

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

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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. 2**

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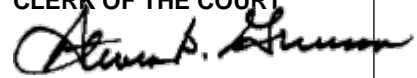
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DISTRICT COURT

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

CASE NO. A-20-811091-C

DEPT. NO. XVI

**ERRATA TO PLAINTIFF’S MOTION
FOR LEAVE TO
FILE AMENDED WRONGFUL DEATH
COMPLAINT AND
PLAINTIFF’S MOTION TO
SUBSTITUTE PARTIES**

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

4 Defendants

5
6 Plaintiff submits this Errata to her Motion for Leave to File Amended Wrongful Death
7 Complaint and Motion to Substitute Parties. Plaintiff erroneously attached a prior version of the
8 Amended Complaint as **Exhibit "2."**

9 The correct Amended Complaint is attached hereto.

10 DATED this 30th day of November, 2020.

11 CLAGGETT & SYKES LAW FIRM

12 /s/ Sean K. Claggett

13 Sean K. Claggett, Esq.
14 Nevada Bar No. 008407
15 Matthew S. Granda, Esq.
16 Nevada Bar No. 012753
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22 *Attorneys for Plaintiff*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November 2020, I served a copy of the foregoing
ERRATA TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED WRONGFUL
DEATH COMPLAINT AND PLAINTIFF'S MOTION TO SUBSTITUTE PARTIES on the
following person(s) by electronic service pursuant to NRCP 5(b) and NEFCR 9:

Dennis L. Kennedy, Esq. Joseph A. Liebman, Esq. BAILEY KENNEDY 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302 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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Spencer M. Diamond Esq. KING & SPALDING LLP 1180 Peachtree Street, N.E. Atlanta, GA 30309 Email: sdiamond@kslaw.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>	Katherine Heinz, Esq. SHOOK, HARDY AND BACON, LLP 2555 Grand Boulevard Kansas City, MO 64108 Email: lhein@shb.com <i>Attorneys for Philip Morris USA, Inc.</i>

/s/ Moises Garcia

An Employee of CLAGGETT & SYKES
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DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of
the Estate of 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

CASE NO. A-20-811091-C

DEPT. NO. XVI

AMENDED COMPLAINT

JURY TRIAL DEMAND

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.

COMES NOW, DOLLY ROWAN, as Special Administrator of the Estate of NOREEN THOMPSON, by and through her attorney of record, CLAGGETT & SYKES LAW FIRM, complaining of Defendants, and alleges as follows:

JURISDICTION, VENUE, AND PARTIES

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

2. NOREEN THOMPSON (hereinafter "Decedent") was at all time relevant a resident of Clark County, Nevada. Plaintiff, DOLLY ROWAN, is the surviving child of NOREEN THOMPSON (hereinafter "Plaintiff" or "DOLLY") and is duly appointed the Special Administrator and Personal Representative of the Estate of NOREEN THOMPSON. Decedent and Dolly were at all times relevant to this litigation residents of Clark County, Nevada.

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

1 4. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
2 Defendant R.J. REYNOLDS TOBACCO COMPANY, Inc. (hereinafter “R.J. REYNOLDS”), was and
3 is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was
4 duly organized, created, and existing under and by virtue of the laws of the State of North Carolina
5 with its principal place of business located in the State of North Carolina. Defendant, R.J.
6 REYNOLDS, resides and/or conducts business in every county within the State of Nevada and did so
7 during all times relevant to this action.
8

9 5. R.J. REYNOLDS TOBACCO COMPANY is also the successor-by-merger to
10 LORILLARD TOBACCO COMPANY (hereinafter “LORILLARD”), and is the successor-in-interest
11 to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION
12 (n/k/a Brown & Williamson Holdings, Inc.) (hereinafter “BROWN & WILLIAMSON”), which is the
13 successor-by-merger to the AMERICAN TOBACCO COMPANY (hereinafter “AMERICAN”).
14

15 6. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
16 Defendant LIGGETT GROUP, Inc. (f/k/a LIGGETT GROUP, INC., f/k/a BROOKE GROUP, LTD.,
17 Inc., f/k/a LIGGETT & MEYERS TOBACCO COMPANY) (hereinafter “LIGGETT”), was and is a
18 corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly
19 organized, created, and existing under and by virtue of the laws of the State of Delaware with its
20 principal place of business located in the State of North Carolina. Defendant, LIGGETT, resides and/or
21 conducts business in every county within the State of Nevada and did so during all times relevant to
22 this action.
23

24 7. The TOBACCO INDUSTRY RESEARCH COMMITTEE (“TIRC”) was formed in
25 1954, and later was re-named the COUNCIL FOR TOBACCO RESEARCH (“CTR”). This was a
26 disingenuous, fraudulent “research committee” organized by Defendants as part of their massive public
27 relations campaign to create a controversy regarding the health hazards of cigarettes.
28

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

5
6 9. Plaintiff is informed and believes, and thereon allege that Defendant, QUICK STOP
7 MARKET, LLC (hereafter “QUICK STOP”), was and is a domestic limited liability company
8 authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized,
9 created, and existing under and by virtue of the laws of the State of Nevada. QUICK STOP owns and
10 operates a store that sells tobacco and cigarette products located at 3401 E. Lake Mead Blvd, North Las
11 Vegas NV 89030. QUICK STOP is a retailer of tobacco and cigarette products and is registered with
12 the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Decedent,
13 NOREEN THOMPSON.

14
15 10. Plaintiff is informed and believes, and thereon alleges that Defendant, JOE’S BAR,
16 INC. (hereafter “JOE’S BAR”), was and is a domestic corporation authorized to do business within
17 this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by
18 virtue of the laws of the State of Nevada. JOE’S BAR owns and operates a store that sells tobacco and
19 cigarette products located at 8984 Spanish Ridge Ave, Las Vegas NV 89148. JOE’S BAR is a retailer
20 of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco
21 retailer, selling such items to the public, including Decedent, NOREEN THOMPSON.

22
23 11. Plaintiff is informed and believes, and thereon alleges that Defendant, THE POKER
24 PALACE, was and is a domestic corporation authorized to do business within this jurisdiction of Clark
25 County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the
26 State of Nevada. THE POKER PALACE owns and operates a casino that sells tobacco and cigarette
27 products located at 2757 Las Vegas Blvd N. N. Las Vegas, NV 89030. THE POKER PALACE is a
28

1 retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed
2 tobacco retailer, selling such items to the public, including Decedent, NOREEN THOMPSON.

3 12. Plaintiff is informed and believes, and thereon alleges that Defendant, SILVER
4 NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO (hereafter “SILVER NUGGET”) was
5 and is a domestic limited liability company 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. SILVER NUGGET owns and operates a casino that sells tobacco and cigarette
8 products located at 650 S. Main Street, Las Vegas, NV 89191. SILVER NUGGET is a retailer of
9 tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer,
10 selling such items to the public, including Decedent, NOREEN THOMPSON.

11 13. Plaintiff is informed and believes, and thereon alleges that Defendant, JERRY’S
12 NUGGET, was and is a domestic corporation authorized to do business within this jurisdiction of Clark
13 County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the
14 State of Nevada. JERRY’S NUGGET owns and operates a casino that sells tobacco and cigarette
15 products located at 7251 Amigo Street, Suite 210, Las Vegas NV 89119. JERRY’S NUGGET is a
16 retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed
17 tobacco retailer, selling such items to the public, including Decedent, NOREEN THOMPSON.

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

23 15. Plaintiff does not know the true names of Defendants Does I through X and sues said
24 Defendants by fictitious names. Upon information and belief, each of the Defendants designated
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1 herein as Doe is legally responsible in some manner for the events alleged in this Complaint and
2 actually, proximately, and/or legally caused injury and damages to Plaintiff. Plaintiff will seek leave
3 of the Court to amend this Complaint to substitute the true and correct names for these fictitious names
4 upon learning that information.

5
6 16. Plaintiff does not know the true names of Defendants Roe Business Entities XI through
7 XX and sues said Defendants by fictitious names. Upon information and belief, each of the Defendants
8 designated herein as Roe Business Entities XI through XX are predecessors-in-interest, successors-
9 in-interest, and/or agencies otherwise in a joint venture with, and/or serving as an alter ego of, any
10 and/or all Defendants named herein; and/or are entities responsible for the supervision of the
11 individually named Defendants at the time of the events and circumstances alleged herein; and/or are
12 entities employed by and/or otherwise directing the individual Defendants in the scope and course of
13 their responsibilities at the time of the events and circumstances alleged herein; and/or are entities
14 otherwise contributing in any way to the acts complained of and the damages alleged to have been
15 suffered by the Plaintiff herein. Upon information and belief, each of the Defendants designated as a
16 Roe Business Entity is in some manner negligently, vicariously, and/or statutorily responsible for the
17 events alleged in this Complaint and actually, proximately, and/or legally caused damages to Plaintiff.
18 Plaintiff will seek leave of the Court to amend this Complaint to substitute the true and correct names
19 for these fictitious names upon learning that information.
20
21

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

24 **FACTS COMMON TO ALL CLAIMS**

25 18. Plaintiff repeats and realleges each and every allegation set forth in the preceding
26 paragraphs, as if fully set forth herein.
27
28

1 19. Decedent, NOREEN THOMPSON, was diagnosed on or about April 8, 2019 with lung
2 cancer and passed away on June 19, 2020. NOREEN THOMPSON's lung cancer and her death
3 therefrom were caused by smoking Pall Mall brand cigarettes, Camel brand cigarettes, Viceroy brand
4 cigarettes, and Pyramid brand cigarettes, to which she was addicted and smoked continuously from
5 approximately 1954 until 2019.

6
7 20. At all times material, Pall Mall cigarettes were and are designed, manufactured, and
8 sold by Defendant R.J. REYNOLDS TOBACCO COMPANY, which is the successor-in-interest to the
9 United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which
10 is the successor-by-merger to THE AMERICAN TOBACCO COMPANY.

11 21. At all times material, Viceroy cigarettes were and are designed, manufactured, and sold
12 by Defendant, R.J. REYNOLDS TOBACCO COMPANY, which is the successor-in-interest to the
13 United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which
14 is the successor-by-merger to THE AMERICAN TOBACCO COMPANY.

15 22. At all times material, Camel cigarettes were and are designed, manufactured, and sold
16 by Defendant R.J. REYNOLDS TOBACCO COMPANY.

17 23. At all times material, Pyramid cigarettes were and are designed, manufactured, and
18 sold by Defendant LIGGETT.

19
20 24. Decedent, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,
21 and Pyramid cigarettes from QUICK STOP in sufficient quantities to be a substantial contributing
22 cause of her lung cancer.

23
24 25. Decedent, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,
25 and Pyramid cigarettes from JOE'S in sufficient quantities to be a substantial contributing cause of her
26 lung cancer.

1 26. Decedent, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,
2 and Pyramid cigarettes from THE POKER PALACE in sufficient quantities to be a substantial
3 contributing cause of her lung cancer.

4 27. Decedent, NOREEN THOMPSON, purchased and smoked Pall Mall, Viceroy, Camel,
5 and Pyramid cigarettes from SILVER NUGGET in sufficient quantities to be a substantial contributing
6 cause of her lung cancer.

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

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

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

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

1 32. Defendants failed to acknowledge or admit the truth until they were forced to do so as
2 a result of litigation in the year 2000.

3 33. Decedent's injuries and death arose out of Defendants' acts and/or omissions which
4 occurred inside and outside of the State of Nevada.

5 34. At all times material to this action, Defendants knew or should have known the
6 following:
7

- 8 a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as
9 COPD, which includes emphysema and chronic bronchitis, laryngeal cancer, and lung
10 cancer, including squamous cell carcinoma, small cell carcinoma, adenocarcinoma,
11 and large cell carcinoma;
- 12 b. Nicotine in cigarettes is addictive;
- 13 c. Defendants placed cigarettes on the market that were defective and unreasonably
14 dangerous;
- 15 d. Defendants concealed or omitted material information not otherwise known or
16 available, knowing that the material was false and misleading, or failed to disclose a
17 material fact concerning the health effects or addictive nature of smoking cigarettes, or
18 both;
- 19 e. Defendants entered into an agreement to conceal or omit information regarding the
20 health effects of cigarettes or their addictive nature with the intention that smokers and
21 the public would rely on this information to their detriment;
- 22 f. Defendants sold or supplied cigarettes that were defective;
- 23 g. Defendants were negligent;
- 24 h. Children and teenagers are more likely to become addicted to cigarettes if they begin
25 smoking at an early age;
- 26
- 27
- 28

- 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), but nevertheless did continue to defend smoking as a matter of "free choice";
- n. It is possible to develop safer cigarettes free of nicotine, carcinogens, and other deadly and poisonous compounds;
- o. "The thing [Defendants] sell most is nicotine" (Concealed Document 1980);
- p. Filtered, low tar, low nicotine, and "light" cigarettes are more dangerous than "regular" cigarettes;
- q. "Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and would almost certainly fail" (Concealed Document 1966);
- r. "Without the nicotine, the cigarette market would collapse, and [Defendants] would all lose their jobs and their consulting fees" (Concealed Document 1977);
- s. "Carcinogens are found in practically every class of compounds in smoke" (Concealed Document 1961);
- t. "Cigarettes have certain unattractive side effects . . . they cause lung cancer" (Concealed Document 1963).

35. Defendants' tortious and unlawful conduct caused consumers, including NOREEN THOMPSON, to suffer serious injuries and death.

Historical Allegations of Defendants Unlawful Conduct
Giving Rise to the Lawsuit

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

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

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

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

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

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

42. In addition to scientists, Defendants themselves began to conduct similar research. By February 2, 1953, Defendants had concrete proof that cigarette smoking increased the risk of lung cancer. A previously secret and concealed document authored by Defendant R.J. Reynolds, states: **"Studies of clinical data tend to confirm the relationship between heavy smoking and prolonged smoking and incidence of cancer of the lung."**

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

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

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

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



47. Executives from every cigarette company except 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.

48. 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,

1 or careful balancing of the two together, is going to deal with such fear
2 now. That, gentlemen, is the nature of the unexampled challenge to this
3 office.

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

8 50. TIRC’s *public* mission statement was to supposedly aid and assist with so-called
9 “independent” research into cigarette use and health.

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

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

54. The Frank Statement set forth the industry’s “open question” position that it would maintain for more than forty years -- that cigarette smoking was not a proven cause of lung cancer; that cigarettes were not injurious to health; and that more research on smoking and health issues was needed. In the Frank Statement, the participating companies accepted “an interest in people’s health as a basic responsibility, paramount to every other consideration in our business” and pledged “aid and assistance to the research effort into all phases of tobacco use and health.” The companies promised that they would fulfill the obligations they had undertaken in the Frank Statement by funding independent research through TIRC, free from any industry influence. The “Frank Statement” in its entirety stated as follows:

RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings.

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive should be disregarded or lightly dismissed. At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.

Distinguished authorities point out: 1. That medical research of recent years indicates many possible causes of lung cancer. 2. That there is no agreement among the authorities regarding what the cause is. 3. That there is no proof that cigarette smoking is one of the causes. 4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. Indeed the validity of the statistics themselves is questioned by numerous scientists.

We accept an interest in people’s health as a basic responsibility, paramount to every other consideration in our business.

We believe the products we make are not injurious to health.

We always have and always will cooperate closely with those whose task it is to safeguard the public health.

For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during these years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of disease is a matter of deep concern to us.

Many people have asked us what are we going to do to meet the public's concern aroused by the recent reports. Here is the answer: 1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies. 2. For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE ["TIRC"]. 3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men [sic] from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities.

This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it.

55. The issuance of the "Frank Statement to Cigarette Smokers" was an effective public relations step. By falsely promising the public the industry was absolutely committed to its good health, the Frank Statement allayed the public's concerns about smoking and health, reassured smokers, and provided them with a misleading and false effective rationale for continuing to smoke.

56. The Frank Statement was but the first of hundreds, if not thousands, of statements reassuring the public of the safety of cigarette smoking. The industry would push the "open question" as far as the late 1990s.

57. For the next five decades, TIRC/CTR worked diligently, and quite successfully, to rebuff the public's concern about the dangers of cigarettes. Defendants, through TIRC/CTR,

1 invented the false and misleading notion that there was an “open question” regarding cigarette
2 smoking and health. They appeared on television and radio to broadcast this message.

3 58. TIRC/CTR hired fake scientists and spokespeople to attack genuine, legitimate
4 scientific studies. Virtually none of the so-called “research” funded by TIRC/CTR centered on the
5 immediate questions relating to carcinogenesis and tobacco. Rather than addressing the compounds
6 and carcinogens in cigarette smoke and their hazardous effect on the human body, TIRC/CTR
7 instead directed its resources to alternative theories of the origins of cancer, centering on genetic
8 factors and environmental risks.
9

10 59. The major initiative of TIRC/CTR, through their Scientific Advisory Board (SAB),
11 was to “create the appearance of [Defendants] devoting substantial resources to the problem without
12 the risk of funding further ‘contrary evidence.’”
13

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

15 61. In 1962, The Tobacco Institute, the public relations successor to the TIRC, began to
16 publish many advertisements, including one entitled, “Some frank words about Smoking and
17 Research,” which stated in part:

18 “Most scientists recognized long ago that there are no simple, easy
19 answers in cancer research. They know that the answers to fundamental
20 questions about causation can come only through persistent scientific
21 research.”

22 “The tobacco industry supports and cooperates with all responsible
23 efforts to find the facts and bring them to the public.”

24 “In that spirit, we are cooperating with the U.S. Surgeon General and
25 his special study group appointed to evaluate presently available
26 research knowledge. Similar cooperation has been offered to the
27 American Medical Association’s proposed study.”

