan Servicing LP*, No. 2:11-cv-1727-KJD-  
27 RJJ, 2012 WL 2048199, at \*2 (D. Nev. June 5, 2012) (“A claim under the NDTPA sounds in  
28 fraud . . . .” (citations and internal quotation marks omitted)). Consequently, to succeed on her



1 NDTPA claim against PM USA, Plaintiff must allege detrimental justifiable reliance—which  
2 simply cannot be present without an allegation of specific product causation against PM USA.

3 In this case, Plaintiff did not allege that she ever purchased or smoked cigarettes  
4 manufactured by PM USA. *See generally* Compl. Indeed, Plaintiff unambiguously pleaded that  
5 her alleged lung cancer “was caused by smoking Pall Mall brand cigarettes, Camel brand  
6 cigarettes, Viceroy brand cigarettes, and Pyramid brand cigarettes, to which she was addicted  
7 and smoked continuously from approximately 1954 until 2019.” *Id.* at ¶ 20. Plaintiff also  
8 alleged that, “[a]t all times material,” Pall Mall, Viceroy, Camel, and Pyramid brand cigarettes  
9 “were . . . designed, manufactured, and sold” by Reynolds or Liggett. *Id.* at ¶¶ 22–25. Thus,  
10 without Plaintiff ever having purchased or smoked PM USA’s cigarettes, no connection exists  
11 between the alleged deceptive trade practices as they relate to the purported health risk of PM  
12 USA’s particular products and Plaintiff’s alleged lung cancer.

13 Furthermore, Plaintiff’s claim also fails because she did not and cannot allege that PM  
14 USA knowingly made misrepresentations about Pall Mall, Viceroy, Camel, and Pyramid brand  
15 cigarettes, the products that allegedly caused Plaintiff’s injuries. Because Plaintiff did not smoke  
16 any cigarette brand other than the four listed above, she never was a victim—as required by Nev.  
17 Rev. Stat. § 41.600(2)(e)—of any alleged, knowing misrepresentation by PM USA about its own  
18 products. To the extent that Plaintiff alleges misrepresentations about “all cigarettes,” claims  
19 arising out of such alleged misrepresentations would clearly be preempted under federal law.  
20 Consequently, Plaintiff’s claims against PM USA under the NDTPA fail as a matter of law. As  
21 such, the Court should dismiss this claim.

22 **C. Plaintiff’s Claim for Civil Conspiracy to Defraud (Sixth Claim for Relief)**  
23 **Fails Under Nevada Law as to PM USA Because Plaintiff Did Not Plead an**  
**Underlying Tort as to PM USA.**

24 Under Nevada law, an actionable civil conspiracy to defraud claim exists when a plaintiff  
25 properly can demonstrate the following elements: “(1) a conspiracy agreement, *i.e.*, a  
26 combination of two or more persons who, by some concerted action, intend to accomplish an  
27 unlawful objective for the purpose of harming another; (2) an overt act of fraud in furtherance of  
28 the conspiracy; and (3) resulting damages to the plaintiff.” *Jordan*, 110 P.3d at 51 (internal



1 footnotes and quotations omitted). As PM USA asserted in its motion to dismiss Plaintiff's  
2 claims against it, "an underlying cause of action for fraud is a *necessary predicate* to a cause of  
3 action for conspiracy to defraud." *Id.* (emphasis added); *see also Sommers v. Cuddy*, No. 2:08-  
4 cv-78-RCJ-RJJ, 2012 WL 359339, at \*5 (D. Nev. Feb. 2, 2012) (applying Nevada state law and  
5 recognizing that a cause of action for civil conspiracy to defraud requires a viable underlying  
6 cause of action for fraud); *Goodwin v. Exec. Tr. Servs., LLC*, 680 F. Supp. 2d 1244, 1253–54 (D.  
7 Nev. 2010); *Fausto v. Sanchez-Flores*, 2019 Nev. Dist. LEXIS 1046, at \*4 (Nev. Dist. Ct. Oct.  
8 16, 2019) ("Further, a plaintiff must show the commission of an actionable underlying tort to  
9 establish a civil conspiracy claim."); *Klementi v. Spencer*, 2018 Nev. Dist. LEXIS 934, at \*10  
10 (Nev. Dist. Ct. Aug. 28, 2018) (same); *Slaughter v. State*, 2017 Nev. Dist. LEXIS 2118, at \*6  
11 (Nev. Dist. Ct. Oct. 20, 2017) (same).

12 Plaintiff suggests that *Jordan* does not apply because it "only speaks to conspiracy to  
13 defraud claims". Opp. at 10. But Plaintiff then acknowledges that the "conspiracy count in this  
14 action is supported by the underlying violation of deceptive trade practices.... which is a  
15 consumer fraud action." *Id.* Accordingly, contrary to Plaintiff's contention, Plaintiff has  
16 pleaded a conspiracy to defraud claim and *Jordan* is directly on point. If Plaintiff's NDPTA  
17 claim fails to state a cause of action, so does Plaintiff's conspiracy claim.

18 As discussed above, Plaintiff's NDTPA claim fails as a matter of law because of her  
19 irremediable failure to allege product causation. And, Plaintiff's claim of fraud against only  
20 Defendants Reynolds and Liggett likewise cannot serve as the underlying tort for civil  
21 conspiracy, because, among other reasons, PM USA had no duty to Plaintiff in the absence of  
22 product use or other special relationship. Consequently, no actionable tort claim supports  
23 Plaintiff's claim for civil conspiracy. For these reasons, the Court should dismiss Plaintiff's civil  
24 conspiracy cause of action as well.

25 ///

26 ///

27 ///

28 ///



1   **III.   CONCLUSION**

2           For the reasons stated above, as well as for the reasons set forth in Defendant Reynolds’  
3   Reply in Support of its Motion to Dismiss Plaintiff’s Complaint under NRCP 12(b)(5), PM USA  
4   respectfully requests that the Court enter an order dismissing Plaintiff’s Complaint as to each of  
5   the claims against it.

6  
7           Dated this 7th day of May, 2020.

8  
9                           WEINBERG, WHEELER, HUDGINS,  
                                  GUNN & DIAL, LLC

10                           /s/ D. Lee Roberts, Jr.