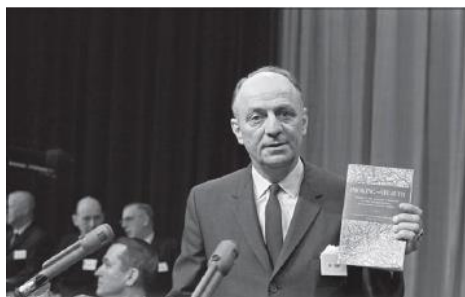
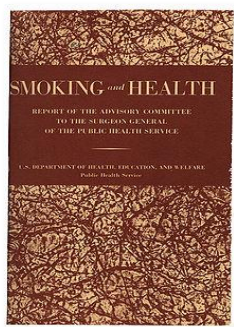
28 “We know we have a special responsibility to help scientists determine
the facts about tobacco use and health.”

“The industry accepted this responsibility in 1954 by establishing the
Tobacco Industry Research Committee to provide research grants to

1 scientists in recognized research institutions. This research program is
2 continuing on an expanded and intensified scale.”

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

6 63. The cigarette industry’s *public* response, through TIRC, to the 1964 Surgeon General
7 Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry
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14 would cooperate with the Surgeon General, (iii) “more research” was needed, despite the industry’s
15 own internal decision not to conduct research directly related to tobacco and health, and (iv) if there
16 were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those
17 elements. As a result, cigarette consumption again began to rise.

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

22
23 **“Cigarettes have certain unattractive side effects . . . they cause**
24 **lung cancer”** (Concealed Document 1963).

25 **“Carcinogens are found in practically every class of compounds in**
26 **smoke”** (Concealed Document 1961).

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

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

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

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

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

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

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

“Very few consumers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison” (Concealed Document 1978).

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

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

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

66. Defendants deliberately added chemicals such as urea, ammonia, diammonium-phosphate, and other chemicals to their cigarettes. They deliberately designed cigarettes to “free-base” nicotine and manipulated levels of pH in smoke to make cigarettes more addictive and easier to inhale.

67. Defendants’ sole priority was to make as much money as quickly as possible, with no concern about the safety or well-being of their customers.

1 68. In 1966, the United States Government mandated that a “Caution” label be placed on
2 packs of cigarettes stating, “Cigarette Smoking May be Hazardous to Your Health.”

3 69. The cigarette industry responded to the “Caution” label by continuing their massive
4 public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the
5 public.
6

7 70. Also in 1966, the Tobacco Institute (“TI”) issued a press release where it stated on
8 behalf of the industry falsely assuring the public the following:

9 **“Scientists throughout the world are continuing to investigate to**
10 **learn the full facts about ‘tar’ and nicotine, and about questions**
11 **concerning tobacco and health. *The tobacco industry is supporting***
12 ***much of this research and will continue to do so.*”**

13 71. Throughout this period, Defendants also introduced “filtered” cigarettes – cigarettes
14 falsely marketed, advertised, and promoted as delivering and/or containing “less tar” and “less
15 nicotine.”

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

22 73. Defendants continued throughout the 1970s, 1980s, and 1990s to encourage the false
23 impression that there was a genuine and continuing controversy regarding the health hazards of
24 smoking.
25

26 74. The tobacco industry frequently attacked the Surgeon General. For example, the
27 industry preempted the Surgeon General’s 1979 report on national news networks, stating the report
28 was “suspect from the start.” The industry later attacked the Surgeon General following the 1988

1 report on the addictive nature of cigarettes with a press release titled, "CLAIMS THAT
2 CIGARETTES ARE ADDICTIVE CONTRADICT COMMON SENSE."

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

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

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

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

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

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

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

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

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

24 80. Cigarettes were the number one most heavily advertised product on television until the
25 United States Government banned television advertisements in 1972.
26
27
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81. When cigarettes advertising was banned on television, Defendants turned to marketing in stadiums, sponsoring sporting events such as the Winston Cup and Marlboro 500, sponsoring concerts, utilizing print advertisements in magazines, adding product placement in movies, and more.



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

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

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

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

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

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

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

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



89. After the industry executives testified before congress that cigarettes were not addictive and had not been proven to cause cancer, Defendants, including Philip Morris, continued to adhere to the controversy by stating both smokers and non-smokers deserve to know the facts, not innuendo, about cigarettes:

Yesterday, Philip Morris and other U.S. tobacco manufacturers helped to set the record straight by speaking before a Congressional committee...

Fact: Philip Morris does not add nicotine to its cigarettes...

Fact: Philip Morris does not "manipulate" nicotine levels...
Fact: Philip Morris does not believe cigarette smoking is addictive...
Fact: None of the ingredients added in the manufacture of cigarettes is
harmful as used...

90. Despite their own intensive research and millions of internal documents describing the dangers and addictive qualities of cigarettes, Defendants negligently, willfully, maliciously, and intentionally made false and misleading statements to Congress, the public, and Decedent, NOREEN THOMPSON.

91. Even after Defendants knowingly lied during these Congressional hearings, Defendants continued, and still continue, to perpetuate their conspiracy.

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

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

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

95. Additionally, including as recently as 2018, Defendants have continued to oppose proposed FDA regulations which would reduce or eliminate nicotine in cigarettes.

1 96. As recently as 2019, Defendants have not admitted and still do not admit or
2 acknowledge that nicotine in their cigarette smoke “is” addictive.

3 97. As recently as 2019, Defendants have not admitted and still do not admit or
4 acknowledge that nicotine addiction can cause diseases.

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

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

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

13 101. This sophisticated conspiracy involved hundreds of billions of dollars spent on
14 marketing efforts, massive deception, including lying under oath before Congress and other
15 governmental entities, forming fake organizations with fake scientists and fake research, and
16 creating a “brilliantly conceived” public relations campaign designed to create and sustain doubt
17 and confusion regarding a supposed - made up - cigarette ‘controversy’ of their own invention.

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

20 103. From 1953 through 2000, Defendants made false or misleading statements including
21 but not limited to the following:

- 22 • denying that smoking “is” addictive;
- 23 • that smoking is not injurious to health;
- 24 • that it is unknown if smoking causes serious diseases;

- that scientific and medical community has not reached a consensus about the harms of smoking;
- that no one knows what causes cancer;
- that the tobacco industry made an honest effort to study the harms of smoking and a causal relationship had not need proven;

104. From 1953 through the present, Defendants made false or misleading statements including but not limited to the following:

- that filter, low tar and low nicotine, lights and ultra-light are safe, or safer than full flavor cigarettes, and/or directly and/or indirectly made statements about their safety and efficacy.

105. Throughout the same period, Defendants publicly attacked the validity of research suggesting any harmful effects from smoking.

Conspiratorial Involvement by Defendants' Lawyers

106. Throughout this fifty-plus year conspiracy, Defendants and their co-conspirators utilized attorneys – both in-house and outside counsel – to further their conspiracy. Defendants and their co-conspirators consulted with these attorneys both before any litigation was contemplated, and once litigation against the tobacco companies began.

107. Philip Morris USA Inc., R.J. Reynolds Tobacco Company, British American Tobacco Company, American Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco Company, and Liggett Group LLC, collectively and through their general counsel, formed the Committee of Counsel and/or the Counsel of Six (hereafter “CC”), whose purpose was to oversee, organize, operate, and execute a conspiracy to conceal and/or misrepresent the harms and addictive nature of cigarettes.

108. Beginning in the 1950s, Philip Morris USA Inc., R.J. Reynolds Tobacco Company, British American Tobacco Company, American Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco Company, and Liggett Group LLC, through the CC, also retained outside counsel to assist them in their conspiratorial activities, which included concealing and/or misrepresenting the

1 harms of smoking and its addictive nature to the public.

2 109. The law firms whom Defendants retained as outside counsel included Shook Hardy
3 Bacon (“SHB”), Covington & Burling (“COVB”), Jones Day (“DAY”), Jacob Medinger & Finnegan
4 (“JMF”), Womble Carlyle (“WOM”), Cabell Medinger Forsyth & Decker (“CMFD”), and others.

5 110. Beginning in the 1950s, the CC and the outside law firms (hereafter “Lawyers”) conspired
6 with Defendants and acted as agents, servants, representatives and/or employees of Defendants in the
7 course and scope of their agency or employment and in furtherance of the conspiracy.¹

8 111. The Lawyers played a central role in creating, sustaining, and perpetuating the
9 Defendants’ and the tobacco industry’s conspiracy. Some examples include, but are not limited to the
10 following:

- 11 a. The Lawyers directed “scientists” as to what research they should and should not
12 undertake (“new research [regarding the health effects of smoking] will have questionable
13 value, but no negative results”) (CC229); (quote from lawyer Rupp with COVB:
14 “epidemiological evidence is necessary if for no other reason than to effectively respond
15 to anti-smoking groups . . . the industry should continue to emphasize the lack of
16 substantive proof of causation”) (CC188);
- 17 b. The Lawyers were involved at every level of alleged scientific “research” pursued by
18 Defendants and the tobacco industry (“The excessive involvement of external lawyers at
19 this very basic scientific level is questionable”) (COVB11);
- 20 c. The Lawyers allegedly vetted scientific “research” papers and reports as well as public
21 relations materials to ensure the interests of the conspiracy would be protected;
- 22 d. The Lawyers improperly identified “friendly” scientific witnesses, subsidized them with
23

24
25
26
27
28 ¹ The allegations herein are not directed to Defendants’ current counsel and/or their representation as
part of their lawful defense in this case.

1 grants from the Center for Tobacco Research and the Center for Indoor Air Research, paid
2 them enormous fees, and often hid the relationship between those witnesses and the
3 industry;

- 4
- 5 e. The Lawyers devised and carried out document destruction policies and took shelter
6 behind baseless assertions of attorney client privilege (SHB118, SHB109, CC139);
- 7 f. The Lawyers advocated for tobacco committees to be “front” organizations; (attorney
8 William “Bill” Shinn of SHB stated in 1978 that an ad hoc committee should be a broad
9 policy making committee, not just a smoking and health committee, and that the best way
10 money was spent was on “special projects” where “CTR has acted as a ‘front’”) (CC141);
- 11 g. The Lawyers chaired meetings with co-conspirators (attorney Don Hoel of SHB chaired
12 the Environmental Tobacco Smoke meeting in 1988) (CC188);
- 13
- 14 h. The Lawyers presented the results of scientific studies at industry meetings (for example,
15 in 1993, attorney Chris Proctor of COVB presented four epidemiologic studies were used
16 to “merchandize the ‘positive’ progress in epidemiology”) (COVB122);
- 17 i. The Lawyers oversaw domestic smoking and health projects (for example, in 1998,
18 attorney Donald Hoel of SHB and SHB advised Philip Morris regarding whether to
19 initially fund, and whether to continue or discontinue funding, scientists) (SHB 109);
- 20
- 21 j. The Lawyers also worked with and coached scientists on how to be possible witness in
22 litigation, how to speak at legislative hearings, how to serve as consultants, and/or how to
23 conduct specific supposed research;
- 24 k. They further oversaw international smoking and health projects (for example, in 1991,
25 attorney Sharon Boyse of BAT wrote a memo praising how the Latin American and Far
26 East programs were ideal because COVB developed them in such a way “that there was
27 no direct association between the scientists and the tobacco industry”) (COVB130);
28

- 1 l. The Lawyers screened international scientists in order to eliminate those with views
2 opposing the conspiracy (“Candidates who have made public statements adverse to the
3 industry on the primary health issue generally are avoided”) (COVB124);
4
- 5 m. The Lawyers hid the source of the money used for special projects to make them appear
6 more acceptable to the public:
 - 7 i. On November 15, 1978, at a CTR meeting in New York, attorney William Shinn
8 of SHB told the attendees that “special projects” were the best way money was
9 spent, and said “on these projects, CTR has acted as a ‘front.’” (CC141);
10
 - 11 ii. On July 13, 1984, a memorandum from Lee Stanford to David Hardy of SHB
12 stated, “[the] non-CTR projects fund was originally developed so that companies
13 would not be paying scientists directly.” (SHB118);
14
 - 15 iii. On October 1989, a scientist from BAT, Dr. Ray Thornton, was invited by Dr.
16 Helmut Gaisch of PM to a meeting with the Association for Research on Indoor
17 Air (ARIA). Dr. Thornton’s record indicates PM funded ARIA, through COVB,
18 who in turn supplied money to George Leslie, who in turn set up ARIA.
19 (COVB131);
20
 - 21 iv. On April 28, 1992, David Murphy, an attorney for Wachtell, Lipton, Rosek &
22 Katz (another law firm working for PM), wrote that Lorillard and CTR inquired
23 about funding through an SHB special account for one Dr. Bennett Jensen. SHB
24 proposed to give Dr. Jensen \$40,000, not for specific research or with an eye to
25 publication, but solely to maintain a good relationship with him and secure his
26 continued help in contacting other scientists. Dr. Jensen previously received CTR
27 Special Project Funds in 1988. Murphy wrote:

28 Allinder admits that Shook Hardy wants to give Jensen money to
keep him happy and that there is no immediate value to his

research . . . issue raises a larger question—whether ‘CTR Special Projects’ funds (and, after such activities were moved out of CTR, joint industry funds administered through Shook, Hardy) were used to purchase favorable judicial or legislative testimony, thereby perpetrating a fraud on the public”

(CC119) (emphasis added);

- n. The Lawyers ensured that Defendants and the tobacco industry did not directly support legitimate projects related to smoking and health, and instead directed the companies toward supporting alternative projects including junk science, attacks on legitimate public health research, and research of scientifically implausible alternative causation theories for smoking-related diseases.

112. The Lawyers were also crucial to the development of research the Defendants and the tobacco industry funded through their selection of Directors for the Center for Tobacco Research (CTR) Scientific Advisory Board (SAB) who imposed unnecessary limits on the research funded by CTR.

113. Additionally, the outside Lawyers went so far as to take over access to a database of documents created by RJR’s Research and Development division. The outside Lawyers banned the tobacco companies and their in-house counsel from accessing these documents in order to conceal the documents through a false assertion of alleged attorney work product privilege.

114. Further, the Lawyers played a major role in Defendants’ witness development plans to perpetuate the conspiracy’s “open question” position.

- a. For example, shortly after joining Brown & Williamson Tobacco Co. as Vice President of Research and Development in 1989, Jeffrey Wigand, as part of his orientation, was required to go to Kansas City, Missouri to meet for three days with lawyers from SHB for an “orientation session.” At the session, Wigand was “coached by lawyers regarding the company line on smoking and health, and addiction.” The company line was “[t]hat causation had not been proven and that nicotine had not been shown to be addictive.” Similar orientation meetings took place with other tobacco scientists at SHB’s offices.

(See SHB195, SHB106, United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1, 805 (D.D.C. 2006)).

b. Wigand described the orientation session as follows:

Lawyers were instructing me, a scientist, how to interpret epidemiological studies. In every instance, I was instructed that the evidence in the public health domain had not satisfactorily proven causation. I was told that studies that demonstrated a link between smoking and cancer were fraught with errors. Moreover, I was told that epidemiology could not be relied upon because it was just statisticians doing guess work.

c. In addition, attorney Lee Stanford of SHB sent a letter to fellow SHB attorney David Hardy on briefing research associate and chemist Dr. Alex Spears (who would later become Lorillard's CEO) for a conversation with physician and medical news reporter Dean Edell:

CTR Special Projects, non-CTR projects and the Industry Research Committee are obviously sensitive. Dr. Spears should be prepared to respond to questions in a way that does not lead Edell into these areas. In particular, Dr. Spears should try to avoid references to the role of attorneys. However, this should not become too awkward . . . Dr. Spears should attempt to divert the question. (Emphasis added.)

d. Further, on January 12, 1967, attorney Hardy wrote to several other industry attorneys asking them for written comments regarding special projects and congressional hearings. (SHB111.) Attorneys Don Cohn and Francis Decker wrote back stating they hoped materials being developed by TIRC/CTR head Tom Hoyt for various Special Projects would be useful in developing a witness to emphasize the importance of multivariant analysis over univariant ones. Cohn and Decker also recommend development of two witnesses who could comment upon diseases other than lung cancer. They would present the position that the claimed associations have not been proven to be causal. As to one

such potential witness, Dr. Pratt, they noted that while he had potential, he would require “considerable work” before he would be prepared to appear before Congress. (SHB112).

FIRST CLAIM FOR RELIEF

(WRONGFUL DEATH - NEGLIGENCE)

Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan as Heir of Noreen Thompson Against Defendants R.J. Reynolds, and Liggett

115. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 114 and incorporate the same herein by reference.

116. Plaintiff brings this wrongful death claim based on Defendants’ negligence as set forth below against R.J. Reynolds and Liggett.

117. Plaintiff, DOLLY ROWAN, is the heir of NOREEN THOMPSON, along with her two siblings, Navona Collison and Russell Thompson.

118. Plaintiff, DOLLY ROWAN, brings this cause of action pursuant to NRS 41.085(4), as heir of NOREEN THOMPSON.

119. Plaintiff, DOLLY ROWAN, is the Special Administrator and Personal Representative of the Estate of NOREEN THOMPSON.

120. Plaintiff brings this claim pursuant to 41.085(5) as the Special Administrator and Personal Representative of the Estate of NOREEN THOMPSON.

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

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

1 123. Each exposure to Defendants' cigarettes caused Decedent to inhale smoke which caused
2 her to become addicted to cigarettes, and further caused her to develop lung cancer and suffer severe
3 bodily injuries and death.

4 124. Defendants were negligent in all the following respects, same being the proximate
5 and/or legal cause of NOREEN THOMPSON'S injuries and death, including but not limited to:
6

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

- o. targeting minority populations such as African Americans, Hispanics, and women, such as NOREEN THOMPSON, to obtain a greater market share to increase their profits;
- p. failing to develop and utilize alternative designs, manufacturing methods, and/or materials to reduce and/or eliminate harmful materials from cigarettes;
- q. continuing to manufacture, distribute, and/or sell cigarettes when Defendants knew at all times material that its products could cause, and in fact were more likely to cause, injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal cancer, lung cancer, and/or other forms of cancer when used as intended;
- r. 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;
- s. failing to remove and recall cigarettes from the stream of commerce and the marketplace upon ascertaining that said products would cause disease and death.