11                           D. Lee Roberts, Jr., Esq.

12                           Phillip N. Smith, Jr., Esq.

13                           Daniela LaBounty, Esq.

14                           6385 South Rainbow Blvd., Suite 400

15                           Las Vegas, Nevada 89118

16                           Attorney for Defendant Philip Morris USA Inc.



# **CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of May, 2020, a true and correct copy of the foregoing  
**DEFENDANT PHILIP MORRIS USA INC.'S REPLY TO PLAINTIFF'S OPPOSITION  
TO ITS MOTION TO DISMISS PLAINTIFF'S 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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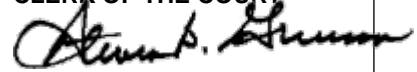
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/s/ Kelly L. Pierce  
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21 *Attorneys for Plaintiff*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 **NOREEN THOMPSON,**

25 **Plaintiff,**

**CASE NO. A-20-811091-C**

26 **v.**

**DEPT. NO. XVI**

27 **PHILIP MORRIS USA, INC., a foreign**  
28 **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**

**PLAINTIFF'S NOTICE OF SERVING**  
**SUPPLEMENTAL AUTHORITY**



1 SILVER NUGGET CASINO, a domestic  
2 limited liability company, JERRY'S NUGGET,  
3 a domestic corporation; and DOES I-X; and  
ROE BUSINESS ENTITIES XI-XX, inclusive

4 Defendants.

---

5  
6 Plaintiff, NOREEN THOMPSON, by and through their counsel of record, enclose the minute  
7 order from Judge Bluth entered on 6/16/2020 attached as **Exhibit 1**.

8  
9 DATED this 16<sup>th</sup> day June, 2020.

10 CLAGGETT & SYKES LAW FIRM

11 */s/ Sean K. Claggett*

---

12 Sean K. Claggett, Esq.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT on the 16<sup>th</sup> day of June 2020, I served a true and correct copy of the foregoing **PLAINTIFF'S NOTICE OF SERVING SUPPLEMENTAL AUTHORITY** is served on the following person(s) by electronic service pursuant to NRCP 5(b) and NEFCR 9:

**VIA E-SERVICE ONLY:**

Dennis L. Kennedy, Esq. Joseph A. Liebman, Esq. BAILEY KENNEDY 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302 Email: DKennedy@BaileyKennedy.com JLiebman@BaileyKennedy.com <i>Attorneys for R.J. Reynolds Tobacco Company, Quick Stop Market, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC D/B/A Silver Nugget Casino, and Jerry's Nugget</i>	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 Email: lroberts@wwhgd.com psmithjr@wwhgd.com dlabounty@wwhgd.com <i>Attorneys for Philip Morris USA, Inc. and ASM Nationwide Corporation</i>
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/s/ Moises Garcia

An Employee of CLAGGETT & SYKES LAW FIRM

# EXHIBIT 1

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Product Liability****COURT MINUTES****June 08, 2020**

A-19-807657-C      Martin Tully, Plaintiff(s)  
                                  vs.  
                                  Philip Morris USA Inc, Defendant(s)

**June 08, 2020      3:00 AM      Minute Order**

**HEARD BY:** Bluth, Jacqueline M.      **COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Keith Reed

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- 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, 181 P.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.

PRINT DATE: 06/16/2020

Page 1 of 3

Minutes Date: June 08, 2020

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 Plaintiff's 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 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 plaintiff is 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.

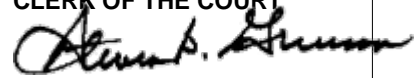
The civil conspiracy claims survive the motion because their underlying fraud claims and conspiracy claims were plead with particularity. NRCP 9 sets out additional requirements for pleading special matters such as fraud. The marketing efforts allegedly used by defendants, combined, with the assertion 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 District Court held that to prevail under a 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.

Counsel for Plaintiff to promptly submit an order.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Sean K. Claggett, D.Lee Roberts Jr. and Dennis L. Kennedy. kar 6/16/20



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17 Attorneys for Defendant Philip Morris USA, Inc.

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 NOREEN THOMPSON,

21 Plaintiff,

22 vs.

23 PHILIP MORRIS USA INC., a foreign  
24 corporation; R.J. REYNOLDS TOBACCO  
25 COMPANY, a foreign corporation,  
26 individually, and as successor-by-merger to  
27 LORILLARD TOBACCO COMPANY and as  
28 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  
limited liability company; JERRY'S NUGGET,  
a domestic corporation; and DOES I-X; and  
ROE BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Case No.: A-20-811091-C

Dept. No.: XXXII

**DEFENDANTS' NOTICE OF SERVING  
SUPPLEMENTAL EXHIBIT IN SUPPORT  
OF DEFENDANTS' MOTION TO  
DISMISS**

///





1 Defendants Philip Morris USA Inc.; R.J. Reynolds Tobacco Company; Liggett Group  
2 LLC; Quick Stop Market, LLC; Joe's Bar, Inc.; The Poker Palace; Silver Nugget Gaming, LLC;  
3 and Jerry's Nugget, by and through their counsel of record, enclose the minute order from Judge  
4 Kerry Earley entered on June 17, 2020, and attached as **Exhibit 1**.

5  
6 Dated this 17th day of June, 2020.

7  
8 WEINBERG, WHEELER, HUDGINS,  
9 GUNN & DIAL, LLC

10 /s/ D. Lee Roberts, Jr.

11 D. Lee Roberts, Jr., Esq.

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16 *Attorney for Defendant Philip Morris USA, Inc.*  
17 *(and filing on behalf of all other Defendants for this*  
18 *filing only)*





## CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 2020, a true and correct copy of the foregoing **DEFENDANTS' NOTICE OF SERVING SUPPLEMENTAL EXHIBIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** 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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/s/ Kelly L. Pierce

An employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

# **EXHIBIT 1**

# **EXHIBIT 1**

A-19-807650-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Product Liability**

**COURT MINUTES**

**June 17, 2020**

---

A-19-807650-C      Sandra Camacho, Plaintiff(s)  
vs.  
Philip Morris USA Inc, Defendant(s)

---

**June 17, 2020      3:00 AM      Minute Order**

**HEARD BY:** Earley, Kerry      **COURTROOM:** Chambers

**COURT CLERK:** Louisa Garcia

**JOURNAL ENTRIES**

- THIS MATTER came before the court for hearing on June 11, 2020 at 9:00 a.m. with D. Lee Roberts, Jr., Esq. of the law firm Weinberg Wheeler Hutchins Gunn & Dial and Kelly Anne Luther, Esq. of the law firm Kasowitz Benson Torres appearing on behalf of Defendant s Philip Morris USA Inc., Liggett Group LLC, and ASM Nationwide, Dennis Kennedy, Esq. of the law firm Bailey Kennedy appearing on behalf of Defendant R.J. Reynolds Tobacco Company, and Micah Echols, Esq. and Sean Claggett, Esq. of the law firm Claggett & Sykes appearing on behalf of Plaintiffs.

THIS MATTER was heard on Defendant Phillip Morris USA Inc. et al. s Motion to Dismiss Plaintiff s Amended Complaint filed on March 23, 2020; Defendant R.J. Reynolds Tobacco Company s Motion to Dismiss Plaintiff s Amended Complaint filed on March 23, 2020; Plaintiff s Opposition to Defendants Motions to Dismiss filed on April 6, 2020; and Defendants Replies in Support of Motions to Dismiss filed on April 23, 2020.