125. Additionally, prior to July 1, 1969, Defendants failed to warn and/or inadequately warned 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 users could develop fatal injuries including, but not limited to, emphysema, COPD, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;
- c. failing to warn foreseeable users, such as 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;
- e. failing to disclose to consumers of cigarettes, such as NOREEN THOMPSON, the results of genuine scientific research conducted by and/or known to Defendant that cigarettes were dangerous, defective, and addictive.

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

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

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

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

130. Defendants' negligence and/or wrongful acts were the actual and proximate or legal cause of NOREEN THOMPSON'S injuries and death. DOLLY ROWAN has sustained damages consisting of the loss of NOREEN THOMPSON'S love, companionship, comfort, affection, society,

1 and moral support, and has suffered great emotional and psychological loss, all in amounts in excess
2 of Fifteen Thousand Dollars (\$15,000.00). As NOREEN THOMPSON'S heir, DOLLY ROWAN as
3 Special Administrator of the Estate of NOREEN THOMPSON seeks these damages pursuant to NRS
4 41.085(4).

5
6 131. As a further actual and proximate or legal result of Defendants' negligence, NOREEN
7 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heir,
8 DOLLY ROWAN seeks general damages for this pain, suffering, and/or disfigurement pursuant to
9 NRS 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

10
11 132. As a further actual and proximate or legal result of Defendants' negligence, NOREEN
12 THOMPSON'S estate incurred special damages, to include medical expenses and funeral expenses,
13 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of
14 NOREEN THOMPSON'S Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
15 41.085(5).

16
17 133. 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 anyone in the community.

20
21 134. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
22 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
23 example of Defendants, and to deter similar conduct in the future. As personal representative of
24 NOREEN THOMPSON'S estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant
25 to NRS 41.085(5).

26
27 135. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
28 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
their employees, agents, and/or servants, as set forth herein.

136. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys' fees and costs of suit.

SECOND CLAIM FOR RELIEF

(NEGLIGENCE)

Dolly Rowan as Administrator of the Estate of Noreen Thompson Against Defendants R.J. Reynolds and Liggett

137. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 114 and 115-136 and incorporate the same herein by reference.

138. Plaintiff, DOLLY ROWAN, brings this claim as Administrator of the Estate of NOREEN THOMPSON pursuant to NRS 41.100.

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

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

141. Each exposure to said Defendants' cigarettes caused Decedent to inhale smoke which caused her to become addicted to cigarettes, and further caused her to develop lung cancer and suffer severe bodily injuries and death.

142. Defendants R.J. Reynolds and Liggett were negligent in all the following respects, same being the proximate and/or legal cause of NOREEN THOMPSON'S injuries and death, including but not limited to:

- a. designing and manufacturing an unreasonably dangerous and deadly product;

- b. designing and manufacturing cigarettes to be addictive;
- c. designing and manufacturing cigarettes to be inhalable;
- d. manipulating the level of nicotine in cigarettes to make them more addictive;
- e. genetically modifying nicotine in tobacco plants;
- f. blending different types of tobacco to obtain a desired amount of nicotine;
- g. engineering cigarettes to be rapidly inhaled into the bloodstream;
- h. adding chemicals and other deadly, poisonous compounds to cigarettes;
- i. adding and/or manipulating compounds such as ammonia and diammonium phosphate to Defendants' cigarettes to "free-base" nicotine;
- j. marketing and advertising "filter" and "filtered" cigarettes as safe;
- k. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and low tar;
- l. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;
- m. manipulating levels of pH in Defendants' cigarettes;
- n. targeting children who could not understand or comprehend the seriousness or addictive nature of nicotine and smoking;
- o. targeting minority populations such as African Americans, Hispanics, and women such as NOREEN THOMPSON, to obtain a greater market share to increase their profits;
- p. failing to develop and utilize alternative designs, manufacturing methods, and/or materials to reduce and/or eliminate harmful materials from cigarettes;
- q. continuing to manufacture, distribute, and/or sell cigarettes when Defendants knew at all times material that their products could cause, and in fact were more likely to cause,

injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal cancer, lung cancer, and/or other forms of cancer when used as intended;

- r. making knowingly false and misleading statements to Decedent, the public, and the American government that cigarettes were safe and/or not proven to be dangerous;
- s. failing to remove and recall cigarettes from the stream of commerce and the marketplace upon ascertaining that said products would cause disease and death.

143. 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 users could develop fatal injuries including, but not limited to, emphysema, COPD, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;
- c. failing to warn foreseeable users, such as 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;
- e. failing to disclose to consumers of cigarettes, such as NOREEN THOMPSON, the results of genuine scientific research conducted by and/or known to Defendants that cigarettes were dangerous, defective, and addictive.

144. Defendants breached the aforementioned duties of due and reasonable care in that they produced, designed, manufactured, sold, and/or marketed defective cigarettes and/or any of their

1 component parts which contained risks of harm to the user/consumer and which were reasonably
2 foreseeable to cause harm in the use or exercise of reasonable and/or ordinary care.

3 145. As a direct and proximate and/or legal result of Defendants' aforementioned
4 negligence, NOREEN THOMPSON was severely injured and died when she was exposed to
5 Defendants' cigarettes. Each exposure to Defendants' cigarettes caused NOREEN THOMPSON to
6 become addicted to cigarettes and to inhale smoke which caused her to develop lung cancer, in addition
7 to other related physical conditions which resulted in and directly caused her to suffer severe bodily
8 injuries and death. Each exposure to such products was harmful and caused or contributed
9 substantially to NOREEN THOMPSON'S aforementioned injuries and death.
10

11 146. NOREEN THOMPSON'S aforementioned injuries and death arose out of and were
12 connected to the way Defendants designed, manufactured, marketed, distributed, and/or sold their
13 products.
14

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

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

25 149. Defendants' negligence is an actual and proximate or legal cause of NOREEN
26 THOMPSON'S injuries and death. NOREEN THOMPSON thereby experienced great pain and
27 anxiety to her body and mind. NOREEN THOMPSON sustained injuries and damages in an amount
28

1 in excess of Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as
2 Administrator of the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.

3 150. As a further actual and proximate or legal result of Defendants' negligence, NOREEN
4 THOMPSON underwent medical treatment and incurred past medical and/or incidental expenses. The
5 exact amount of such damages is unknown at this present time, but NOREEN THOMPSON suffered
6 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY ROWAN, as
7 Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages pursuant to
8 NRS 41.100.
9

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

14 152. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
15 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
16 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of
17 NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS
18 41.100.

19 153. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
20 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
21 their employees, agents, and/or servants, as set forth herein.
22

23 154. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the
24 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys'
25 fees and costs of suit.
26
27
28

THIRD CLAIM FOR RELIEF

(WRONGFUL DEATH - STRICT LIABILITY)

Dolly Rowan, as Personal Representative of the Estate of Noreen Thompson, and Dolly Rowan as Heir of Noreen Thompson, Against Defendants R.J. Reynolds and Liggett

155. Plaintiff repeats and realleges the allegations contained in the paragraphs 1-114 and incorporates the same herein by reference.

156. Plaintiff brings this wrongful death claim based on a strict liability claim against Defendants R.J. Reynolds and Liggett.

157. Plaintiff, DOLLY ROWAN, is the heir of NOREEN THOMPSON, along with her siblings Navona Collison and Russell Thompson.

158. Plaintiff, DOLLY ROWAN, brings this cause of action pursuant to NRS 41.085(4), as heir of NOREEN THOMPSON'S Estate.

159. Plaintiff, DOLLY ROWAN, is the Personal Representative of the Estate of NOREEN THOMPSON.

160. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the Estate of NOREEN THOMPSON.

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

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

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

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

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

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

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

168. Defendants' purposely designed and/or manufactured cigarettes to be defective and unreasonably dangerous by doing the following, including but not limited to:

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

- j. intentionally failing to filter out harmful substances so that during ordinary use, such materials would not be liberated into the air and/or breathed by the smoker such as the Decedent herein;
- k. designing, through the use of filters, manufacturing methods, engineering methods and/or materials, cigarettes in such a way to make smoking them more tasteful, pleasurable and less likely to trigger the smoker's own biological self defense mechanisms which otherwise may have limited and/or altered the smoker's behavior in such a way that the smoker may have smoked less, inhaled less deeply or not at all;
- l. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;
- m. failing to create safer alternative designs for cigarettes including nicotine free or reduced nicotine cigarettes;
- n. falsely labeling and branding cigarettes as filtered, "light" "low tar" and "ultra light;"
- o. prior to July 1, 1969, failing to warn and/or adequately warn foreseeable users, such as NOREEN THOMPSON, of the dangerous and deadly nature of cigarettes;
- p. prior to July 1, 1969, failing to warn foreseeable users, such as NOREEN THOMPSON, that they could develop fatal injuries including, but not limited to, emphysema, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;
- q. prior to July 1, 1969, 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;

1 r. prior to July 1, 1969, failing to warn foreseeable users, such as NOREEN
2 THOMPSON, that quitting and/or limiting use of cigarettes would be extremely
3 difficult, particularly if users started smoking at an early age;

4 s. prior to July 1, 1969, failing to disclose to consumers of cigarettes, such as NOREEN
5 THOMPSON, the results of scientific research conducted by and/or known to
6 Defendants that cigarettes may be dangerous, defective, and/or addictive.
7

8 169. NOREEN THOMPSON was unaware of the defective and unreasonably dangerous
9 condition of Defendants' cigarettes, and at a time when such products were being used in the manner
10 and for the purposes which Defendants' intended, was exposed to, breathed smoke from, and inhaled
11 Defendants' cigarettes.

12 170. Defendants knew their cigarettes would be used without inspection for defects, and by
13 placing them on the market, represented to foreseeable users, including NOREEN THOMPSON, that
14 they would be safe.
15

16 171. NOREEN THOMPSON was unaware of the hazards and defects in Defendants'
17 cigarettes, to-wit, that exposure to said products would cause NOREEN THOMPSON to become
18 addicted and develop lung cancer and ultimately cause her death.

19 172. Defendants' actions were the actual and proximate or legal cause of NOREEN
20 THOMPSON'S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN
21 THOMPSON'S love, companionship, comfort, affection, society, and moral support, and have
22 suffered great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars
23 (\$15,000.00). As NOREEN THOMPSON'S heir, Plaintiff seeks these damages pursuant to NRS
24 41.085(4).
25

26 173. As a further actual and proximate or legal result of Defendants' actions, NOREEN
27 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heir,
28

1 Plaintiff seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS
2 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

3 174. As a further actual and proximate or legal result of Defendants' actions, NOREEN
4 THOMPSON'S estate incurred special damages, to include medical expenses and funeral expenses,
5 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of
6 NOREEN THOMPSON'S Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
7 41.085(5).
8

9 175. Defendants' conduct was despicable and so contemptible that it would be looked down
10 upon and despised by ordinary decent people and was carried on by Defendants with willful and
11 conscious disregard for the safety of anyone in the community.

12 176. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
13 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
14 example of Defendants, and to deter similar conduct in the future. As personal representative of
15 NOREEN THOMPSON'S estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant
16 to NRS 41.085(5).
17

18 177. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
19 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
20 their employees, agents, and/or servants, as set forth herein.
21

22 178. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the
23 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys'
24 fees and costs of suit.
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FOURTH CLAIM FOR RELIEF

(STRICT PRODUCTS LIABILITY)

**Dolly Rowan as Administrator of the Estate of Noreen Thompson
Against Defendants R.J. Reynolds and Liggett**

179. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 114 and 155-178 and incorporates the same herein by reference.

180. Plaintiff, DOLLY ROWAN, brings this claim as Administrator of the Estate of NOREEN THOMPSON pursuant to NRS 41.100.

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

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

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

184. Defendants' defective and unreasonably dangerous cigarettes reached NOREEN THOMPSON without substantial change in condition from that in which such products were when they left the possession of Defendants.

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

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

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

188. Defendants' purposely designed and/or manufactured cigarettes to be defective and unreasonably dangerous by doing the following, including but not limited to:

- a. manipulating levels of nicotine in cigarettes to make them more addictive;
- b. manipulating ingredients in cigarettes to make them inhalable;
- c. genetically modifying nicotine in tobacco plants;
- d. blending different types of tobacco to obtain a desired amount of nicotine;
- e. engineering cigarettes to be rapidly inhaled into the lungs;
- f. adding chemicals and other deadly, poisonous compounds to cigarettes;
- g. adding and/or manipulating compounds such as ammonia and diammonium phosphate to Defendants' cigarettes to "free-base" nicotine;
- h. manipulating levels of pH in Defendants' cigarettes;
- i. manipulating and adding deadly and harmful additives, compounds, and ingredients in their cigarette design and manufacturing process when alternative, less dangerous materials were available;
- j. intentionally failing to filter out harmful substances so that during ordinary use, such materials would not be liberated into the air and/or breathed by the smoker such as the Decedent herein;
- k. designing, through the use of filters, manufacturing methods, engineering methods and/or materials, cigarettes in such a way to make smoking them more tasteful, pleasurable and less likely to trigger the smoker's own biological self defense mechanisms which otherwise may have limited and/or altered the smoker's behavior in such a way that the smoker may have smoked less, inhaled less deeply or not at all;
- l. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;

1 m. failing to create safer alternative designs for cigarettes including nicotine free or
2 reduced nicotine cigarettes;

3 n. falsely labeling and branding cigarettes as filtered, “light” “low tar” and “ultra light;”

4 189. NOREEN THOMPSON was unaware of the defective and unreasonably dangerous
5 condition of Defendants’ cigarettes, and at a time when such products were being used for the purposes
6 for which they were intended, was exposed to, breathed smoke from, and inhaled Defendants’
7 cigarettes.
8

9 190. Defendants knew their cigarettes would be used without inspection for defects, and by
10 placing them on the market, represented to foreseeable users, including NOREEN THOMPSON, that
11 they would be safe.

12 191. NOREEN THOMPSON was unaware of the hazards and defects in Defendants’
13 cigarettes, to-wit: that exposure to said products would cause NOREEN THOMPSON to become
14 addicted and develop lung cancer and ultimately caused her death.
15

16 192. Defendants’ actions are an actual and proximate or legal cause of NOREEN
17 THOMPSON’S injuries. NOREEN THOMPSON thereby experienced great pain, and anxiety her
18 body and mind. NOREEN THOMPSON sustained injuries and damages in an amount in excess of
19 Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as Administrator of
20 the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.
21

22 193. As a further actual and proximate or legal result of Defendants’ actions NOREEN
23 THOMPSON underwent medical treatment and incurred past medical and/or incidental expenses. The
24 exact amount of such damages is unknown at this present time, but NOREEN THOMPSON suffered
25 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY ROWAN, as
26 Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages pursuant to
27 NRS 41.100.
28

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

195. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS 41.100.

196. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of their employees, agents, and/or servants, as set forth herein.

197. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys' fees and costs of suit.

FIFTH CLAIM FOR RELIEF

(WRONGFUL DEATH - FRAUDULENT MISREPRESENTATION)

Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan as Heir of Noreen Thompson Against Defendants R.J. Reynolds and Liggett

198. Plaintiff repeats and realleges the allegations contained in the paragraphs 1 through 114 and incorporates the same herein by reference.

199. Plaintiff brings this wrongful death claim based on a fraudulent misrepresentation claim against Defendants R.J. Reynolds and Liggett.

200. Plaintiff, DOLLY ROWAN, is the heir of NOREEN THOMPSON, along with her siblings Navona Collison and Russell Thompson.

1 201. Plaintiff, DOLLY ROWAN, brings this cause of action pursuant to NRS 41.085(4), as
2 heir of NOREEN’S Estate.

3 202. Plaintiff, DOLLY ROWAN, is the Personal Representative of the Estate of NOREEN
4 THOMPSON.

5 203. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the
6 Estate of NOREEN THOMPSON.

7 204. Beginning at an exact time unknown to Plaintiff, and continuing even today, the
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, the government, and
10 others, as to the health hazards and addictive nature of cigarettes, through false statements and/or
11 misrepresentations of material facts.

12 205. The cigarette manufacturers, including Defendants herein, made literally thousands of
13 misrepresentations to the decedent and others similarly situated over the course of the last fifty years.
14 Plaintiff is unable to allege in full these misrepresentations, which are found in thousands of pre-1969
15 advertisements, continuing press releases, testimony by cigarette manufacturers' officers and employees
16 before Congress and other governmental entities, etc., that the cigarette manufacturers and their co-
17 conspirators , THE TOBACCO INSTITUTE, INC. ("TI") formed in 1958, TOBACCO INDUSTRY
18 RESEARCH COMMITTEE ("TIRC") formed in 1954, and COUNCIL for TOBACCO RESEARCH
19 ("CTR") formed in 1964 and previously known as the TIRC, both because she does not have access to
20 this information, and because to allege each and every such misrepresentation and/or false statement here
21 would entail hundreds or even thousands of pages of pleadings. I Indeed, it is the cigarette manufacturers
22 themselves, including Defendants herein, that have this knowledge and information, and are in the best
23 position to know the contents of each and every such misrepresentation and/or false statement.
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1 206. Defendants made intentional misrepresentations, false promises, concealed
2 information, and failed to disclose material information concerning the health effects and addictive
3 nature of cigarettes to NOREEN THOMPSON, the public, and the American government.