THE COURT having reviewed the matter including all points and authorities, and exhibits, having heard argument of counsel, and for good cause appearing, the Court hereby GRANTS Defendant Philip Morris USA Inc. s Motion to Dismiss IN PART, DENIES Defendant Philip Morris USA Inc. s Motion to Dismiss IN PART, and GRANTS Defendant R.J. Reynolds Tobacco Company s Motion to Dismiss, based on the following:

I. Defendant Philip Morris USA Inc., et al. s Motion to Dismiss

When deciding a Motion to Dismiss, the Court will recognize all factual allegations in the complaint as true and draw all inference in favor of the non-moving party. Buzz Stew, LLC v. City of N. Las

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Minutes Date: June 17, 2020

PA118

Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). A complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief. Id.

The court must accept a plaintiff's factual allegations as true, however, these allegations must be legally sufficient to constitute the elements of the claim asserted. Garcia v. Prudential Ins. Co. of Am., 129 Nev. 15, 19, 293 P.3d 869, 872 (2013) (internal quotations omitted).

THE COURT NOTES that Plaintiff s amended complaint alleges causes of action against Philip Morris USA Inc., et al for 1) Negligence; 2) Gross Negligence; 3) Strict Products Liability; 4) Fraudulent Misrepresentation; 5) Fraudulent Concealment; 6) Civil Conspiracy; 7) Violation of Deceptive Trade Practices Act-NRS 598.0903; and 8) Strict Products Liability Against Defendant ASM Nationwide Corporation.

#### Plaintiffs First Claim for Relief for Negligence

A claim for negligence in Nevada requires that the plaintiff satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages. Turner v. Mandalay Sports Entertainment, LLC, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008).

THE COURT FINDS that Plaintiffs sufficiently alleged all four elements of a cognizable claim of negligence against the Defendants. (Amend. Compl. 89-102).

THEREFORE, THE COURT hereby DENIES Defendants Motion to Dismiss with respect to Plaintiffs First Claim for Relief.

#### Plaintiffs Second Claim for Relief for Gross Negligence

Gross negligence is substantially and appreciably higher in magnitude and more culpable than ordinary negligence...Ordinary and gross negligence differ in degree of inattention. Bearden v. City of Boulder City, 89 Nev. 106, 109, 507 P.2d 1034, 1035 (1973). Ordinary negligence and gross negligence are degrees of the same conduct. Cornella v. Justice Court, 132 Nev. 587, 593, 377 P.3d 97, 102 (2016).

THE COURT FINDS that Gross Negligence is not a separate and distinct claim from ordinary negligence but is a greater standard of proving negligence.

THEREFORE, THE COURT hereby GRANTS Defendants Motion to Dismiss with respect to Plaintiffs Second Claim for Relief and Plaintiffs Second Claim for Relief is hereby DISMISSED WITH PREJUDICE As it is presently plead pursuant to plaintiffs first claim of relief.

#### Plaintiffs Third Claim for Relief Strict Products Liability AND Plaintiffs Eighth Claim for Relief for

## Strict Products Liability

To successfully plead a strict products liability claim, a plaintiff must show that: 1) the product had a defect which rendered it unreasonably dangerous, 2) the defect existed at the time the product left the manufacturer, and 3) the defect caused the plaintiff's injury. *Fyssakis v. Knight Equip. Corp.*, 108 Nev. 212, 214, 826 P.2d 570, 571 (1992).

THE COURT FINDS that Plaintiffs sufficiently alleged a cognizable claim for Strict Products Liability in their Amended Complaint. (Amend. Compl. 132-142).

THEREFORE, THE COURT hereby DENIES Defendants Motion to Dismiss with respect to Plaintiffs Third and Eighth Claims for Relief.

Plaintiffs Fourth Claim for Relief for Fraudulent Misrepresentation and Plaintiffs Fifth Claim for Relief for Fraudulent Concealment

When a complaint includes a claim of fraud, NRCP 9(b) requires a plaintiff to plead with particularity the fraudulent activity's time and place, the parties' identities, and the nature of the fraud. *Rocker v. KPMG LLP*, 122 Nev. 1185, 1187, 148 P.3d 703, 704 (2006). However, the Nevada Supreme Court has adopted the, relaxed pleading requirements that the federal courts utilize under Federal Rule of Civil Procedure 9(b) for cases when facts necessary for the plaintiff to plead a cause of action for fraud with particularity under NRCP 9(b) are peculiarly within the defendant's knowledge or possession. *Id.* Additionally, plaintiffs must allege facts in their complaint to support a strong inference of fraud for the relaxed pleading requirements to apply. *Id.* at 1195, 710.

THIS COURT FINDS that Plaintiffs alleged facts in their amended complaint are sufficient to meet the standard of particularity under NRCP 9(b). (Amend. Compl. 151, 179-182).

THIS COURT FURTHER FINDS that some of the facts that may be necessary for Plaintiffs to plead a claim for fraud with particularity could be peculiarly within the defendant's knowledge or possession.

THEREFORE, THE COURT hereby DENIES Defendants Motion to Dismiss with respect to Plaintiffs Fourth and Fifth Claims for Relief.

Plaintiffs Sixth Claim for Relief for Civil Conspiracy and Plaintiffs Seventh Claim for Relief for Violation of Deceptive Trade Practices Act-NRS 598.0903

An actionable civil conspiracy consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts. *Dow Chemical Co. v. Malhum*, 114 Nev. 1468, 1488, 970 P.2d 98,

112 (1998).

The Court notes that Civil Conspiracy is a derivative claim in Nevada with the Plaintiffs alleging the Violation of Deceptive Trade Practices Act as the underlying unlawful objective.

THE COURT FINDS that Plaintiffs sufficiently alleged a cognizable claim for Violation of NRS 598.0903 in their Amended Complaint. (Amend. Compl. 212 a-p).

THE COURT FURTHER FINDS that Plaintiffs sufficiently alleged a cognizable claim for Civil Conspiracy in their Amended Complaint. (Amend. Compl. 193, 194).

THEREFORE, THE COURT hereby DENIES Defendant Philip Morris USA Inc., et al s Motion to Dismiss with respect to Plaintiffs Sixth and Seventh Claims for Relief.

II. Defendant R.J. Reynolds Tobacco Company s Motion to Dismiss Plaintiffs Seventh Claim for Relief for Violation of Deceptive Trade Practices Act-NRS 598.0903

To successfully bring a claim under NRS 41.600(1) for violation of the Deceptive Trade Practices Act a plaintiff must show that they were a victim of consumer fraud . To be a victim under NRS 41.600(1) a plaintiff must show that the consumer fraud caused damages to the plaintiff. Picus v. Wal-Mart Stores, 256 F.R.D. 651, 658 (D. Nev. 2009).

It is undisputed that Plaintiff Sandra Camacho did not purchase or use any R.J. Reynolds product. Therefore, THE COURT FINDS that Plaintiffs could not plead facts sufficient to show that Defendant R.J. Reynolds caused damages to the Plaintiffs. Further, Plaintiff Sandra Camacho did not plead sufficient facts alleging she had any legal relationship with Defendant R.J. Reynolds to support a claim for Violation of Deceptive Trade Practices Act.

THEREFORE, THE COURT hereby GRANTS Defendant R.J. Reynolds Tobacco Company s Motion to Dismiss Plaintiff s Seventh Claim for Relief for Violation of Deceptive Trade Practices and IT IS HEREBY ORDERED Plaintiffs Seventh Claim for Relief for Violation of Deceptive Trade Practices Act-NRS 598.0903 are DISMISSED WITH PREJUDICE as to Defendant R.J. Reynolds Tobacco Company.

Plaintiffs Sixth Claim for Relief for Civil Conspiracy

An actionable civil conspiracy consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts. Dow Chemical Co. v. Malhum, 114 Nev. 1468, 1488, 970 P.2d 98, 112 (1998).

The Court notes that Civil Conspiracy is a derivative claim in Nevada with the Plaintiffs alleging the Violation of Deceptive Trade Practices Act as the underlying unlawful objective.

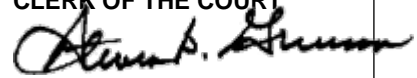
THE COURT FINDS that Plaintiff s did not plead a claim for Civil Conspiracy pursuant to the Court s ruling that dismissed Plaintiffs Seventh Claim for Relief for Violation of Deceptive Trade Practices.

THEREFORE, THE COURT hereby GRANTS Defendant R.J. Reynolds Tobacco Company s Motion to Dismiss Plaintiff s Sixth Claim for Relief for Civil Conspiracy and IT IS HEREBY ORDERED Plaintiffs Sixth Claim for Relief for Civil Conspiracy is DIMISSED WITH PREJUDICE as to Defendant R.J. Reynolds Tobacco Company.

Counsel for Defendants shall prepare the appropriate orders in accordance with this Minute Order pursuant to EDCR 7.21, and in compliance with Administrative Order 20-17.

CLERK'S NOTE: A copy of this minute order was distributed via electronic mail.





1 **ORD**

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4 Matthew S. Granda, Esq.

5 Nevada Bar No. 012753

6 Micah S. Echols, Esq.

7 Nevada Bar No. 008437

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16 Kimberly L. Wald, Esq. (admitted pro hac vice)

17 Florida Bar. No. 112263

18 **KELLEY | UUSTAL**

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20 Fort Lauderdale, FL 33301

21 *Attorneys for Plaintiff*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 **NOREEN THOMPSON,**

25 Plaintiff,

CASE NO. A-20-811091-C

26 v.

DEPT. NO. XXXII

27 **PHILIP MORRIS USA, INC.,** a foreign  
28 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

**ORDER DENYING DEFENDANTS**  
**PHILIP MORRIS USA INC.'S MOTION**  
**TO DISMISS PLAINTIFFS'**  
**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.

Defendant's Motion to Dismiss came before the Court on May 14, 2020.

### **APPEARANCES**

The Parties appeared as follows:

- For Plaintiff Noreen Thompson – Sean Claggett, Esq., Matthew Granda, Esq., Micah Echols, Esq., and Kimberly Wald, Esq.
- For R.J. 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 – Valentin Leppert, Esq., Ursula Henninger, Esq., Dennis Kennedy, Esq., and Joseph Liebman, Esq.
- For Philip Morris USA, Inc. – D. Lee Roberts Esq.
- For Liggett Group LLC – Christopher Jorgensen, Esq. and Kelly Luther, Esq.

### **ORDER**

THE COURT HEREBY FINDS that Defendants' Motion is **Denied in Part and Granted in Part.**

This matter came before the Court for a hearing on the following matters: (1) Defendant Phillip Morris USA Inc.'s Motion to Dismiss Plaintiff's Complaint under NRCP 12(b)(5); (2) Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiff's Complaint: NRCP 12(b)(5); (3) Defendant Liggett Group, LLC's Notice of Adoption and Joinder in R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiff's Complaint: NRCP 12(b)(5); (4) Defendants Quick Stop Market, LLC, Joe's Bar, Inc., the Poker Palace, Silver Nugget Gaming LLC dba Silver Nugget Casino and Jerry's Nugget's Joinder to Defendant R.J. Reynolds Tobacco Company's

1 Motion to Dismiss Plaintiff's Complaint: NRCP 12(b)(5). After hearing the oral arguments, the  
2 Court took the matter UNDER ADVISEMENT. After a review of the pleadings, oral arguments at  
3 the hearing, and good cause shown, the court FINDS and ORDERS as follows.

4 NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief  
5 can be granted. The court must accept all factual allegations in the complaint as true, and draw all  
6 inferences in the plaintiff's favor. Buzz Stew, LLC v. City of Las Vegas, 124 Nev. 224, 227-28  
7 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a  
8 claim for relief is whether the allegations give fair notice of the nature and basis of the legally  
9 sufficient claim and relief requested. Breliant v. Preferred Equities Corp., 109 Nev. 842 (1993).  
10 Dismissal is proper if the allegations in the complaint alone are insufficient to establish the  
11 elements of the claims for relief. Buzz Stew, 124 Nev. at 227. Additionally, NRCP 8(a) allows  
12 notice pleading, where all that is required in a complaint is a "short and plain statement of the claim  
13 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the  
14 pleader seeks." Material which is properly submitted as part of the complaint may be considered  
15 on a motion to dismiss. Hal Roach Studios Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19  
16 (9th Cir. 1990). The document is not "outside" the complaint if the complaint specifically refers to  
17 the document and if its authenticity is not questioned. Branch v. Tunnell, 14 F. 3d 449, 453 (9th  
18 Cir. 1994). To the extent that matters outside the complaint are presented to the court, "the motion  
19 shall be treated as one for summary judgment and disposed of as provided in Rule 56." NRCP  
20 12(b). A party may move for summary judgment at any time and must be granted if the pleadings  
21 and affidavits show that there is no genuine issue as to any material fact and that the moving party  
22 is entitled to a judgment as a matter of law. Villescascas v. CAN, Insurance Co., 109 Nev. 1075  
23 (1993). "As a general rule, the court may not consider matters outside the pleading being attacked."  
24 Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However,  
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1 the court may take into account matters of public record, orders, items present in the record of the  
2 case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to  
3 state a claim upon which relief can be granted." Id. Additionally, "a document is not outside the  
4 complaint if the complaint specifically refers to the document and if its authenticity is not  
5 questioned." Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir.1994) overruled on other grounds by  
6 Galbraith v. Cnty. of Santa Clara, 307 F.3d 1119, 1125 26 (9th Cir.2002). Material which is  
7 properly submitted as part of the complaint may be considered on a motion to dismiss. Hal Roach  
8 Studios Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is  
9 not "outside" the complaint if the complaint specifically refers to the document and if its  
10 authenticity is not questioned. Branch v. Tunnell, 14 F. 3d 449, 453 (9th Cir. 1994). To the extent  
11 that matters outside the complaint are presented to the court, "the motion shall be treated as one  
12 for summary judgment and disposed of as provided in Rule 56." NRCP 12(b). A party may move  
13 for summary judgment at any time and must be granted if the pleadings and affidavits show that  
14 there is no genuine issue as to any material fact and that the moving party is entitled to a judgment  
15 as a matter of law. Villescas v. CAN, Insurance Co., 109 Nev. 1075 (1993)

16  
17  
18 The Court finds that motion to dismiss cannot be granted at this time. Plaintiffs have made  
19 sufficient allegations as to claims that arose prior to July 1, 1969, and made sufficient allegations of  
20 false advertising and misleading Plaintiff Noreen Thompson to use their product. However,  
21 Defendants arguments that fraudulent misrepresentation and fraudulent concealment causes of  
22 action do not contain sufficient specific factual allegations is valid and treating their motions as a  
23 NRCP 12(e) motion for a more definite statement, the motion should be granted as to that basis on  
24 claims for fraudulent misrepresentation and fraudulent concealment.