4 207. Defendants carried out their campaign of fraud, false statements, and/or
5 misrepresentations in the following ways, without limitation:
6

- 7 a. Defendants falsely represented to NOREEN THOMPSON that questions about
8 smoking and health would be answered by unbiased, trustworthy sources;
- 9 b. Defendants misrepresented and confused facts about health hazards of cigarettes and
10 nicotine addiction;
- 11 c. Defendants, along with other cigarette manufacturers, spent billions of dollars hiring
12 lawyers, fake scientists, and public relations firms to misdirect purported “objective”
13 scientific research;
- 14 d. Defendants discouraged meritorious litigation by engaging in “scorched earth” tactics,
15 as noted in a previously secret 1988 document: “to paraphrase General Patton, the way
16 we won these cases was not by spending all of [their] money, but by making that other
17 son of a bitch spend all of his;”
18
- 19 e. Defendants suppressed and distorted evidence concerning the health effects and
20 addictive nature of cigarettes to protect their existence and profits;
- 21 f. Defendants designed, marketed, and sold so-called “filtered” and “light” cigarettes
22 despite knowing internally that such cigarettes were just as addictive, dangerous, and
23 deadly as “regular” cigarettes.
24
- 25 i. Defendants knew their system to measure the tar and nicotine was neither a
26 valid nor reliable way to measure the amount of tar and nicotine inhaled by an
27 actual smoker.
28

- 1 ii. Notwithstanding same, the Defendants marketed “Light” cigarettes to
2 consumers as a safer alternative based upon said measuring system.
- 3 iii. Defendants manipulated the design of cigarettes to produce test results that
4 were artificially low.
- 5 iv. Defendants knew that “Light” cigarette smokers compensate to obtain the same
6 level of tar or nicotine as non-light cigarettes either by taking more puffs on
7 each cigarette, by taking larger, longer or deeper puffs, and/or by smoking more
8 cigarettes.
- 9
- 10 g. Defendants continued to fraudulently market and sell “mild”, “low tar”, and “light”
11 cigarettes through 2010 despite knowing they were no safer than ‘full flavor’ cigarettes
12 and knowing consumers perceived them as safer.
- 13 i. The cigarette manufacturers, including Defendants herein, were ultimately
14 prohibited by Congress from marketing “mild”, “low tar”, and “light” cigarettes
15 when Congress passed the Family Smoking Prevention and Tobacco Control
16 Act, Public Law 111-31 (June 22, 2009), which became effective on June 22,
17 2010.
- 18
- 19 ii. Despite the congressional ban, the cigarette manufacturers, including
20 Defendants herein, have continued to market and sell even today the same
21 “mild”, “low tar”, and “light” cigarettes, only now these cigarettes are marketed
22 with a new package coloring scheme in order to get around the banned light
23 descriptors.
- 24
- 25 iii. These cigarettes are the same or substantially the same as the pre-prohibition
26 “mild”, “light”, and “low tar” cigarettes. By design, consumers often perceive
27
28

1 the color descriptors on packaging as suggesting the cigarettes are less harmful
2 to smoke than regular or full flavor brands.

3 iv. The cigarette manufacturers, including Defendants herein, are thus able to
4 continue fraudulently misrepresenting the “light”, “low tar” and “mild”
5 cigarette marketing the ban was designed to prevent.
6

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

11 209. Defendants made multiple misrepresentations to NOREEN THOMPSON, including
12 misrepresentations and misleading statements in advertisements, news programs and articles, media
13 reports, and press releases, concerning the health effects and addictive nature of cigarettes, including
14 “light” and “low tar” cigarettes.
15

16 210. Throughout the years, Defendants and co-conspirators have repeatedly stated that
17 cigarettes were not dangerous, and that they would either remove harmful constituents or stop making
18 cigarettes altogether. Some examples include:

- 19 a. A 1970 advertisement from the Tobacco Institute said: “[t]he Tobacco Institute
20 believes the American public is entitled to complete, authenticated information
21 about cigarette smoking and health.”
- 22 b. In 1971, Joseph Cullman, Chairman of Philip Morris, stated on Face the Nation,
23 “we do not believe that cigarettes are hazardous; we don’t accept that.”
- 24 c. In 1972 Philip Morris vice president James Bowling repeated the company’s
25 promise to consumers two decades earlier that “if our product is harmful, we’ll
26 stop making it.”
- 27 d. Bowling repeated the company’s position on smoking and health in a 1976
28 interview when he noted: “from our standpoint, if anyone ever identified any
ingredient in tobacco smoke as being hazardous to human health or being
something that shouldn’t be there, we could eliminate it. But no one ever has.”

- e. In a 1978 magazine interview William Dwyer, vice president of the Tobacco Institute, stated: “we take the view that the best science can say is that cigarette smoking may be hazardous. And then it may not be.”
- f. A 1978 Philip Morris publication entitled “Facts About the Smoking Controversy” stated: “scientists have not determined what causes cancer...cigarettes have never been proven unsafe.”
- g. In 1985, R.J. Reynolds took out advertisements in major newspapers and magazines which stated: “We believe in science. That is why we continue to provide funding for independent research into smoking and health...Science is science. Proof is proof. That is why the controversy over smoking and health remains an open one.”

211. Defendants continued to make these and similar statements well into the 1990s, with the goal of convincing consumers to start and keep smoking, not reduce their smoking, and/or not quit.

212. Defendants and the tobacco industry promoted their message through many press releases and statements and through less obvious methods, including influencing the content of apparently neutral articles and cultivating opinion leaders who would convey their message. Defendant and the tobacco industry communicated their message through all forms of available media, including newspapers, magazines, and television.

213. Industry spokespersons appeared on news shows, on commercials and public television to state falsely that the evidence concerning the health effects of tobacco was based primarily on statistical relationships and that there was no proof that a specific tobacco component caused a specific disease and that cigarette smoking was not addictive.

214. Cigarette manufacturers when sued denied that cigarettes were addictive and claimed that smoking was a matter of free choice and that smokers could simply quit smoking if they so wanted.

215. Cigarette manufacturers claimed attorney-client privilege to shield as many documents as possible from disclosure and destroyed and/or refused to produce documents related to health issues and plaintiffs’ claims.

216. Cigarette manufacturers, when sued for smoking-related injuries, conducted the litigation in such a way as to cause the maximum expenditure of time and resources by the claimants for the purposes of exhausting their adversaries' resources and to discourage other meritorious litigation.

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

218. These misrepresentations and false statements also include the following statements which were heard, read, and relied upon by Decedent, NOREEN THOMPSON, who remembered these statements or substantially similar statements, made by Defendants, their co-conspirators, and their spokespeople:

- a. That the addictive nature and health effects of smoking were matters of "open debate."
- b. "It is not known whether cigarettes cause cancer, it has not been casually established."
Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline 1984.
- c. "Despite all of the research to date there has been no causal link established [between cigarette smoking and cancer]." Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline 1984.
- d. "There is absolutely no proof that cigarettes are addictive." Edward Horrigan, CEO of R.J. Reynolds, Congressional Testimony 1982.
- e. "Claims that cigarettes are addictive [are] irresponsible and scare tactics." Tobacco Industry Response to 1988 United States Surgeon General's Report.
- f. "To my knowledge, it's not been proven that cigarette smoking causes cancer."
William Campbell, CEO Philip Morris, Congressional Testimony, 1993.

219. The aforementioned acts, false statements and/or misrepresentations which were made

1 and/or caused to be made by the cigarette manufacturers, either directly or indirectly including
2 Defendants herein and their co-conspirators, were justifiably relied upon by NOREEN THOMPSON,
3 resulted in NOREEN THOMPSON being unaware of the extent of the danger of the Defendant's
4 cigarette products, the addictive nature of Defendants' cigarette products, and that filtered and "light"
5 cigarettes were just as dangerous as regular and/or unfiltered cigarettes.

6
7 220. Furthermore, NOREEN THOMPSON relied on Defendants' false and misleading
8 marketing and advertisements of cigarettes, which caused her to start and continue smoking filtered
9 cigarettes, including but not limited to the following:

- 10 a. False and misleading commercials.
- 11 b. False and misleading marketing gimmicks and jingles including but not limited to the
12 Winston Jingle "Winston takes good like a cigarette should," the iconic "Marlboro
13 Man," "Marlboro Country," "Walk a Mile for Camel," "Joe Camel," Lucile Ball, and
14 Rawhide.
- 15 c. False and misleading marketing tactics regarding "filtered" cigarettes which caused
16 Mrs. Thompson to smoke a filtered cigarette and continue to smoke a filtered cigarette
17 and become addicted to a filtered cigarette which caused and contributed to her
18 developing lung cancer.

19
20 221. NOREEN THOMPSON, during the course of her smoking history, heard some or all
21 of the false or misleading statements and/or similar statements made directly or indirectly by the
22 Defendants, believed some or all of the Defendants' false or misleading statements and relied upon
23 them to her detriment, and smoked and/or continued to smoke cigarettes based on such false or
24 misleading statements.

25
26 222. The aforementioned acts, false statements and/or misrepresentations which were made
27 and/or caused to be made by the cigarette manufacturers, including Defendants herein, and their co-
28

1 conspirators were justifiably relied upon by NOREEN THOMPSON, resulted in her being unaware
2 of the extent of the danger of the Defendants' cigarette products, the addictive nature of Defendants'
3 cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as dangerous as
4 regular and/or unfiltered cigarettes. Such acts, false statements and/or misrepresentations were made
5 by the Defendants who had knowledge superior to NOREEN THOMPSON regarding the health
6 aspects and addictive nature of cigarettes.
7

8 223. As a direct and proximate result of these aforementioned statements, Decedent,
9 NOREEN THOMPSON, continued to smoke cigarettes which caused or contributed her developing
10 lung cancer.

11 224. If NOREEN THOMPSON had known the true health hazards and addictive nature of
12 cigarettes, she would not have started smoking, nor smoked light, low tar, and/or filtered cigarettes.
13 nor continued to smoke for many years.
14

15 225. As a direct and proximate result of these aforementioned statements, Decedent,
16 NOREEN THOMPSON, relied upon the assurances from the tobacco industry, including statements
17 and sworn congressional testimony from Defendants' CEOs and also statements from the Defendants'
18 spokesmen and women hired by Defendants and their co-conspirators, and as a direct and proximate
19 result of that reliance, continued to smoke cigarettes.
20

21 226. Defendants made intentional misrepresentations to Decedent, NOREEN THOMPSON,
22 in the following ways:

- 23 a. The aforementioned representations were regarding material facts about cigarettes and
24 were knowingly false;
- 25 b. Defendants knew said representations were false at the time they made such statements;
- 26 c. Defendants knew NOREEN THOMPSON did not possess sufficient information to
27 understand or appreciate the dangers of cigarettes;
28

- d. Defendants intended to induce NOREEN THOMPSON, and did indeed induce NOREEN THOMPSON, to rely upon the aforementioned false representations/acts/statements;
- e. NOREEN THOMPSON was unaware of the falsity of Defendants' aforementioned false representations/acts/statements;
- f. NOREEN THOMPSON was justified in relying upon Defendants' misrepresentations because they were made by Defendants, who possessed superior knowledge regarding the health hazards and addictive nature of cigarettes;
- g. As a direct and proximate and/or legal cause of Defendants' intentional misrepresentations, NOREEN THOMPSON became addicted to cigarettes and developed lung cancer, which caused her death.

227. Furthermore, Defendants made false promises to Decedent, NOREEN THOMPSON, in the following ways:

- a. By making false promises to the public, including NOREEN THOMPSON that Defendants would (i) cooperate with public health, including the Surgeon General, (ii) conduct allegedly "objective" research regarding the addictive nature and health hazards of cigarettes, (ii) remove any harmful elements to cigarettes, if there were any, (iv) form purported "objective" research committees dedicated to undertaking an interest in health as its "basic responsibility paramount to every other consideration," (v) falsely pledging to provide aid and assistance to research cigarette use and health and others;
- b. At all times material, Defendants did not intend to keep their promises;
- c. Defendants made these promises with the intent to induce Decedent to begin and continue smoking;

- 1 d. NOREEN THOMPSON was unaware of Defendants' intention not to perform their
2 promises;
3 e. NOREEN THOMPSON acted in reliance upon Defendants' promises;
4 f. NOREEN THOMPSON was justified in relying upon Defendants' promises;
5 g. As a direct and proximate and/or legal cause of Defendants' false promises, NOREEN
6 THOMPSON became addicted to cigarettes and developed lung cancer, which caused
7 her death.
8

9 228. Defendants' conduct was the actual and proximate or legal cause of NOREEN
10 THOMPSON'S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN
11 THOMPSON'S love, companionship, comfort, affection, society, and moral support, and have
12 suffered great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars
13 (\$15,000.00). As NOREEN THOMPSON'S heir, Plaintiff seeks these damages pursuant to NRS
14 41.085(4).
15

16 229. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
17 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heir,
18 Plaintiff seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS
19 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).
20

21 230. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
22 THOMPSON'S estate incurred special damages, to include medical expenses and funeral expenses,
23 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of
24 NOREEN THOMPSON'S Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
25 41.085(5).
26
27
28

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

232. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future. As personal representative of NOREEN THOMPSON'S estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS 41.085(5).

233. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of their employees, agents, and/or servants, as set forth herein.

234. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys' fees and costs of suit.

SIXTH CLAIM FOR RELIEF

(FRAUDULENT MISREPRESENTATION)

Dolly Rowan as Administrator of the Estate of Noreen Thompson Against Defendants R.J. Reynolds, and Liggett

235. Plaintiff repeats and realleges each and every allegation as contained in paragraphs 1 through 114 and 198 through 234 and incorporates the same herein by reference.

236. Plaintiff, DOLLY ROWAN, brings this claim as Administrator of the Estate of NOREEN THOMPSON pursuant to NRS 41.100.

237. Beginning at an exact time unknown to Plaintiff, and continuing even today, the cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a

1 campaign designed to deceive the public, including NOREEN THOMPSON, the government, and
2 others, as to the health hazards and addictive nature of cigarettes, through false statements and/or
3 misrepresentations of material facts.

4 238. The cigarette manufacturers, including Defendants herein, made literally thousands of
5 misrepresentations to the decedent and others similarly situated over the course of the last fifty years.
6 Plaintiff is unable to allege in full these misrepresentations, which are found in thousands of pre-1969
7 advertisements, continuing press releases, testimony by cigarette manufacturers' officers and employees
8 before Congress and other governmental entities, etc., that the cigarette manufacturers and their co-
9 conspirators TI (formed in 1958), TIRC (formed in 1954), and CTR (formed in 1964)), both because she
10 does not have access to this information, and because to allege each and every such misrepresentation
11 and/or false statement here would entail hundreds or even thousands of pages of pleadings. I Indeed, it is
12 the cigarette manufacturers themselves, including Defendants herein, that have this knowledge and
13 information, and are in the best position to know the contents of each and every such misrepresentation
14 and/or false statement.

15 239. Defendants made intentional misrepresentations, false promises, concealed
16 information, and failed to disclose material information concerning the health effects and addictive
17 nature of cigarettes to NOREEN THOMPSON, the public, and the American government.

18 240. Defendants carried out their campaign of fraud, false statements, and/or
19 misrepresentations in the following ways, without limitation:

- 20 a. Defendants falsely represented to NOREEN THOMPSON that questions about
21 smoking and health would be answered by unbiased, trustworthy sources;
22 b. Defendants misrepresented and confused facts about health hazards of cigarettes and
23 nicotine addiction;
24
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- 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, as noted in a previously secret 1988 document: “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 concerning the health effects and addictive nature of cigarettes to protect their existence and profits;
- f. Defendants designed, marketed, and sold so-called “filtered” and “light” cigarettes despite knowing internally that such cigarettes were just as addictive, dangerous, and deadly as “regular” cigarettes.
 - i. Defendants knew their system to measure the tar and nicotine was neither a valid nor reliable way to measure the amount of tar and nicotine inhaled by an actual smoker.
 - ii. Notwithstanding same, the Defendants marketed “Light” cigarettes to consumers as a safer alternative based upon said measuring system.
 - iii. Defendants manipulated the design of cigarettes to produce test results that were artificially low.
 - iv. Defendants knew that “Light” cigarette smokers compensate to obtain the same level of tar or nicotine as non-light cigarettes either by taking more puffs on each cigarette, by taking larger, longer or deeper puffs, and/or by smoking more cigarettes.

1 g. Defendants continued to fraudulently market and sell “mild”, “low tar”, and “light”
2 cigarettes through 2010 despite knowing they were no safer than ‘full flavor’ cigarettes
3 and knowing consumers perceived them as safer.

4 i. The cigarette manufacturers, including Defendants herein, were ultimately
5 prohibited by Congress from marketing “mild”, “low tar”, and “light” cigarettes
6 when Congress passed the Family Smoking Prevention and Tobacco Control
7 Act, Public Law 111-31 (June 22, 2009), which became effective on June 22,
8 2010.

9
10 ii. Despite the congressional ban, the cigarette manufacturers, including
11 Defendants herein, have continued to market and sell even today the same
12 “mild”, “low tar”, and “light” cigarettes, only now these cigarettes are marketed
13 with a new package coloring scheme in order to get around the banned light
14 descriptors.

15
16 iii. These cigarettes are the same or substantially the same as the pre-prohibition
17 “mild”, “light”, and “low tar” cigarettes. By design, consumers often perceive
18 the color descriptors on packaging as suggesting the cigarettes are less harmful
19 to smoke than regular or full flavor brands.

20
21 iv. The cigarette manufacturers, including Defendants herein, are thus able to
22 continue fraudulently misrepresenting the “light”, “low tar” and “mild”
23 cigarette marketing the ban was designed to prevent.

24 241. Cigarette manufacturers, including Defendants herein, knew cigarettes were dangerous
25 and addictive. It became their practice, purpose, and goal to question any scientific research which
26 concluded cigarettes were dangerous. They did this through misleading media campaigns, mailings
27 to doctors and other scientific professionals, and testimony before governmental bodies.
28

242. Defendants made multiple misrepresentations to NOREEN THOMPSON, including misrepresentations and misleading statements in advertisements, news programs and articles, media reports, and press releases, concerning the health effects and addictive nature of cigarettes, including “light” and “low tar” cigarettes.