25  
26 The Court finds that specifically as to Defendant Philip Morris USA Inc.'s ("Philip Morris")  
27 Motion, the only causes of action alleged against Philip Morris are civil conspiracy and violation of  
28

the Nevada Deceptive Trade Practices Act. However, Plaintiff Thompson acknowledges that she did not use the cigarettes manufactured, distributed or sold by Philip Morris. Thus, the factual basis of Philip Morris' alleged liability is unclear. Thus, treating Philip Morris' motion as a NRCP 12(e) motion for a more definite statement, the motion should be granted as to that basis on claims for civil conspiracy and violation of the Nevada Deceptive Trade Practices Act.

The Court ORDERS Defendants' motions shall be DENIED in part, GRANTED in part. Under NRCP 12(e), Plaintiffs shall amend their Complaint within 14 days after notice of this order.

DATED this 25th day of August 2020.



DISTRICT COURT JUDGE ROB BARE

7/61

Respectfully Submitted By: Dated this 21 <sup>st</sup> August 2020  <b>CLAGGETT &amp; SYKES LAW FIRM</b>  <i>/s/ Sean K. Claggett</i>  <hr/> Sean K. Claggett, Esq. Nevada Bar No. 008407 4101 Meadows Lane, Suite 100 Las Vegas, Nevada 89107 <i>Attorneys for Plaintiff</i>	Reviewed as to Form and Content: Dated this 21 <sup>st</sup> day of August 2020 <b>WEINBERG WHEELER HUDGINS GUN &amp; DIAL</b>  <i>/s/ D. Lee Roberts, Jr.</i>  <hr/> D. Lee Roberts, Jr. Nevada Bar No. 8877 6385 South Rainbow Boulevard, Suite 400 Las Vegas, Nevada 89118 <i>Attorneys for Defendant, Philip Morris USA, Inc..</i>
Reviewed as to Form and Content: Dated this 21 <sup>st</sup> August 2020 <b>BAILEY KENNEDY</b>  <i>/s/ Joseph A. Liebman</i>  <hr/> Dennis L. Kennedy Joseph A. Liebman, Esq. 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148 <i>Attorneys for Defendant, R.J. Reynolds Tobacco Company and 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</i>	Reviewed as to Form and Content: Dated this 21 <sup>st</sup> day of August 2020 <b>LEWIS ROCA ROTHGERBER CHRISTIE</b>  <i>/s/ J. Christopher Jorgensen</i>  <hr/> J. Christopher Jorgensen, Esq. Nevada Bar No. 5382 3993 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169 <i>Attorneys for Defendant, Liggett Group LLC</i>

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Joseph, I apologize about that. Corrected stipulation attached.

PM and Liggett please let me know if you approve of the stipulation and orders so I may submit to the Court.

# Kelley | Uustal

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---

**From:** Joseph Liebman [<mailto:JLiebman@baileykennedy.com>]  
**Sent:** Wednesday, August 19, 2020 1:47 PM  
**To:** Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)>; Henninger, Ursula <[uhenninger@KSLAW.com](mailto:uhenninger@KSLAW.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>; Kelly Anne Luther <[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)>  
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**Subject:** RE: Thompson, Noreen v. TOB Mfr

Kim:

My e-signature is spelled incorrectly on the stipulation. Other than that, approved.

---

**From:** Kimberly L. Wald [<mailto:klw@kulaw.com>]  
**Sent:** Wednesday, August 19, 2020 7:18 AM  
**To:** Henninger, Ursula <[uhenninger@KSLAW.com](mailto:uhenninger@KSLAW.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Joseph Liebman <[JLiebman@baileykennedy.com](mailto:JLiebman@baileykennedy.com)>; Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>; Kelly Anne Luther <[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)>  
**Cc:** Michael Hersh <[mah@kulaw.com](mailto:mah@kulaw.com)>; Deana Foster <[deana@kulaw.com](mailto:deana@kulaw.com)>; 'mgranda@claggettlaw.com' <[mgranda@claggettlaw.com](mailto:mgranda@claggettlaw.com)>; 'Moises Garcia' <[MGarcia@claggettlaw.com](mailto:MGarcia@claggettlaw.com)>; Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)>  
**Subject:** RE: Thompson, Noreen v. TOB Mfr

Please see attached revised orders, Ms. Luther noticed the dates were incorrect.

# Kelley | Uustal

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---

**From:** Kimberly L. Wald  
**Sent:** Wednesday, August 19, 2020 8:17 AM  
**To:** Henninger, Ursula <[uhenninger@KSLAW.com](mailto:uhenninger@KSLAW.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Joseph Liebman <[JLiebman@baileykennedy.com](mailto:JLiebman@baileykennedy.com)>; Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>; Kelly Anne Luther <[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)>  
**Cc:** Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)>; Michael Hersh <[mah@kulaw.com](mailto:mah@kulaw.com)>; Deana Foster <[deana@kulaw.com](mailto:deana@kulaw.com)>; 'mgrand@claggettlaw.com' <[mgrand@claggettlaw.com](mailto:mgrand@claggettlaw.com)>; 'Moises Garcia' <[MGarcia@claggettlaw.com](mailto:MGarcia@claggettlaw.com)>  
**Subject:** Re: Thompson, Noreen v. TOB Mfr

Counsel,

Please see attached Orders on Defendants' Motions to Dismiss along with the Stipulation we discussed. Please let me know if you approve.

Thank you,  
Kim Wald

**Kelley | Uustal**

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## Moises Garcia

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**From:** Roberts, Lee <LRoberts@wwhgd.com>  
**Sent:** Friday, August 21, 2020 6:24 AM  
**To:** Kimberly Wald  
**Cc:** Joseph Liebman; Henninger, Ursula; Jorgensen, J. Christopher; Kelly Anne Luther (KLuther@kasowitz.com); Michael Hersh; Deana Foster; Matt Granda; Moises Garcia; Sharon Murnane; Susan Russo  
**Subject:** Re: Thompson, Noreen v. TOB Mftr

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

We approve.