243. Throughout the years, Defendants and co-conspirators have repeatedly stated that cigarettes were not dangerous, and that they would either remove harmful constituents or stop making cigarettes altogether. Some examples include:

- a. A 1970 advertisement from the Tobacco Institute said: “[t]he Tobacco Institute believes the American public is entitled to complete, authenticated information about cigarette smoking and health.”
- b. In 1971, Joseph Cullman, Chairman of Philip Morris, stated on Face the Nation, “we do not believe that cigarettes are hazardous; we don’t accept that.”
- c. In 1972 Philip Morris vice president James Bowling repeated the company’s promise to consumers two decades earlier that “if our product is harmful, we’ll stop making it.”
- d. Bowling repeated the company’s position on smoking and health in a 1976 interview when he noted: “from our standpoint, if anyone ever identified any ingredient in tobacco smoke as being hazardous to human health or being something that shouldn’t be there, we could eliminate it. But no one ever has.”
- e. In a 1978 magazine interview William Dwyer, vice president of the Tobacco Institute, stated: “we take the view that the best science can say is that cigarette smoking may be hazardous. And then it may not be.”
- f. A 1978 Philip Morris publication entitled “Facts About the Smoking Controversy” stated: “scientists have not determined what causes cancer...cigarettes have never been proven unsafe.”
- g. In 1985, R.J. Reynolds took out advertisements in major newspapers and magazines which stated: “We believe in science. That is why we continue to provide funding for independent research into smoking and health...Science is science. Proof is proof. That is why the controversy over smoking and health remains an open one.”

244. Defendants continued to make these and similar statements well into the 1990s, with the goal of convincing consumers to start and keep smoking, not reduce their smoking, and/or not quit.

1 245. Defendants and the tobacco industry promoted their message through many press
2 releases and statements and through less obvious methods, including influencing the content of
3 apparently neutral articles and cultivating opinion leaders who would convey their message.
4 Defendant and the tobacco industry communicated their message through all forms of available media,
5 including newspapers, magazines, and television.
6

7 246. Industry spokespersons appeared on news shows, on commercials and public television
8 to state falsely that the evidence concerning the health effects of tobacco was based primarily on
9 statistical relationships and that there was no proof that a specific tobacco component caused a specific
10 disease and that cigarette smoking was not addictive.

11 247. Cigarette manufacturers when sued denied that cigarettes were addictive and claimed that
12 smoking was a matter of free choice and that smokers could simply quit smoking if they so wanted.
13

14 248. Cigarette manufacturers claimed attorney-client privilege to shield as many documents as
15 possible from disclosure and destroyed and/or refused to produce documents related to health issues and
16 plaintiffs' claims.

17 249. Cigarette manufacturers, when sued for smoking-related injuries, conducted the litigation
18 in such a way as to cause the maximum expenditure of time and resources by the claimants for the
19 purposes of exhausting their adversaries' resources and to discourage other meritorious litigation.
20

21 250. These misrepresentations and false statements include, but are not limited to, the
22 aforementioned statements and actions contained herein, including in the *Historical Allegations of*
23 *Defendants Unlawful Conduct Giving Rise to the Lawsuit* section above.

24 251. These misrepresentations and false statements also include the following statements
25 which were heard, read, and relied upon by Decedent, NOREEN THOMPSON, who remembered
26 these statements or substantially similar statements, made by Defendants, their co-conspirators, and
27 their spokespeople:
28

- a. That the addictive nature and health effects of smoking were matters of “open debate.”
- b. “It is not known whether cigarettes cause cancer, it has not been casually established.”
Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline
1984.
- c. “Despite all of the research to date there has been no causal link established [between
cigarette smoking and cancer].” Edward Horrigan, President of R.J. Reynolds Tobacco
Company on ABC Nightline 1984.
- d. “There is absolutely no proof that cigarettes are addictive.” Edward Horrigan, CEO of
R.J. Reynolds, Congressional Testimony 1982.
- e. “Claims that cigarettes are addictive [are] irresponsible and scare tactics.” Tobacco
Industry Response to 1988 United States Surgeon General’s Report.
- f. “To my knowledge, it’s not been proven that cigarette smoking causes cancer.”
William Campbell, CEO Philip Morris, Congressional Testimony, 1993.

252. The aforementioned acts, false statements and/or misrepresentations which were made
and/or caused to be made by the cigarette manufacturers, either directly or indirectly including
Defendants herein and their co-conspirators, were justifiably relied upon by NOREEN THOMPSON,
resulted in NOREEN THOMPSON being unaware of the extent of the danger of the Defendants’
cigarette products, the addictive nature of Defendants’ cigarette products, and that filtered and “light”
cigarettes were just as dangerous as regular and/or unfiltered cigarettes.

253. Furthermore, NOREEN THOMPSON relied on Defendants’ following false and
misleading marketing and advertisements of cigarettes, which caused her to start and continue
smoking filtered cigarettes, without limitation:

- a. False and misleading commercials.
- b. False and misleading marketing gimmicks and jingles including but not limited to the

Winston Jingle “Winston takes good like a cigarette should,” the iconic “Marlboro Man,” “Marlboro Country,” “Walk a Mile for Camel,” “Joe Camel,” Lucile Ball, and Rawhide.

- c. False and misleading marketing tactics regarding “filtered” cigarettes which caused Mrs. Thompson to smoke a filtered cigarette and continue to smoke a filtered cigarette and become addicted to a filtered cigarette which caused and contributed to her developing lung cancer.

254. NOREEN THOMPSON, during the course of her smoking history, heard some or all of the false or misleading statements and/or similar statements made directly or indirectly by the Defendants, believed some or all of the Defendants’ false or misleading statements and relied upon them to her detriment, and smoked and/or continued to smoke cigarettes based on such false or misleading statements.

255. The aforementioned acts, false statements and/or misrepresentations which were made and/or caused to be made by the cigarette manufacturers, including Defendants herein, and their co-conspirators were justifiably relied upon by NOREEN THOMPSON, resulted in her being unaware of the extent of the danger of the Defendants’ cigarette products, the addictive nature of Defendants’ cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as dangerous as regular and/or unfiltered cigarettes. Such acts, false statements and/or misrepresentations were made by the Defendants who had knowledge superior to NOREEN THOMPSON regarding the health aspects and addictive nature of cigarettes.

256. As a direct and proximate result of these aforementioned statements, Decedent, NOREEN THOMPSON, continued to smoke cigarettes which caused or contributed her developing lung cancer.

257. If NOREEN THOMPSON had known the true health hazards and addictive nature of

1 cigarettes, she would not have started smoking, nor smoked light, low tar, and/or filtered cigarettes.
2 nor continued to smoke for many years.

3 258. Decedent, NOREEN THOMPSON, relied upon the assurances from the tobacco
4 industry, including statements and sworn congressional testimony from Defendants' CEOs and also
5 statements from the Defendants' spokesmen and women hired by Defendants and their co-
6 conspirators, and as a direct and proximate result of that reliance, continued to smoke cigarettes.

7
8 259. Defendants made intentional misrepresentations to Decedent, NOREEN THOMPSON,
9 in the following ways:

- 10 a. The aforementioned representations were regarding material facts about cigarettes and
11 were knowingly false;
12
13 b. Defendants knew said representations were false at the time they made such statements;
14
15 c. Defendants knew NOREEN THOMPSON did not possess sufficient information to
16 understand or appreciate the dangers of cigarettes;
17
18 d. Defendants intended to induce NOREEN THOMPSON, and did indeed induce
19 NOREEN THOMPSON, to rely upon the aforementioned false
20 representations/acts/statements;
21
22 e. NOREEN THOMPSON was unaware of the falsity of Defendants' aforementioned
23 false representations/acts/statements;
24
25 f. NOREEN THOMPSON was justified in relying upon Defendants' misrepresentations
26 because they were made by Defendants, who possessed superior knowledge regarding
27 the health hazards and addictive nature of cigarettes;
28
g. As a direct and proximate and/or legal cause of Defendants' intentional
misrepresentations, NOREEN THOMPSON became addicted to cigarettes and
developed lung cancer, which caused her death.

260. Furthermore, Defendants made false promises to Decedent, NOREEN THOMPSON, in the following ways:

- a. By making false promises to the public, including NOREEN THOMPSON that Defendants would (i) cooperate with public health, including the Surgeon General, (ii) conduct allegedly “objective” research regarding the addictive nature and health hazards of cigarettes, (ii) remove any harmful elements to cigarettes, if there were any, (iv) form purported “objective” research committees dedicated to undertaking an interest in health as its “basic responsibility paramount to every other consideration,” (v) falsely pledging to provide aid and assistance to research cigarette use and health and others;
- b. At all times material, Defendants did not intend to keep their promises;
- c. Defendants made these promises with the intent to induce Decedent to begin and continue smoking;
- d. NOREEN THOMPSON was unaware of Defendants’ intention not to perform their promises;
- e. NOREEN THOMPSON acted in reliance upon Defendants’ promises;
- f. NOREEN THOMPSON was justified in relying upon Defendants’ promises;
- g. As a direct and proximate and/or legal cause of Defendants’ false promises, NOREEN THOMPSON became addicted to cigarettes and developed lung cancer, which caused her death.

261. Defendants’ conduct is an actual and proximate or legal cause of NOREEN THOMPSON’S injuries. NOREEN THOMPSON thereby experienced great pain, and anxiety her body and mind. NOREEN THOMPSON’S sustained injuries and damages in an amount in excess of

1 Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as Administrator of
2 the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.

3 262. As a further actual and proximate or legal result of Defendants' conduct NOREEN
4 THOMPSON underwent medical treatment and incurred past medical and/or incidental expenses. The
5 exact amount of such damages is unknown at this present time, but NOREEN THOMPSON suffered
6 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY NOREEN, as
7 Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages pursuant to
8 NRS 41.100.

9
10 263. Defendants' conduct was despicable and so contemptible that it would be looked down
11 upon and despised by ordinary decent people and was carried on by Defendants with willful and
12 conscious disregard for the safety of anyone in the community.

13
14 264. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
15 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
16 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of
17 NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS
18 41.100.

19
20 265. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
21 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
22 their employees, agents, and/or servants, as set forth herein.

23 266. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the
24 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys'
25 fees and costs of suit.

SEVENTH CLAIM FOR RELIEF

(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)

**Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan
as Heir of Noreen Thompson Against Defendants R.J. Reynolds and Liggett**

267. Plaintiff repeats and realleges the allegations contained in the paragraphs 1-114 and 198 – 266 and incorporates the same herein by reference.

268. Plaintiff brings this wrongful death claim based on a fraudulent concealment claim against Defendants R.J. Reynolds and Liggett.

269. Plaintiff, DOLLY ROWAN, is the heir of NOREEN THOMPSON, along with her two siblings.

270. Plaintiff, DOLLY ROWAN, brings this cause of action pursuant to NRS 41.085(4), as heir of NOREEN THOMPSON’S Estate.

271. Plaintiff, DOLLY ROWAN, is the Personal Representative of the Estate of NOREEN THOMPSON.

272. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the Estate of NOREEN THOMPSON.

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

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

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

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

- a. the highly addictive nature of nicotine in cigarettes;
- b. the design of cigarettes to make them more addictive and easier to inhale;
- c. the manipulating and controlling of nicotine content of their products to create and perpetuate users' addiction to cigarettes;
- d. the manufacturing and engineering process of making cigarettes, including adding chemicals and other deadly, poisonous compounds to cigarettes;
- e. the deliberate use of ammonia technology and/or certain tobacco blends to boost the pH of cigarette smoke to "free base" nicotine in cigarettes;
- f. their intentional use of tobacco high in nitrosamines—a potent carcinogen not found in natural, green tobacco leaf, but created during the tobacco curing process;
- g. their scheme to target and addict children to replace customers who were dying from smoking cigarettes;
- h. the true results of their research regarding the dangers posed by smoking cigarettes and the addictive nature of 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

1 nicotine, have certain unattractive side effects:

- 2 1. They cause, or predispose to, lung cancer.
- 3 2. They contribute to certain cardiovascular disorders.
- 4 3. They may well be truly causative in emphysema, etc.

- 5 i. the risks of contracting cancer, including but not limited to laryngeal cancer,
- 6 esophageal cancer, other head and neck cancers, oral cancer, emphysema, COPD, lung
- 7 cancer, heart disease, strokes, bladder cancer, and other forms of cancer;
- 8 j. filtered, low tar, low nicotine, and/or “light” cigarettes were not safe, safer, or less
- 9 dangerous than “regular” cigarettes;
- 10 k. the Federal Trade Commission (“FTC”) method of measuring “tar & nicotine” levels
- 11 underestimated and did not accurately reflect the levels of tar and nicotine delivered to
- 12 a smoker;
- 13 l. by continuing even today to fraudulently market and sell multiple brands as “filtered”
- 14 knowing that smokers wrongly believe that filtered cigarettes reduce the harms of
- 15 smoking and despite knowing internally that such cigarettes are just as addictive,
- 16 dangerous, and deadly as non-filtered cigarettes.

18 277. Cigarette manufacturers, including Defendants herein, through their actions, funding,
19 and involvement with TIRC/CTR, also concealed and/or made fraudulent statements and
20 misrepresentations to the public, including NOREEN THOMPSON, including but not limited to the
21 following:

- 23 a. falsely concealing that the true purpose of TIRC/CTR was public relations, politics,
- 24 and positioning for litigation;
- 25 b. falsely pledging to provide aid and assistance to research cigarette use and health;
- 26 c. expressly undertaking a disingenuous interest in health as its “basic responsibility
- 27 paramount to every other consideration;”
- 28

- d. affirmatively assumed a (broken) promise to truthfully disclose adverse information regarding the health hazards of smoking;
- e. purposely created the illusion that scientific research regarding the dangers of cigarettes was being conducted and the results of which would be made public;
- f. concealing information regarding the lack of bona fide research being conducted by TIRC/CTR and the lack of funds being provided for research;
- g. concealing that TIRC/CTR was nothing more than a “public relations” front and shield.

278. 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.

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

280. Throughout the years, Defendants and their co-conspirators have repeatedly stated that cigarettes were not dangerous, and that they would either remove harmful constituents or stop making cigarettes altogether. Some examples include:

- a. A 1970 advertisement from the Tobacco Institute said: “[t]he Tobacco Institute believes the American public is entitled to complete, authenticated information about cigarette smoking and health.”
- b. In 1971, Joseph Cullman, Chairman of Philip Morris, stated on Face the Nation, “we do not believe that cigarettes are hazardous; we don’t accept that.”
- c. In 1972 Philip Morris vice president James Bowling repeated the company’s promise to consumers two decades earlier that “if our product is harmful, we’ll stop making it.”
- d. Bowling repeated the company’s position on smoking and health in a 1976 interview when he noted: “from our standpoint, if anyone ever identified any ingredient in tobacco smoke as being hazardous to human health or being

1 something that shouldn't be there, we could eliminate it. But no one ever has."

2 e. In a 1978 magazine interview William Dwyer, vice president of the Tobacco
3 Institute, stated: "we take the view that the best science can say is that cigarette
4 smoking may be hazardous. And then it may not be."

5 f. A 1978 Philip Morris publication entitled "Facts About the Smoking
6 Controversy" stated: "scientists have not determined what causes
7 cancer...cigarettes have never been proven unsafe."

8 g. In 1985, R.J. Reynolds took out advertisements in major newspapers and
9 magazines which stated: "We believe in science. That is why we continue to
10 provide funding for independent research into smoking and health...Science is
11 science. Proof is proof. That is why the controversy over smoking and health
12 remains an open one."

13 281. Defendants continued to make these and similar statements well into the 1990s with
14 the goal of convincing smokers to start and keep smoking, not reduce their smoking, and/or not quit.

15 282. Defendants and the tobacco industry promoted their message through many press
16 releases and statements and through less obvious methods, including influencing the content of
17 apparently neutral articles and cultivating opinion leaders who would convey their message.
18 Defendants and the tobacco industry communicated their message through all forms of available
19 media, including newspapers, magazines, and television.

20 283. Industry spokespersons appeared on news shows, on commercials and public television
21 to state that the evidence concerning the health effects of tobacco was based primarily on statistical
22 relationships and that there was no proof that a specific tobacco component caused a specific disease
23 and that cigarette smoking was not addictive.

24 284. Cigarette manufacturers when sued denied that cigarettes were addictive and claimed that
25 smoking was a matter of free choice and that smokers could quit smoking if they so wanted.

26 285. Cigarette manufacturers claimed attorney-client privilege to shield as many documents as
27 possible from disclosure and destroyed and/or refused to produce documents related to health issues and
28 plaintiffs' claims.

1 286. Cigarette manufacturers, when sued for smoking-related injuries, conducted the litigation
2 in such a way as to cause the maximum expenditure of time and resources by the claimants for the
3 purposes of exhausting their adversaries' resources and to discourage other meritorious litigation.

4 287. The concealed statements and misrepresentations which concealed material
5 information about the health hazards of cigarettes also include the following statements which were
6 heard, read, and relied upon by Decedent, NOREEN THOMPSON, who remembers these or
7 substantially similar statements made by Defendants, their co-conspirators, and their spokespeople:
8

- 9 a. That the addictive nature and health effects of smoking were matters of “open debate.”
10 “It is not known whether cigarettes cause cancer, it has not been casually established.”
11 Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline
12 1984.
13 b. “Despite all of the research to date there has been no causal link established [between
14 cigarette smoking and cancer.]” Edward Horrigan, President of R.J. Reynolds Tobacco
15 Company on ABC Nightline 1984.
16 c. “There is absolutely no proof that cigarettes are addictive.” Edward Horrigan, CEO of
17 R.J. Reynolds, Congressional Testimony 1982.
18 d. “Claims that cigarettes are addictive [are] irresponsible and scare tactics.” Tobacco
19 Industry Response to 1988 United States Surgeon General’s Report.
20 e. “To my knowledge, it’s not been proven that cigarette smoking causes cancer.”
21 William Campbell, CEO Philip Morris, Congressional Testimony, 1993.
22 288. The aforementioned acts, false statements and/or misrepresentations which were made
23 and/or caused to be made, either directly or indirectly, by the cigarette manufacturers, including
24 Defendants herein and their co-conspirators, were justifiably relied upon by NOREEN THOMPSON
25 and resulted in NOREEN THOMPSON being unaware of the extent of the danger of the Defendants’
26
27
28

1 cigarette products, the addictive nature of Defendants' cigarette products, and that filtered cigarettes
2 were just as dangerous as regular and/or unfiltered cigarettes.