Sent from my iPhone

[cid:REVISEE-sig2020\_5801a862-4942-4e3a-94ab-425c0ea8e329.png]

D. Lee Roberts, Attorney

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On Aug 21, 2020, at 5:28 AM, Kimberly L. Wald <klw@kulaw.com> wrote:

This Message originated outside your organization.

---

Good morning Lee, following up on the below.

<<http://www.kelleyuustal.com/>>  
<image213155.png>

Kimberly L. Wald , Esq.

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From: Roberts, Lee [<mailto:LRoberts@wwhgd.com>]  
Sent: Thursday, August 20, 2020 2:09 PM  
To: Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)>; Joseph Liebman <[JLiebman@baileykennedy.com](mailto:JLiebman@baileykennedy.com)>; Henninger, Ursula <[uhenninger@KSLAW.com](mailto:uhenninger@KSLAW.com)>; Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>; Kelly Anne Luther (KLuther@kasowitz.com) <[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)>  
Cc: Michael Hersh <[mah@kulaw.com](mailto:mah@kulaw.com)>; Deana Foster <[deana@kulaw.com](mailto:deana@kulaw.com)>; 'mgranda@claggettlaw.com' <[mgranda@claggettlaw.com](mailto:mgranda@claggettlaw.com)>; 'Moises Garcia' <[MGarcia@claggettlaw.com](mailto:MGarcia@claggettlaw.com)>; Sharon Murnane <[SMurnane@baileykennedy.com](mailto:SMurnane@baileykennedy.com)>; Susan Russo <[SRusso@baileykennedy.com](mailto:SRusso@baileykennedy.com)>  
Subject: Re: Thompson, Noreen v. TOB Mfr

Let me confirm with Shook and I will get back shortly

[cid:REVISEE-sig2020\_5801a862-4942-4e3a-94ab-425c0ea8e329.png]

D. Lee Roberts, Attorney

Weinberg Wheeler Hudgins Gunn & Dial

6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118

D: 702.938.3809 | F: 702.938.3864

[www.wwhgd.com](http://www.wwhgd.com)<<http://www.wwhgd.com>>><<http://www.wwhgd.com><<http://www.wwhgd.com>>> |  
vCard<<http://www.wwhgd.com/vcard-53.vcf><<http://www.wwhgd.com/vcard-53.vcf>>>

---

From: Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)<<mailto:klw@kulaw.com>>>

Sent: Thursday, August 20, 2020 8:02:03 AM

To: Joseph Liebman; Henninger, Ursula; Roberts, Lee; Jorgensen, J. Christopher; Kelly Anne Luther  
([KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)<<mailto:KLuther@kasowitz.com>>)

Cc: Michael Hersh; Deana Foster; 'mgranda@claggettlaw.com'; 'Moises Garcia'; Sharon Murnane; Susan Russo; Kimberly L. Wald

Subject: RE: Thompson, Noreen v. TOB Mfr

This Message originated outside your organization.

---

Joseph, I apologize about that. Corrected stipulation attached.

PM and Liggett please let me know if you approve of the stipulation and orders so I may submit to the Court.

[cid:image624209.png@81C4C031.C99B73A1]<<http://www.kelleyuustal.com/><<http://www.kelleyuustal.com/>>>

Kimberly L. Wald , Esq.

500 N. Federal Highway, Suite 200

Fort Lauderdale, FL 33301

[www.kulaw.com](http://www.kulaw.com)<<http://www.kulaw.com>>><<http://www.kulaw.com><<http://www.kulaw.com>>>

[Facebook]<<https://www.facebook.com/KelleyUustal/><<https://www.facebook.com/KelleyUustal/>>>

[LinkedIn]<<https://twitter.com/KelleyUustal><<https://twitter.com/KelleyUustal>>>

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fax: 954.522.6608

email: [klw@kulaw.com](mailto:klw@kulaw.com)<<mailto:klw@kulaw.com><<mailto:klw@kulaw.com>%3c<mailto:klw@kulaw.com>>>

**From:** Jorgensen, J. Christopher [mailto:CJorgensen@lrrc.com]  
**Sent:** Wednesday, August 19, 2020 11:25 AM  
**To:** Kelly Anne Luther <KLuther@kasowitz.com>; Kimberly L. Wald <klw@kulaw.com>  
**Cc:** 'Moises Garcia' <MGarcia@claggettlaw.com>; Deana Foster <deana@kulaw.com>; Jaramillo, Annette <AJaramillo@lrrc.com>; Helm, Jessica <JHelm@lrrc.com>  
**Subject:** RE: Thompson, Noreen v. TOB Mfr

Thompson

Kim,  
Once the changes Kelly requested are made, you have my permission to affix my signature to the documents and file.  
Thank you  
Chris Jorgensen

**Christopher Jorgensen**

Partner  
702.474.2642 office  
702.949.8398 fax  
[cjorgensen@lrrc.com](mailto:cjorgensen@lrrc.com)

---

**Lewis Roca** Rothgerber Christie LLP

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
[lrrc.com](http://lrrc.com)

---

**From:** Kelly Anne Luther <[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)>

**Sent:** Wednesday, August 19, 2020 7:02 AM

**To:** Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)>

**Cc:** Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>; 'Moises Garcia' <[MGarcia@claggettlaw.com](mailto:MGarcia@claggettlaw.com)>; Deana Foster <[deana@kulaw.com](mailto:deana@kulaw.com)>

**Subject:** RE: Thompson, Noreen v. TOB Mftr

[EXTERNAL]

---

Just noticed the dates on the orders are June. . .

---

**From:** Kimberly L. Wald [<mailto:klw@kulaw.com>]

**Sent:** Wednesday, August 19, 2020 9:59 AM

**To:** Kelly Anne Luther <[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)>

**Cc:** Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>; 'Moises Garcia' <[MGarcia@claggettlaw.com](mailto:MGarcia@claggettlaw.com)>; Deana Foster <[deana@kulaw.com](mailto:deana@kulaw.com)>

**Subject:** RE: Thompson, Noreen v. TOB Mftr

Thanks Kelly. Please see revised attached.

**Kelley | Uustal**

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tel: 954.522.6601  
fax: 954.522.6608  
email: [klw@kulaw.com](mailto:klw@kulaw.com)

---

**From:** Kelly Anne Luther [<mailto:KLuther@kasowitz.com>]

**Sent:** Wednesday, August 19, 2020 9:57 AM

**To:** Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)>

**Cc:** Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>

**Subject:** RE: Thompson, Noreen v. TOB Mftr

Kim, these look fine to me. On the Liggett line, can you add a "J." Before Chris's name on the orders? It is correct on the stipulation. Thanks.