3 289. Furthermore, NOREEN THOMPSON relied on Defendants' following false and
4 misleading marketing and advertisements of cigarettes, which caused her to start and continue
5 smoking filtered cigarettes, including but not limited to the following: :

- 6
- 7 a. False and misleading commercials.
 - 8 b. False and misleading marketing gimmicks and jingles including but not limited to the
9 Winston Jingle "Winston takes good like a cigarette should," the iconic "Marlboro
10 Man," "Marlboro Country," "Walk a Mile for Camel," "Joe Camel," Lucile Ball, and
11 Rawhide.
 - 12 c. False and misleading marketing tactics regarding "filtered" cigarettes which caused
13 Mrs. Thompson to smoke a filtered cigarette and continue to smoke a filtered cigarette
14 and become addicted to a filtered cigarette which caused and contributed to her
15 developing lung cancer.
- 16

17 290. During the course of NOREEN THOMPSON's smoking history, she heard some or
18 all of the false and misleading statements above and/or similar statements made directly or indirectly
19 by Defendants and their co-conspirators, believed some or all of the Defendants' and their co-
20 conspirators' false and misleading statements, and relied to her detriment and continued to smoke
21 cigarettes based on such false and misleading statements.

22

23 291. As a direct and proximate result of these aforementioned statements, Decedent,
24 NOREEN THOMPSON, continued to smoke cigarettes which caused or contributed to her developing
25 lung cancer.

26 292. If NOREEN THOMPSON had known the true health hazards and addictive nature of
27 cigarettes, she would not have started smoking, nor smoked light, low tar, and/or filtered cigarettes,
28

1 nor continued to smoke for many years.

2 293. As a direct and proximate result of these aforementioned statements, Decedent,
3 NOREEN THOMPSON, relied upon the assurances from the tobacco industry, including statements
4 and sworn congressional testimony from Defendants' CEOs and also statements from spokesmen and
5 women hired by Defendants and their co-conspirators, and as a direct and proximate result of that
6 reliance, continued to smoke cigarettes.
7

8 294. NOREEN THOMPSON and others similarly situated justifiably relied upon the
9 cigarette manufacturers, including the Defendants herein, the TIRC, and the CTR to disseminate
10 knowledge and information which they possessed regarding the health hazards of cigarettes, especially
11 after the industry chose to repeatedly and publicly deny the harms of smoking and the addictive nature
12 of cigarettes/nicotine. NOREEN THOMPSON, during the course of her smoking history, heard some
13 or all of these false and misleading statements and/or similar statements made directly or indirectly by
14 the Defendants, believed some or all of the Defendants' false and misleading statements, and relied to
15 her detriment, and smoked and/or continued to smoke cigarettes based on such false and misleading
16 statements.
17

18 295. The aforementioned information and/or knowledge concealed and/or suppressed by the
19 cigarette manufacturers, including Defendants herein and their co-conspirators, was concealed for the
20 purposes of inducing the Decedent to smoke and preventing her from quitting or reducing
21 consumption of cigarettes. NOREEN THOMPSON was unaware of the extent of the danger of the
22 Defendants' cigarette products, the addictive nature of Defendants' cigarette products, and that low
23 tar, low nicotine and/or filtered cigarettes were just as dangerous as unfiltered cigarettes. The
24 knowledge and information concealed by the cigarette manufacturers, including the Defendants
25 herein, who had superior knowledge regarding the health aspects of cigarettes than NOREEN
26 THOMPSON.
27
28

296. Defendants made false promises to Decedent, NOREEN THOMPSON, in the following ways:

- a. Defendants assumed the responsibility to provide NOREEN THOMPSON, and the public, accurate and truthful information about their own products;
- b. Defendants concealed and/or suppressed the aforementioned material facts about the dangers of cigarettes;
- c. Defendants were under a duty to disclose material facts about the dangers of cigarettes to Decedent;
- d. Defendants assumed the duty of disclosing material facts about the dangers of cigarettes through repeated public statements concerning tobacco and health, the need for more research, and the open question about disease causation;
- e. Defendants knew they were concealing material facts about the dangers of cigarettes from Decedent;
- f. Defendants intended to induce Decedent to smoke and become addicted to cigarettes;
- g. Decedent was unaware of the dangerous and addictive nature of cigarettes, and would not have begun or continued to smoke had she known the aforementioned concealed and/or suppressed information Defendants' possessed;
- h. Decedent was unaware of the danger of Defendants' cigarettes, the addictive nature of Defendants' cigarettes, and that low tar, low nicotine, "light," and/or filtered cigarettes were just as dangerous as unfiltered and "regular" cigarettes;
- i. Decedent justifiably relied upon Defendants to disseminate the superior knowledge and information they possessed regarding the dangers of cigarettes;
- j. The concealment and/or suppressed of material facts regarding the hazards of cigarettes caused Decedent to become addicted to cigarettes, and also caused her to develop lung

1 cancer.

2 297. Defendants' conduct was the actual and proximate or legal cause of NOREEN
3 THOMPSON'S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN
4 THOMPSON'S love, companionship, comfort, affection, society, and moral support, and have
5 suffered great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars
6 (\$15,000.00). As NOREEN THOMPSON heir, Plaintiff seeks these damages pursuant to NRS
7 41.085(4).
8

9 298. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
10 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heir,
11 Plaintiff seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS
12 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).
13

14 299. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
15 THOMPSON'S estate incurred special damages, to include medical expenses and funeral expenses,
16 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of
17 NOREEN THOMPSON'S Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
18 41.085(5).
19

20 300. Defendants' conduct was despicable and so contemptible that it would be looked down
21 upon and despised by ordinary decent people and was carried on by Defendants with willful and
22 conscious disregard for the safety of anyone in the community.

23 301. Defendants' 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 Defendants, and to deter similar conduct in the future. As personal representative of
26 NOREEN THOMPSON'S estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant
27 to NRS 41.085(5).
28

1 302. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
2 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
3 their employees, agents, and/or servants, as set forth herein.

4 303. The actions of Defendants 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 attorneys'
6 fees and costs of suit.
7

8
9 **EIGHTH CLAIM FOR RELIEF**
10 **(FRAUDULENT CONCEALMENT)**

11 **Dolly Rowan as Administrator of the Estate of Noreen Thompson Against Defendants R.J.**
12 **Reynolds and Liggett**

13 304. Plaintiff repeats and realleges each and every allegation as contained in paragraphs 1
14 through 114 and 198 through 303 and incorporate the same herein by reference.

15 305. Plaintiff, DOLLY ROWAN, brings this claim as Administrator of the Estate of
16 NOREEN THOMPSON pursuant to NRS 41.100.

17 306. Beginning at an exact time unknown to Plaintiff and continuing today, cigarette
18 manufacturers, including Defendants herein, have carried out, and continue to carry out, a campaign
19 designed to deceive the public, including NOREEN THOMPSON, physicians, the government, and
20 others as to the true dangers and addictive nature of cigarettes.
21

22 307. Cigarette manufacturers, including Defendants herein, carried out their plan by
23 concealing and suppressing facts, information, and knowledge about the dangers of smoking,
24 including addiction.
25

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

311. Defendants also carried out their scheme by concealing their knowledge concerning ,
but not limited to, the following:

- a. the highly addictive nature of nicotine in cigarettes;
- b. the design of cigarettes to make them more addictive and easier to inhale;
- c. the manipulation and controlling of the nicotine content in their cigarettes to create and perpetuate users' addiction to cigarettes;
- d. the manufacturing and engineering process of making cigarettes, including adding chemicals and other deadly, poisonous compounds to cigarettes;
- e. the deliberate use of ammonia technology and/or certain tobacco blends to boost the pH of cigarette smoke to "free base" nicotine in cigarettes;
- f. their intentional use of tobacco high in nitrosamines—a potent carcinogen not found in natural, green tobacco leaf, but created during the tobacco curing process;
- g. their scheme to target and addict children to replace customers who were dying from smoking cigarettes;
- h. the true results of their research regarding the dangers posed by smoking cigarettes and the addictive nature of 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.

- i. the risks of contracting cancer, including but not limited to laryngeal cancer, esophageal cancer, other head and neck cancers, oral cancer, emphysema, COPD, lung cancer, heart disease, strokes, bladder cancer, other forms of cancer;
- j. filtered, low tar, low nicotine, and/or “light” cigarettes were not safe, safer, or less dangerous than “regular” cigarettes;
- k. 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.
- l. continuing even today to fraudulently market and sell multiple brands as “filtered” knowing that smokers wrongly believe that filtered cigarettes reduce the harms of smoking and despite knowing internally that such cigarettes are just as addictive, dangerous, and deadly as non-filtered cigarettes.

312. Cigarette manufacturers, including Defendants herein, through their actions, funding, and involvement with TIRC/CTR, also concealed and/or made fraudulent statements and misrepresentations to the public, including NOREEN THOMPSON, which include the following, without limitation:

- a. falsely concealing the true purpose of TIRC/CTR was public relations, politics, and positioning for litigation;
- b. falsely pledging to provide aid and assistance to research cigarette use and health;
- c. expressly undertaking a disingenuous interest in health as its “basic responsibility paramount to every other consideration;”
- d. assuming the duty of disclosing material facts about the dangers of cigarettes through repeated public statements concerning tobacco and health, the need for more research, and the open question about disease causation;

- e. assuming a (broken) promise to truthfully disclose adverse information regarding the health hazards of smoking;
- f. purposely creating the illusion that scientific research regarding the dangers of cigarettes was being conducted and the results of which would be made public;
- g. concealing information regarding the lack of bona fide research being conducted by TIRC/CTR and the lack of funds being provided for research;
- h. concealing that TIRC/CTR was nothing more than a “public relations” front and shield.

313. 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.

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

315. Throughout the years, Defendants and their co-conspirators have repeatedly stated that cigarettes were not dangerous, and that they would either remove harmful constituents or stop making cigarettes altogether. Some examples include:

- a. A 1970 advertisement from the Tobacco Institute said: “[t]he Tobacco Institute believes the American public is entitled to complete, authenticated information about cigarette smoking and health.”
- b. In 1971, Joseph Cullman, Chairman of Philip Morris, stated on Face the Nation, “we do not believe that cigarettes are hazardous; we don’t accept that.”
- c. In 1972 Philip Morris vice president James Bowling repeated the company’s promise to consumers two decades earlier that “if our product is harmful, we’ll stop making it.”
- d. Bowling repeated the company’s position on smoking and health in a 1976 interview when he noted: “from our standpoint, if anyone ever identified any ingredient in tobacco smoke as being hazardous to human health or being

1 something that shouldn't be there, we could eliminate it. But no one ever has."

2 e. In a 1978 magazine interview William Dwyer, vice president of the Tobacco
3 Institute, stated: "we take the view that the best science can say is that cigarette
4 smoking may be hazardous. And then it may not be."

5 f. A 1978 Philip Morris publication entitled "Facts About the Smoking
6 Controversy" stated: "scientists have not determined what causes
7 cancer...cigarettes have never been proven unsafe."

8 g. In 1985, R.J. Reynolds took out advertisements in major newspapers and
9 magazines which stated: "We believe in science. That is why we continue to
10 provide funding for independent research into smoking and health...Science is
11 science. Proof is proof. That is why the controversy over smoking and health
12 remains an open one."

13 316. Defendants continued to make these and similar statements well into the 1990s with
14 the goal of convincing smokers to start and keep smoking, not reduce their smoking, and/or not quit.

15 317. Defendants and the tobacco industry promoted their message through many press
16 releases and statements and through less obvious methods, including influencing the content of
17 apparently neutral articles and cultivating opinion leaders who would convey their message.
18 Defendant and the tobacco industry communicated their message through all forms of available media,
19 including newspapers, magazines, and television.

20 318. Industry spokespersons appeared on news shows, on commercials and public television
21 to state that the evidence concerning the health effects of tobacco was based primarily on statistical
22 relationships and that there was no proof that a specific tobacco component caused a specific disease
23 and that cigarette smoking was not addictive.

24 319. Cigarette manufacturers when sued denied that cigarettes were addictive and claimed that
25 smoking was a matter of free choice and that smokers could quit smoking if they so wanted.

26 320. Cigarette manufacturers claimed attorney-client privilege to shield as many documents as
27 possible from disclosure and destroyed and/or refused to produce documents related to health issues and
28 plaintiffs' claims.

321. Cigarette manufacturers when sued for smoking-related injuries, conducted the litigation in such a way as to cause the maximum expenditure of time and resources by the claimants for the purposes of exhausting their adversaries' resources and to discourage other meritorious litigation.

322. These concealed statement, misrepresentations and false statements which concealed material information about the health hazards of cigarette also include the following statements which were heard, read, and relied upon by Decedent, NOREEN THOMPSON, who remembered these statements or substantially similar statements, made by Defendants, their co-conspirators, and their spokespeople:

- a. That the addictive nature and health effects of smoking were matters of "open debate."
- b. ;
- c. "It is not known whether cigarettes cause cancer, it has not been casually established."
Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline 1984.
- d. "Despite all of the research to date there has been no causal link established [between cigarette smoking and cancer.]" Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline 1984.
- e. "There is absolutely no proof that cigarettes are addictive." Edward Horrigan, CEO of R.J. Reynolds, Congressional Testimony 1982.
- f. "Claims that cigarettes are addictive is irresponsible and scare tactics." Tobacco Industry Response to 1988 United States Surgeon General's Report.
- g. "To my knowledge, it's not been proven that cigarette smoking causes cancer."
William Campbell, CEO Philip Morris, Congressional Testimony, 1993.

323. The aforementioned acts, false statements and/or misrepresentations which were made and/or caused to be made by the cigarette manufacturers, either directly or indirectly including

1 Defendants herein and their co-conspirators, were justifiably relied upon by NOREEN THOMPSON,
2 resulted in NOREEN THOMPSON being unaware of the extent of the danger of the Defendants'
3 cigarette products, the addictive nature of Defendants' cigarette products, and that filtered cigarettes
4 were just as dangerous as regular and/or unfiltered cigarettes.

5 324. Furthermore, NOREEN THOMPSON relied on Defendants' false and misleading
6 marketing and advertising of cigarettes which caused her to start smoking, and continue smoking
7 filtered cigarettes, including but not limited to the following:
8

- 9 a. False and misleading commercials
- 10 b. False and misleading marketing gimmicks and jingles including but not limited to the
11 Winston Jingle "Winston takes good like a cigarette should," the iconic "Marlboro
12 Man," "Marlboro Country," "Walk a Mile for Camel," "Joe Camel," Lucile Ball, and
13 Rawhide.
- 14 c. False and misleading marketing tactics regarding "filtered" cigarettes which caused
15 Mrs. Thompson to smoke a filtered cigarette and continue to smoke a filtered cigarette
16 and become addicted to a filtered cigarette which caused and contributed to her
17 developing lung cancer.
18

19 325. During the course of Mrs. Thompson's smoking history, she heard some or all of these
20 false and misleading statements above and/or similar statements made directly or indirectly by
21 Defendants and its co-conspirators, believed some or all of the Defendants' and their co-conspirators'
22 false and misleading statements and relied to her detriment and continued to smoke cigarettes based
23 on such false and misleading statements.
24

25 326. As a direct and proximate result of these aforementioned statements, Decedent,
26 NOREEN THOMPSON, continued to smoke cigarettes which caused or contributed to her developing
27 lung cancer.
28

1 327. If NOREEN THOMPSON had known the true health hazards and addictive nature of
2 cigarettes, she would not have started smoking, nor continued to smoke for many years.

3 328. As a direct and proximate result of these aforementioned statements, Decedent,
4 NOREEN THOMPSON, relied upon the assurances from the tobacco industry, including statements
5 and sworn congressional testimony from Defendants' CEOs and also statements from the Defendants'
6 spokesmen and women hired by Defendants and its co-conspirators, and as a result of that reliance,
7 continued to smoke cigarettes.
8

9 329. NOREEN THOMPSON and others similarly situated justifiably relied upon the
10 cigarette manufacturers, including the Defendants herein, the TIRC, and the CTR, to disseminate
11 knowledge and information which they possessed regarding the health hazards of cigarettes, especially
12 after the industry chose to repeatedly and publicly deny the harms of smoking and the addictive nature
13 of cigarettes/nicotine. NOREEN THOMPSON, during the course of her smoking history heard some
14 or all of these false and misleading statements and/or similar statements made directly or indirectly by
15 the Defendants, believed some or all of the Defendants' false and misleading statements and relied to
16 her detriment and smoked and/or continued to smoke cigarettes based on such false and misleading
17 statements.
18

19 330. The aforementioned information and/or knowledge concealed and/or suppressed by the
20 cigarette manufacturers, including Defendants herein, and its co-conspirators was concealed for the
21 purposes of inducing the Decedent to smoke, fail to quit or reduce consumption. NOREEN
22 THOMPSON was unaware of the extent of the danger of the Defendants' cigarette products, the
23 addictive nature of Defendants' cigarette products, and that low tar, low nicotine and/or filtered
24 cigarettes were just as dangerous as unfiltered cigarettes. The knowledge and information concealed
25 by the cigarette manufacturers, including the Defendants herein, was concealed by entities which had
26 superior knowledge regarding the health aspects of cigarettes than NOREEN THOMPSON.
27
28

331. Defendants made false promises to Decedent, NOREEN THOMPSON, in the following ways:

- a. Defendants assumed the responsibility to provide NOREEN THOMPSON, and the public, accurate and truthful information about their own products;
- b. Defendants concealed and/or suppressed the aforementioned material facts about the dangers of cigarettes;
- c. Defendants were under a duty to disclose material facts about the dangers of cigarettes to Decedent;
- d. Defendants knew it was concealing material facts about the dangers of cigarettes from Decedent;
- e. Defendants intended to induce Decedent to smoke and become addicted to cigarettes;
- f. Decedent was unaware of the dangerous and addictive nature of cigarettes, and would not have begun or continued to smoke had she known the aforementioned concealed and/or suppressed information Defendants' possessed;
- g. Decedent was unaware of the danger of Defendants' cigarettes, the addictive nature of Defendants' cigarettes, and that low tar, low nicotine, "light," and/or filtered cigarettes were just as dangerous as unfiltered and "regular" cigarettes;
- h. Decedent justifiably relied upon Defendants to disseminate the superior knowledge and information it possessed regarding the dangers of cigarettes;
- i. The concealment and/or suppressed of material facts regarding the hazards of cigarettes caused Decedent to become addicted to cigarettes, and also caused her to develop lung cancer.