Kelly Anne Luther  
Kasowitz Benson Torres LLP  
1441 Brickell Avenue  
Suite 1420  
Miami, Florida 33131  
Tel. (786) 587-1045  
Fax. (305) 675-2218  
[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)

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---

**From:** Kimberly L. Wald [<mailto:klw@kulaw.com>]

**Sent:** Wednesday, August 19, 2020 8:17 AM

**To:** Henninger, Ursula <[uhenninger@KSLAW.com](mailto:uhenninger@KSLAW.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Joseph Liebman <[JLiebman@baileykennedy.com](mailto:JLiebman@baileykennedy.com)>; Jorgensen, J. Christopher <[CJorgensen@lrrc.com](mailto:CJorgensen@lrrc.com)>; Kelly Anne Luther <[KLuther@kasowitz.com](mailto:KLuther@kasowitz.com)>

**Cc:** Kimberly L. Wald <[klw@kulaw.com](mailto:klw@kulaw.com)>; Michael Hersh <[mah@kulaw.com](mailto:mah@kulaw.com)>; Deana Foster <[deana@kulaw.com](mailto:deana@kulaw.com)>; 'mgranda@claggettlaw.com' <[mgranda@claggettlaw.com](mailto:mgranda@claggettlaw.com)>; 'Moises Garcia' <[MGarcia@claggettlaw.com](mailto:MGarcia@claggettlaw.com)>

**Subject:** Re: Thompson, Noreen v. TOB Mftr

**\*\*EXTERNAL EMAIL\*\***

Counsel,

Please see attached Orders on Defendants' Motions to Dismiss along with the Stipulation we discussed. Please let me know if you approve.

Thank you,  
Kim Wald

**Kelley | Uustal**

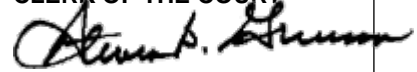
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fax: 954.522.6608  
email: [klw@kulaw.com](mailto:klw@kulaw.com)

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**SAO**

Sean K. Claggett, Esq.

Nevada Bar No. 008407

Matthew S. Granda, Esq.

Nevada Bar No. 012753

Micah S. Echols, Esq.

Nevada Bar No. 008437

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[mgranda@claggettlaw.com](mailto:mgranda@claggettlaw.com)

[micah@claggettlaw.com](mailto:micah@claggettlaw.com)

Kimberly L. Wald, Esq. (admitted pro hac vice)

Florida Bar. No. 112263

KELLEY | UUSTAL

500 North Federal Highway, Suite 200

Fort Lauderdale, FL 33301

*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

NOREEN THOMPSON,

Plaintiff,

v.

CASE NO. A-20-811091-C

DEPT. NO. XXXII

**STIPULATION REGARDING  
PLAINTIFF'S AMENDED COMPLAINT**

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  
limited liability company, JERRY'S NUGGET,  
a domestic corporation; and DOES I-X; and  
ROE BUSINESS ENTITIES XI-XX, inclusive

Defendants.

**STIPULATION REGARDING PLAINTIFF'S AMENDED COMPLAINT**

Plaintiff, NOREEN THOMPSON, by and through their counsel of record, Claggett & Sykes  
Law Firm and Defendants, 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 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 limited liability company, JERRY'S  
NUGGET, a domestic corporation hereby stipulate as follows:

Mrs. Thompson passed away on June 19, 2020, after the Court heard argument on Defendants'  
Motions to Dismiss. Dolly Rowan, Noreen's daughter, is currently in the process of being appointed  
the Special Administrator of Mrs. Thompson's estate. Therefore, the parties have stipulated and  
agreed that Plaintiff shall file one Amended Complaint after the Special Administration is opened  
reflecting both the Court's ruling regarding Defendants' Motions for More Definite Statement and  
also Mrs. Rowan's amended counts as Special Administrator of Noreen Thompson's estate.

IT IS HEREBY STIPULATED AND AGREED that once the Special Administration is  
opened, Plaintiff shall file one Amended Complaint pursuant to the Court's order denying in part and  
granting in part Defendants' Motions to Dismiss Plaintiff's Complaint and granting in part



Defendants' Motion for More Definite Statement. Defendants shall have twenty (20) days to respond to the Amended Complaint.

**IT IS SO STIPULATED.**

Respectfully Submitted By:  
Dated this 21<sup>st</sup> August 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:  
Dated this 21<sup>st</sup> day of August 2020  
WEINBERG WHEELER HUDGINS GUN &  
DIAL

/s/ D. Lee Roberts, Jr.

D. Lee Roberts, Jr.  
Nevada Bar No. 8877  
6385 South Rainbow Boulevard, Suite 400  
Las Vegas, Nevada 89118  
*Attorneys for Defendant, Philip Morris USA.  
Inc.*

Reviewed as to Form and Content:  
Dated this 21<sup>st</sup> August 2020  
BAILEY KENNEDY

/s/ Joseph A. Liebman

Dennis L. Kennedy  
Joseph A. Liebman, Esq.  
Nevada Bar No. 1462  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Defendant, R.J. Reynolds Tobacco  
Company and 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*

Reviewed as to Form and Content:  
Dated this 21<sup>st</sup> day of August 2020  
LEWIS ROCA ROTHGERBER CHRISTIE

/s/ J. Christopher Jorgensen


J. Christopher Jorgensen, Esq.  
Nevada Bar No. 5382  
3993 Howard Hughes Parkway, #600  
Las Vegas, Nevada 89169  
*Attorneys for Defendant, Liggett Group LLC*

**ORDER**

Based on the foregoing stipulation, and good cause appearing:

IT IS HEREBY ORDERED that once the Special Administration is opened, Plaintiff is authorized to file an Amended Complaint pursuant to the Court's order denying in part and granting in part Defendants' Motions to Dismiss Plaintiff's Complaint and granting in part Defendants' Motion for More Definite Statement. Defendants shall have twenty (20) days to respond to the Amended Complaint..

DATED this 25th day of August, 2020.



DISTRICT COURT JUDGE ROB BARE

HGL

Respectfully submitted by:

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett

Sean K. Claggett, Esq.  
Nevada Bar No. 008407  
William T. Sykes, Esq.  
Nevada Bar No. 009916  
Matthew S. Granda, Esq.  
4101 Meadows Lane, Suite 100  
Las Vegas, Nevada 89107  
*Attorneys for Plaintiff*

## Moises Garcia

---

**From:** Jorgensen, J. Christopher <CJorgensen@lrrc.com>  
**Sent:** Friday, August 21, 2020 10:33 AM  
**To:** Kimberly Wald; Joseph Liebman; Roberts, Lee; Henninger, Ursula; Kelly Anne Luther (KLuther@kasowitz.com); Jackson, Brian (SHB) (BJACKSON@shb.com)  
**Cc:** Matt Granda; Moises Garcia; Deana Foster; Jaramillo, Annette; Helm, Jessica  
**Subject:** RE: Thompson Stipulation

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Kim,  
You are authorized to insert my electronic signature and file.  
Thanks  
Chris