332. Defendants' conduct is an actual and proximate or legal cause of NOREEN THOMPSON'S injuries. NOREEN THOMPSON thereby experienced great pain, and anxiety her

body and mind. NOREEN THOMPSON sustained injuries and damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as Administrator of the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.

333. As a further actual and proximate or legal result of Defendants' conduct NOREEN THOMPSON underwent medical treatment and incurred past medical and/or incidental expenses. The exact amount of such damages is unknown at this present time, but NOREEN THOMPSON suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY ROWAN, as Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages pursuant to NRS 41.100.

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

335. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS 41.100.

336. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of their employees, agents, and/or servants, as set forth herein.

337. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys' fees and costs of suit.

NINTH CLAIM FOR RELIEF

(WRONGFUL DEATH – CIVIL CONSPIRACY)

Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan as Heir of Noreen Thompson Against Defendants R.J. Reynolds, Liggett and Philip Morris

338. Plaintiff repeats and realleges the allegations contained in the paragraphs 1-114 and 198-337 and incorporates the same herein by reference.

339. Plaintiff brings this wrongful death claim based on a civil conspiracy claim against Defendants Philip Morris, R.J. Reynolds, and Liggett.

340. Plaintiff, DOLLY ROWAN, is the heir of NOREEN THOMPSON, along with her siblings.

341. Plaintiff, DOLLY ROWAN, brings this cause of action pursuant to NRS 41.085(4), as heir of NOREEN THOMPSON'S Estate.

342. Plaintiff, DOLLY ROWAN, is the Personal Representative of the Estate of NOREEN THOMPSON.

343. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the Estate of NOREEN THOMPSON.

344. Defendants acted in concert to accomplish an unlawful objective for the purposes of harming Decedent, NOREEN THOMPSON. Defendants' actions include but are not limited to the following:

- a. Defendants, along with other cigarette manufacturers, CTR, TIRC, TI, and 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.

- b. Defendants agreed to execute their scheme by performing the abovementioned unlawful acts and/or by doing lawful acts by unlawful means;
- c. 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;
- d. 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.

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

- a. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
- b. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- c. Marketing and/or advertising lights and ultra-light cigarettes as safer or less hazardous to health;
- d. Knowingly concealing from the public that filtered, low tar, lights, and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes;
- e. Adding “onserts” to packages of cigarettes even after the United States government banned marketing of “light” and “ultra-light” cigarettes;
- f. Continuing to market and/or advertise lights, ultra lights, and low tar cigarettes under color brand name descriptors such as “Gold” and “Silver” and informing smokers “pack will be changing, but your cigarette will stay the same” following the federal ban on the use of “lights”, “mild”, and “low” tar descriptors in 2010;

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

3 h. 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.

5 346. Defendants' actions, as it relates to their acts in furtherance of their conspiracy as
6 alleged in this complaint, continues through the present.

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

10 348. NOREEN THOMPSON relied, both directly and indirectly, on the Defendants'
11 concealment and omission of such information to her detriment. NOREEN THOMPSON, during the
12 course of her smoking history heard, some or all of these false and misleading statements and/or
13 similar statements made directly or indirectly by the Defendants and their co-conspirators, believed
14 some or all of the Defendants' and their co-conspirators' false and misleading statements and relied
15 to her detriment and smoked and/or continued to smoke cigarettes based on such false and misleading
16 statements.

17 349. The success of the conspiracy depended upon the concerted action of the cigarette
18 manufacturers (in a so-called "gentleman's agreement"), for otherwise the revelation by one company
19 of what it knew about the health consequences of smoking and/or the availability of a "safe" or "safer"
20 cigarette and/or the addictive nature of the manufacturers' cigarette would have thwarted the
21 conspiracy.

22 350. Specifically, Defendant PHILIP MORRIS conspired with Defendants R.J.
23 REYNOLDS and LIGGETT to conceal the truth regarding the hazardous and deadly nature of
24 cigarettes by doing the following including but not limited to:

- a. By advertising “light” and “low tar” cigarettes to the public, including NOREEN THOMPSON, to help create and sustain the culture and societal and consumer expectations that “light” cigarettes were better, safer, and healthier than regular cigarettes;
- b. By endeavoring in mass marketing campaigns consistent with R.J. REYNOLDS and LIGGETT’s campaign regarding the appeal of cigarettes including but not limited to their Marlboro County and Marlboro Man campaigns;
- c. By working with R.J. REYNOLDS and LIGGETT to create “fake science” by hiring “fake scientists” to spread “fake scientific research” about the health hazards of smoking cigarettes including but not limited to the following:
 - i. Working with R.J. Reynolds and Liggett to create the Center for Indoor Air Research (“CIAR”) whose intent was to broaden the question of indoor air pollution to avert attention away from tobacco smoking causing disease and death;
 - ii. Creating the “White Papers” which rebutted scientific reports which were critical of tobacco.
- d. By hiring industry spokespeople to appear on national television and media to mislead and lie to the public, including NOREEN THOMPSON, regarding the health hazards of smoking cigarettes including but not limited to the following examples:
 - i. In 1968 an article “To Smoke or Not to smoke – That is still the question” was published in *True* magazine and was authorized by an allegedly independent source Stanley Frank; however, Frank was actually paid \$500 by Brown & Williamson (who was later subsumed by Defendant R.J. Reynolds), and the

1 newspaper itself was paid \$500,000 by the Tobacco Institute, which was in part
2 funded and guided by Defendant Philip Morris;

- 3 ii. Joseph Culman III, Chairman and CEO of Philip Morris and Chairman of the
4 Tobacco Institute, appealing on the news program “Face the Nation” stating the
5 following: **“We do not believe cigarettes are hazardous, we don’t accept**
6 **that . . . This industry can face the future with confidence because when,**
7 **as and if, any ingredient in cigarette smoke is identified as being injurious**
8 **to human health we are confident that we can illuminate that ingredient .**
9 **. . I believe they [cigarettes] have not been proven to be unsafe . . . It’s true,**
10 **babies born from women who smoke are smaller . . . and some women**
11 **would prefer having smaller babies.”**

- 12 e. By knowingly and intentionally working with R.J. Reynolds and Liggett by creating a
13 false and misleading “cigarette controversy” which was promulgated by trade
14 organizations that Philip Morris was not only actively participating in and employees’
15 were chairmen and members of, but also in fact helped financially fund and set up
16 including the TI, TIRC, and CTR whose internal, previously secret and concealed
17 documents include the following statements discussing their conspiracy:
18

- 19 i. “Our basic position in the cigarette controversy is subject to the charge, and
20 may be subject to a finding, that **we are making false or misleading**
21 **statements to promote the sale of cigarettes**” (Previously concealed from
22 Tobacco Institute);
23
24 ii. “For nearly 20 years, this industry has **employed a single strategy to defend**
25 **itself** . . . brilliantly conceived and executed . . . a holding strategy . . . **creating**
26
27
28

- 1 **doubt about the health charge without actually denying it**” (Letter from
2 Vice President of the Tobacco Institute Fred Panzer);
- 3 iii. “The most **important type of story is that which casts doubt on the cause**
4 **and effect theory of disease and smoking . . . Doubt is our product.**”
5 (Previously concealed memo to the Tobacco Institute);
- 6 iv. Ann Browder, a representative from the Tobacco Institute appearing on WPLG
7 in 1983 stating the following: **“We don’t know what causes the illness**
8 **[cancer] . . . I don’t think there is a causal relationship because cigarette**
9 **smoking and any illness;**”
- 10 v. “CTR began as an organization called the Tobacco Research Council (TIRC).
11 **It was set up as an industry “shield” in 1954** . . . Bill Shinn feels that “special
12 projects” are the best way that monies are spent. On these projects CTR as acted
13 as a front.” (Previously concealment meeting minutes from a CTR meeting held
14 in New York in 1978 **where Jim Bowling, Senior Vice President of**
15 **Corporate Affairs, Bob Seligman, Vice President of Research &**
16 **Development, and Tom Osdene, Director of Research all from Philip**
17 **Morris were in attendance** along with Bob Shinn who was an attorney at
18 Shook, Hardy, and Bacon)”
- 19 f. In conjunction with Defendants R.J. Reynolds and Liggett, spending over
20 \$300,000,000 funding fraudulent “research” and marketing by the TIRC to create,
21 sustain, and spread a false controversy regarding smoking and health;
- 22 g. By having their executives such as their Chief Operating Officer, William Campbell,
23 lie under oath before Congress in 1993 stating “to my knowledge, it’s not been proven
24 that cigarette smoking causes cancer.”
- 25
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1 351. Defendant Philip Morris's actions and statements as described above, combined with
2 the actions of R.J. Reynolds and Liggett, lead to a systemic culture in America regarding an alleged
3 cigarette controversy, where people, including Mrs. Thompson, were manipulated into believing
4 cigarettes were safe and not deadly.

5
6 352. Philip Morris's actions further directly lead to mass marketing of cigarettes in
7 quantities we cannot even comprehend today that seeped into every household and family in
8 American, including Mrs. Thompsons.

9 353. As a direct and proximate result of Philip Morris's actions and contributions to the TI,
10 TIRC, and CTR, the tobacco industry was able to create and sustain the largest conspiracy and
11 deception this county has ever seen.

12 354. But for Philip Morris's direct involvement, Mrs. Thompson would not have been
13 exposed to the same degree or intensity of cigarette advertising or have been exposed to the alleged
14 "controversy" regarding cigarettes as she was exposed to.

15 355. But for Philip Morris's direct involvement, Mrs. Thompson would not have began
16 smoking as a child, continued to smoke, become addicted to smoking cigarettes, or died as a result of
17 smoking cigarettes.

18
19 356. Defendants' conduct was the actual and proximate or legal cause of NOREEN
20 THOMPSON'S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN
21 THOMPSON'S love, companionship, comfort, affection, society, and moral support, and has suffered
22 great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars
23 (\$15,000.00). As NOREEN THOMPSON'S heir, Plaintiff seeks these damages pursuant to NRS
24 41.085(4).
25

26 357. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
27 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heir,
28

1 Plaintiff seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS
2 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

3 358. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
4 THOMPSON'S estate incurred special damages, to include medical expenses and funeral expenses,
5 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of
6 NOREEN THOMPSON'S Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
7 41.085(5).
8

9 359. Defendants' conduct was despicable and so contemptible that it would be looked down
10 upon and despised by ordinary decent people and was carried on by Defendants with willful and
11 conscious disregard for the safety of anyone in the community.

12 360. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
13 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
14 example of Defendants, and to deter similar conduct in the future. As personal representative of
15 NOREEN THOMPSON'S estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant
16 to NRS 41.085(5).
17

18 361. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
19 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
20 their employees, agents, and/or servants, as set forth herein.
21

22 362. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the
23 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys'
24 fees and costs of suit.
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TENTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

Dolly Rowan as Administrator of the Estate of Noreen Thompson Against Defendants R.J. Reynolds, Liggett, and Philip Morris

363. Plaintiff repeats and realleges the allegations as contained in paragraphs 1-114 and 198-362 and incorporate the same herein by reference.

364. Plaintiff, DOLLY ROWAN, brings this claim as Administrator of the Estate of NOREEN THOMPSON pursuant to NRS 41.100.

365. Defendants acted in concert to accomplish an unlawful objective for the purposes of harming Decedent, NOREEN THOMPSON. Defendants' actions include, but are not limited to the following:

- a. Defendants, along with other cigarette manufacturers, and CTR, TIRC, and TI, along with attorneys and law firms retained by Defendants, unlawfully agreed to conceal and/or omit, and did in fact conceal and/or omit, information regarding the health hazards of cigarettes and/or their addictive nature with the intention that smokers and the public would rely on this information to their detriment.
- b. Defendants agreed to execute their scheme by performing the abovementioned unlawful acts and/or by doing lawful acts by unlawful means;
- c. 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;
- d. 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.

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

- a. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
- b. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- c. Marketing and/or advertising lights and ultra-light cigarettes as safer or less hazardous to health;
- d. Knowingly concealing from the public that filtered, low tar, lights, and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes;
- e. Adding “onserts” to packages of cigarettes even after the United States government banned marketing of “light” and “ultra-light” cigarettes;
- f. Continuing to market and/or advertise lights, ultra lights, and low tar cigarettes under color brand name descriptors such as “Gold” and “Silver” and informing smokers “pack will be changing, but your cigarette will stay the same” following the federal ban on the use of “lights”, “mild”, and “low” tar descriptors in 2010;
- g. Opposing, and continuing to oppose proposed FDA regulations to reduce or eliminate levels of nicotine in cigarettes;
- h. Continuing to market and prey upon children and teenagers who are not able to understand or appreciate the risks and dangers associated with cigarette smoking.

367. Defendants’ actions, as it relates to their acts in furtherance of their conspiracy as alleged in this complaint, continues through the present.

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

1 369. NOREEN THOMPSON relied, both directly and indirectly, on the Defendants'
2 concealment and omission of such information to her detriment. NOREEN THOMPSON, during the
3 course of her smoking history heard, some or all of these false and misleading statements and/or
4 similar statements made directly or indirectly by the Defendants and their co-conspirators, believed
5 some or all of the Defendants' and their co-conspirators' false and misleading statements and relied
6 to her detriment and smoked and/or continued to smoke cigarettes based on such false and misleading
7 statements.
8

9 370. The success of the conspiracy depended upon the concerted action of the cigarette
10 manufacturers (in a so-called "gentleman's agreement"), for otherwise the revelation by one company
11 of what it knew about the health consequences of smoking and/or the availability of a "safe" or "safer"
12 cigarette and/or the addictive nature of the manufacturers' cigarette would have thwarted the
13 conspiracy.
14

15 371. Specifically, Defendant, PHILIP MORRIS, conspired with Defendants R.J.
16 REYNOLDS and LIGGETT to conceal the truth regarding the hazardous and deadly nature of
17 cigarettes by doing the following including but not limited to:

- 18 a. By advertising "light" and "low tar" cigarettes to the public, including NOREEN
19 THOMPSON, to help create and sustain the culture and societal and consumer
20 expectations that "light" cigarettes were better, safer, and healthier than regular
21 cigarettes;
22
- 23 b. By endeavoring in mass marketing campaigns consistent with R.J. REYNOLDS and
24 LIGGETT's campaign regarding the appeal of cigarettes including but not limited to
25 their Marlboro County and Marlboro Man campaigns;
26
27
28

- 1 c. By working with R.J. REYNOLDS and LIGGETT to create “fake science” by hiring
2 “fake scientists” to spreads “fake scientific research” about the health hazards of
3 smoking cigarettes including but not limited to the following:
4
5 i. Working with R.J. Reynolds and Liggett to create the Center for Indoor Air
6 Research (“CIAR”) whose intent was to broaden the question of indoor air
7 pollution to avert attention away from tobacco smoking causing disease and
8 death;
9 ii. Creating the “White Papers” which rebutted scientific reports which were
10 critical of tobacco.
11
12 d. By hiring industry spokespeople to appear on national television and media to mislead
13 and lie to the public, including NOREEN THOMPSON, regarding the health hazards
14 of smoking cigarettes including but not limited to the following examples:
15
16 i. In 1968 an article “To Smoke or Not to smoke – That is still the question” was
17 published in *True* magazine and was authorized by an allegedly independent
18 source Stanley Frank; however, Frank was actually paid \$500 by Brown &
19 Williamson (who was later subsumed by Defendant R.J. Reynolds), and the
20 newspaper itself was paid \$500,000 by the Tobacco Institute, which was in part
21 funded and guided by Defendant Philip Morris;
22
23 ii. Joseph Culman III, Chairman and CEO of Philip Morris and Chairman of the
24 Tobacco Institute, appealing on the news program “Face the Nation” stating the
25 following: **“We do not believe cigarettes are hazardous, we don’t accept**
26 **that . . . This industry can face the future with confidence because when,**
27 **as and if, any ingredient in cigarette smoke is identified as being injurious**
28 **to human health we are confident that we can illuminate that ingredient .**

1 . . I believe they [cigarettes] have not been proven to be unsafe . . . It's true,
2 babies born from women who smoke are smaller . . . and some women
3 would prefer having smaller babies."