**Christopher Jorgensen**

Partner  
702.474.2642 office  
702.949.8398 fax  
[cjorgensen@lrrc.com](mailto:cjorgensen@lrrc.com)

---

**Lewis Roca Rothgerber Christie LLP**

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
[lrrc.com](http://lrrc.com)

---

**From:** Kimberly L. Wald <klw@kulaw.com>  
**Sent:** Friday, August 21, 2020 10:12 AM  
**To:** Joseph Liebman <JLiebman@baileykennedy.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Roberts, Lee <LRoberts@wwhgd.com>; Henninger, Ursula <uhenninger@KSLAW.com>; Kelly Anne Luther (KLuther@kasowitz.com) <KLuther@kasowitz.com>; Jackson, Brian (SHB) (BJACKSON@shb.com) <BJACKSON@shb.com>  
**Cc:** 'mgranda@claggettlaw.com' <mgranda@claggettlaw.com>; 'Moises Garcia' <MGarcia@claggettlaw.com>; Kimberly L. Wald <klw@kulaw.com>; Deana Foster <deana@kulaw.com>  
**Subject:** Thompson Stipulation

[EXTERNAL]

---

Counsel,  
I apologize for the multiple emails. We noticed the prior stipulation did not contain the order for Judge's signature. Please see attached and let me know if you approve.

Thank you.

Kim Wald

# Kelley | Uustal

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Fort Lauderdale, FL 33301  
[www.kulaw.com](http://www.kulaw.com)



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fax: 954.522.6608  
email: [klw@kulaw.com](mailto:klw@kulaw.com)

---

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## Moises Garcia

---

**From:** Roberts, Lee <LRoberts@wwhgd.com>  
**Sent:** Friday, August 21, 2020 12:31 PM  
**To:** Kimberly Wald; Jackson, Brian (SHB); Joseph Liebman; Jorgensen, J. Christopher; Henninger, Ursula; Kelly Anne Luther (KLuther@kasowitz.com)  
**Cc:** Matt Granda; Moises Garcia; Deana Foster  
**Subject:** Re: Thompson Stipulation

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Yes, you have my approval.

[cid:REVISEE-sig2020\_5801a862-4942-4e3a-94ab-425c0ea8e329.png]

D. Lee Roberts, Attorney

Weinberg Wheeler Hudgins Gunn & Dial

6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118

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[www.wwhgd.com](http://www.wwhgd.com)<<http://www.wwhgd.com>> | vCard<<http://www.wwhgd.com/vcard-53.vcf>>

---

From: Kimberly L. Wald <klw@kulaw.com>  
Sent: Friday, August 21, 2020 12:22:05 PM  
To: Jackson, Brian (SHB); Joseph Liebman; Jorgensen, J. Christopher; Roberts, Lee; Henninger, Ursula; Kelly Anne Luther (KLuther@kasowitz.com)  
Cc: 'mgranda@claggettlaw.com'; 'Moises Garcia'; Deana Foster; Kimberly L. Wald  
Subject: RE: Thompson Stipulation

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---

Brian, do we have your approval on behalf of PM to use Lee Robert's signature?

[cid:image104500.png@1B6E148A.8FB01D0B]<<http://www.kelleyuustal.com/>>

## Moises Garcia

---

**From:** Joseph Liebman <JLiebman@baileykennedy.com>  
**Sent:** Friday, August 21, 2020 12:03 PM  
**To:** Kimberly Wald; Jorgensen, J. Christopher; Roberts, Lee; Henninger, Ursula; Kelly Anne Luther (KLuther@kasowitz.com); Jackson, Brian (SHB) (BJACKSON@shb.com)  
**Cc:** Matt Granda; Moises Garcia; Deana Foster  
**Subject:** RE: Thompson Stipulation

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Approved.

---

**From:** Kimberly L. Wald [mailto:klw@kulaw.com]  
**Sent:** Friday, August 21, 2020 10:12 AM  
**To:** Joseph Liebman <JLiebman@baileykennedy.com>; Jorgensen, J. Christopher <JJorgensen@lrrc.com>; Roberts, Lee <LRoberts@wwhgd.com>; Henninger, Ursula <uhenninger@KSLAW.com>; Kelly Anne Luther (KLuther@kasowitz.com) <KLuther@kasowitz.com>; Jackson, Brian (SHB) (BJACKSON@shb.com) <BJACKSON@shb.com>  
**Cc:** 'mgranda@claggettlaw.com' <mgranda@claggettlaw.com>; 'Moises Garcia' <MGarcia@claggettlaw.com>; Kimberly L. Wald <klw@kulaw.com>; Deana Foster <deana@kulaw.com>  
**Subject:** Thompson Stipulation

Counsel,

I apologize for the multiple emails. We noticed the prior stipulation did not contain the order for Judge's signature. Please see attached and let me know if you approve.

Thank you.

Kim Wald

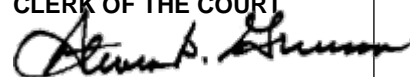
**Kelley | Uustal**

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email: [klw@kulaw.com](mailto:klw@kulaw.com)



**SUGG**

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Matthew S. Granda, Esq.

Nevada Bar No. 012753

Micah S. Echols, Esq.

Nevada Bar No. 008437

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[mgranda@claggettlaw.com](mailto:mgranda@claggettlaw.com)

[micah@claggettlaw.com](mailto:micah@claggettlaw.com)

Kimberly L. Wald, Esq. (admitted pro hac vice)

Florida Bar. No. 112263

**KELLEY | UUSTAL**

500 North Federal Highway, Suite 200

Fort Lauderdale, FL 33301

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**NOREEN THOMPSON,**

Plaintiff,

v.

CASE NO. A-20-811091-C

DEPT. NO. XXXII

**SUGGESTION OF DEATH UPON THE  
RECORD**

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;

1 SILVER NUGGET GAMING, LLC d/b/a  
2 SILVER NUGGET CASINO, a domestic  
3 limited liability company, JERRY'S NUGGET,  
4 a domestic corporation; and DOES I-X; and  
5 ROE BUSINESS ENTITIES XI-XX, inclusive

Defendants.

Plaintiff, NOREEN THOMPSON, by and through her attorneys of record, CLAGGETT & SYKES LAW FIRM, suggest upon the record, pursuant to NRCP 25(a)(1), the death of NOREEN THOMPSON, a named Plaintiff, on June 19, 2020, during the pendency of this action.

DATED this 3<sup>rd</sup> day of September 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

Kimberly L. Wald, Esq. (admitted pro hac vice)  
Florida Bar. No. 112263  
KELLEY|UUSTAL  
500 North Federal Highway, Suite 200  
Fort Lauderdale, FL 33301  
*Attorneys for Plaintiff*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT on the 3<sup>rd</sup> day of September 2020, I served a true and correct copy of the foregoing **SUGGESTION OF DEATH UPON THE RECORD** is served on the following person(s) by electronic service pursuant to NRCP 5(b) and NEFCR 9:

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/s/ Moises Garcia

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