4
5 e. By knowingly and intentionally working with R.J. Reynolds and Liggett by creating a
6 false and misleading "cigarette controversy" which was promulgated by trade
7 organizations that Philip Morris was not only actively participating in and employees'
8 were chairmen and members of, but also in fact helped financially fund and set up
9 including the TI, TIRC, and CTR whose internal, previously secret and concealed
10 documents include the following statements discussing their conspiracy:

11 i. "Our basic position in the cigarette controversy is subject to the charge, and
12 may be subject to a finding, that we are making false or misleading
13 statements to promote the sale of cigarettes" (Previously concealed from
14 Tobacco Institute);

15
16 ii. "For nearly 20 years, this industry has employed a single strategy to defend
17 itself . . . brilliantly conceived and executed . . . a holding strategy . . . creating
18 doubt about the health charge without actually denying it" (Letter from
19 Vice President of the Tobacco Institute Fred Panzer);

20
21 iii. "The most important type of story is that which casts doubt on the cause
22 and effect theory of disease and smoking . . . Doubt is our product."
23 (Previously concealed memo to the Tobacco Institute);

24 iv. Ann Browder, a representative from the Tobacco Institute appearing on WPLG
25 in 1983 stating the following: "We don't know what causes the illness
26 [cancer] . . . I don't think there is a causal relationship because cigarette
27 smoking and any illness;"
28

1 v. “CTR began as an organization called the Tobacco Research Council (TIRC).

2 It was set up as an industry “shield” in 1954 . . . Bill Shinn feels that “special
3 projects” are the best way that monies are spent. On these projects CTR as acted
4 as a front.” (Previously concealment meeting minutes from a CTR meeting held
5 in New York in 1978 where Jim Bowling, Senior Vice President of
6 Corporate Affairs, Bob Seligman, Vice President of Research &
7 Development, and Tom Osdene, Director of Research all from Philip
8 Morris were in attendance along with Bob Shinn who was an attorney at
9 Shook, Hardy, and Bacon)”
10

- 11 f. In conjunction with Defendants R.J. Reynolds and Liggett, spending over
12 \$300,000,000 funding fraudulent “research” and marketing by the TIRC to create,
13 sustain, and spread a false controversy regarding smoking and health;
14
15 g. By having their executives such as their Chief Operating Officer, William Campbell,
16 lie under oath before Congress in 1993 stating “to my knowledge, it’s not been proven
17 that cigarette smoking causes cancer.”
18

19 372. Defendant, Philip Morris’s actions and statements as described above, combined with
20 the actions of R.J. Reynolds and Liggett, lead to a systemic culture in America regarding an alleged
21 cigarette controversy, where people, including Mrs. Thompson, were manipulated into believing
22 cigarettes were safe and not deadly.

23 373. Philip Morris’s actions further directly lead to mass marketing of cigarettes in
24 quantities we cannot even comprehend today that seeped into every household and family in
25 American, including Mrs. Thompsons.
26
27
28

1 374. As a direct and proximate result of Philip Morris's actions and contributions to the TI,
2 TIRC, and CTR, the tobacco industry was able to create and sustain the largest conspiracy and
3 deception this county has ever seen.

4 375. But for Philip Morris's direct involvement, Mrs. Thompson would not have been
5 exposed to the same degree or intensity of cigarette advertising or have been exposed to the alleged
6 "controversy" regarding cigarettes as she was exposed to.

7 376. But for Philip Morris's direct involvement, Mrs. Thompson would not have began
8 smoking as a child, continued to smoke, become addicted to smoking cigarettes, or died as a result of
9 smoking cigarettes.
10

11 377. Defendants' conduct is an actual and proximate or legal cause of NOREEN
12 THOMPSON'S injuries. NOREEN THOMPSON thereby experienced great pain, and anxiety her
13 body and mind. NOREEN THOMPSON sustained injuries and damages in an amount in excess of
14 Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as Administrator of
15 the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.
16

17 378. As a further actual and proximate or legal result of Defendants' conduct NOREEN
18 THOMPSON underwent medical treatment and incurred past medical and/or incidental expenses. The
19 exact amount of such damages is unknown at this present time, but NOREEN THOMPSON suffered
20 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY ROWAN, as
21 Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages pursuant to
22 NRS 41.100.
23

24 379. Defendants' conduct was despicable and so contemptible that it would be looked down
25 upon and despised by ordinary decent people and was carried on by Defendants with willful and
26 conscious disregard for the safety of anyone in the community.
27
28

387. Plaintiff, DOLLY ROWAN, is the Personal Representative of the Estate of NOREEN THOMPSON.

388. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the Estate of NOREEN THOMPSON.

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

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

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

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

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

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

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

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

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

393. Upon information and belief, Defendants knowingly violated NRS 598.0915 by

1 making the following false and misleading statements and representations, including but not limited
2 to:

- 3 a. making countless publicized appearances on television and radio disingenuously
4 denying cigarettes were addictive and claimed smoking was a matter of free choice and
5 smokers could quit smoking if they wanted to;
- 6 b. representing to the public that it was not known whether cigarettes were harmful or
7 caused disease;
- 8 c. falsely advertising and promoting cigarettes as safe, not dangerous, and not harmful;
- 9 d. falsely advertising and promoting “filtered” and “light” cigarettes as “low tar” and “low
10 nicotine” through print advertisements in magazines and newspapers throughout the
11 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- 12 e. falsely representing that questions about smoking and health would be answered by an
13 allegedly unbiased, trustworthy source;
- 14 f. misrepresenting and confusing facts about health hazards of cigarettes and addiction;
- 15 g. creating a made up “cigarette controversy;”
- 16 h. taking out a full page advertisement called the “Frank Statement to Cigarette Smokers”
17 which falsely assured the public, the American government, and NOREEN
18 THOMPSON, that would purportedly “safeguard” the health of smokers, support
19 allegedly “disinterested” research into smoking and health, and reveal to the public the
20 results of their alleged “objective” research;
- 21 i. falsely assuring the public that TIRC/CTR was an “objective” research committee
22 when internal company documents reveals that TIRC/CTR functioned not for the
23 promotion of scientific goals, but for public relations, politics, and positioning for
24 litigation;
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- 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.

394. Specifically, Defendant, PHILIP MORRIS, conspired with Defendants R.J. REYNOLDS and LIGGETT to knowingly make false and misleading representations regarding the truth regarding the hazardous and deadly nature of cigarettes and the ingredients in cigarettes by doing the following including but not limited to:

- a. By advertising “light” and “low tar” cigarettes to the public, including NOREEN THOMPSON, to help create and sustain the culture and societal and consumer expectations that “light” cigarettes were better, safer, and healthier than regular cigarettes;
- b. By endeavoring in mass marketing campaigns consistent with R.J. REYNOLDS and LIGGETT’s campaign regarding the appeal of cigarettes including but not limited to their Marlboro County and Marlboro Man campaigns;
- c. By working with R.J. REYNOLDS and LIGGETT to create “fake science” by hiring “fake scientists” to spread “fake scientific research” about the health hazards of smoking cigarettes including but not limited to the following:
 - i. Working with R.J. Reynolds and Liggett to create the Center for Indoor Air Research (“CIAR”) whose intent was to broaden the question of indoor air pollution to avert attention away from tobacco smoking causing disease and death;
 - ii. Creating the “White Papers” which rebutted scientific reports which were critical of tobacco.
- d. By hiring industry spokespeople to appear on national television and media to mislead and lie to the public, including NOREEN THOMPSON, regarding the health hazards of smoking cigarettes including but not limited to the following examples:

- i. In 1968 an article “To Smoke or Not to smoke – That is still the question” was published in *True* magazine and was authorized by an allegedly independent source Stanley Frank; however, Frank was actually paid \$500 by Brown & Williamson (who was later subsumed by Defendant R.J. Reynolds), and the newspaper itself was paid \$500,000 by the Tobacco Institute, which was in part funded and guided by Defendant Philip Morris;
- ii. Joseph Culman III, Chairman and CEO of Philip Morris and Chairman of the Tobacco Institute, appealing on the news program “Face the Nation” stating the following: **“We do not believe cigarettes are hazardous, we don’t accept that . . . This industry can face the future with confidence because when, as and if, any ingredient in cigarette smoke is identified as being injurious to human health we are confident that we can illuminate that ingredient . . . I believe they [cigarettes] have not been proven to be unsafe . . . It’s true, babies born from women who smoke are smaller . . . and some women would prefer having smaller babies.”**
- e. By knowingly and intentionally working with R.J. Reynolds and Liggett by creating a “cigarette controversy” which was promulgated by trade organizations that Philip Morris was not only actively participating in and employees’ were chairmen and members of, but also in fact helped financially fund and set up including the TI, TIRC, and CTR whose internal, previously secret and concealed documents include the following statements discussing their conspiracy:
- i. “Our basic position in the cigarette controversy is subject to the charge, and may be subject to a finding, that **we are making false or misleading**

1 statements to promote the sale of cigarettes” (Previously concealed from
2 Tobacco Institute);

3 ii. “For nearly 20 years, this industry has employed a single strategy to defend
4 itself . . . brilliantly conceived and executed . . . a holding strategy . . . creating
5 doubt about the health charge without actually denying it” (Letter from
6 Vice President of the Tobacco Institute Fred Panzer);

7
8 iii. “The most important type of story is that which casts doubt on the cause
9 and effect theory of disease and smoking . . . Doubt is our product.”
10 (Previously concealed memo to the Tobacco Institute);

11 iv. Ann Browder, a representative from the Tobacco Institute appearing on WPLG
12 in 1983 stating the following: “We don’t know what causes the illness
13 [cancer] . . . I don’t think there is a causal relationship because cigarette
14 smoking and any illness;”

15
16 v. “CTR began as an organization called the Tobacco Research Council (TIRC).
17 It was set up as an industry “shield” in 1954 . . . Bill Shinn feels that “special
18 projects” are the best way that monies are spent. On these projects CTR as acted
19 as a front.” (Previously concealment meeting minutes from a CTR meeting held
20 in New York in 1978 where Jim Bowling, Senior Vice President of
21 Corporate Affairs, Bob Seligman, Vice President of Research &
22 Development, and Tom Osdene, Director of Research all from Philip
23 Morris were in attendance along with Bob Shinn who was an attorney at
24 Shook, Hardy, and Bacon)”
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26
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28

1 f. In conjunction with Defendants R.J. Reynolds and Liggett, spending over
2 \$300,000,000 funding alleged “research” and marketing by the TIRC to create, sustain,
3 and spread a false controversy regarding smoking and health;

4 g. By having their executives such as their Chief Operating Officer, William Campbell,
5 lie under oath before Congress in 1993 stating “to my knowledge, it’s not been proven
6 that cigarette smoking causes cancer.”
7

8 395. Defendant, Philip Morris knowingly make false and misleading representations
9 regarding the ingredients in cigarettes, the sources and funding behind alleged “scientific research”
10 regarding cigarettes, and more as described above which lead to a systemic culture in America
11 regarding an alleged cigarette controversy, where people, including Mrs. Thompson, were
12 manipulated into believing cigarettes were safe and not deadly.
13

14 396. Philip Morris’s actions further directly lead to mass marketing of cigarettes in
15 quantities we cannot even comprehend today that seeped into every household and family in
16 American, including Mrs. Thompsons.

17 397. As a direct and proximate result of Philip Morris’s actions and contributions to the TI,
18 TIRC, and CTR, the tobacco industry was able to create and sustain the largest conspiracy and
19 deception this county has ever seen.
20

21 398. But for Philip Morris’s direct involvement, Mrs. Thompson would not have been
22 exposed to the same degree or intensity of cigarette advertising or have been exposed to the alleged
23 “controversy” regarding cigarettes as she was exposed to.

24 399. But for Philip Morris’s direct involvement, Mrs. Thompson would not have began
25 smoking as a child, continued to smoke, become addicted to smoking cigarettes, or died as a result of
26 smoking cigarettes.
27

28 400. Defendants’ conduct was the actual and proximate or legal cause of NOREEN

1 THOMPSON'S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN
2 THOMPSON'S love, companionship, comfort, affection, society, and moral support, and have
3 suffered great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars
4 (\$15,000.00). As NOREEN THOMPSON'S heir, Plaintiff seeks these damages pursuant to NRS
5 41.085(4).
6

7 401. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
8 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heir,
9 Plaintiff seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS
10 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).
11

12 402. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
13 THOMPSON'S estate incurred special damages, to include medical expenses and funeral expenses,
14 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of
15 NOREEN THOMPSON Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
16 41.085(5).
17

18 403. Defendants' conduct was despicable and so contemptible that it would be looked down
19 upon and despised by ordinary decent people and was carried on by Defendants with willful and
20 conscious disregard for the safety of anyone in the community.
21

22 404. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
23 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
24 example of Defendants, and to deter similar conduct in the future. As personal representative of
25 NOREEN THOMPSON'S estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant
26 to NRS 41.085(5).
27

28 405. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its

employees, agents, and/or servants, as set forth herein.

406. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys' fees and costs of suit.

TWELTH CLAIM FOR RELIEF

(VIOLATION OF DECEPTIVE TRADE PRACTICES ACT – NRS 598.0903)

Dolly Rowan as Administrator of the Estate of Noreen Thompson Against Defendants R.J. Reynold, Liggett, and Philip Morris

407. Plaintiff repeats and realleges the allegations contained in paragraphs 1-114 and 198-406 and incorporates the same herein by reference.

408. Plaintiff, DOLLY ROWAN, brings this claim as Administrator of the Estate of NOREEN THOMPSON pursuant to NRS 41.100.

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

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

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

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

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

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

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

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

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

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

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

- 1 h. taking out a full page advertisement called the “Frank Statement to Cigarette Smokers”
2 which falsely assured the public, the American government, and NOREEN
3 THOMPSON, that would purportedly “safeguard” the health of smokers, support
4 allegedly “disinterested” research into smoking and health, and reveal to the public the
5 results of their alleged “objective” research;
6
7 i. falsely assuring the public that TIRC/CTR was an “objective” research committee
8 when internal company documents reveals that TIRC/CTR functioned not for the
9 promotion of scientific goals, but for public relations, politics, and positioning for
10 litigation;
11
12 j. sponsoring, being quoted in, and helping publish articles to mislead the public
13 including but not limited to the following: “Smoke-Cancer Tie Termed Obscure”
14 (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called
15 Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco
16 Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study”
17 (1962);
18
19 k. responding to the 1964 Surgeon General Report which linked cigarette smoking to
20 health, by falsely assuring the public that (i) cigarettes were not injurious to health, (ii)
21 the industry would cooperate with the Surgeon General, (iii) more research was needed,
22 and (iv) if there were any bad elements discovered in cigarettes, the cigarette
23 manufacturers would remove those elements;
24
25 l. advertising and promoting cigarettes on television and radio as safe and glamorous, to
26 the extent that cigarette advertising was the number one most heavily advertised
27 product on television;
28
m. making knowingly false and misleading statements during a governmental hearing,

- 1 including stating that, “there is absolutely no proof that cigarettes are addictive;”
- 2 n. purposefully targeting children yet openly in press releases falsely claiming, “We don’t
- 3 advertise to children . . . Some straight talk about smoking for young people;”
- 4 o. responding the 1988 United States Surgeon General’s report that nicotine is the drug
- 5 in tobacco that causes addiction, by issuing press releases stating, “Claims that
- 6 cigarettes are addictive is irresponsible and scare tactics;”
- 7
- 8 p. lying under oath before the United States Congress in 1994 that it was their opinion
- 9 that it had not been proven that cigarettes were addictive, caused disease, or caused one
- 10 single person to die.

11 414. Specifically, Defendant PHILIP MORRIS conspired with Defendants R.J.

12 REYNOLDS and LIGGETT to knowingly make false and misleading representations regarding the

13 truth regarding the hazardous and deadly nature of cigarettes and the ingredients in cigarettes by doing

14 the following including but not limited to:

15

- 16 a. By advertising “light” and “low tar” cigarettes to the public, including NOREEN
- 17 THOMPSON, to help create and sustain the culture and societal and consumer
- 18 expectations that “light” cigarettes were better, safer, and healthier than regular
- 19 cigarettes;
- 20
- 21 b. By endeavoring in mass marketing campaigns consistent with R.J. REYNOLDS and
- 22 LIGGETT’s campaign regarding the appeal of cigarettes including but not limited to
- 23 their Marlboro County and Marlboro Man campaigns;
- 24 c. By working with R.J. REYNOLDS and LIGGETT to create “fake science” by hiring
- 25 “fake scientists” to spreads “fake scientific research” about the health hazards of
- 26 smoking cigarettes including but not limited to the following:
- 27
- 28

- i. Working with R.J. Reynolds and Liggett to create the Center for Indoor Air Research (“CIAR”) whose intent was to broaden the question of indoor air pollution to avert attention away from tobacco smoking causing disease and death;
 - ii. Creating the “White Papers” which rebutted scientific reports which were critical of tobacco.
- d. By hiring industry spokespeople to appear on national television and media to mislead and lie to the public, including NOREEN THOMPSON, regarding the health hazards of smoking cigarettes including but not limited to the following examples:
 - i. In 1968 an article “To Smoke or Not to smoke – That is still the question” was published in *True* magazine and was authorized by an allegedly independent source Stanley Frank; however, Frank was actually paid \$500 by Brown & Williamson (who was later subsumed by Defendant R.J. Reynolds), and the newspaper itself was paid \$500,000 by the Tobacco Institute, which was in part funded and guided by Defendant Philip Morris;
 - ii. Joseph Culman III, Chairman and CEO of Philip Morris and Chairman of the Tobacco Institute, appealing on the news program “Face the Nation” stating the following: **“We do not believe cigarettes are hazardous, we don’t accept that . . . This industry can face the future with confidence because when, as and if, any ingredient in cigarette smoke is identified as being injurious to human health we are confident that we can illuminate that ingredient . . . I believe they [cigarettes] have not been proven to be unsafe . . . It’s true, babies born from women who smoke are smaller . . . and some women would prefer having smaller babies.”**

1 e. By knowingly and intentionally working with R.J. Reynolds and Liggett by creating a
2 “cigarette controversy” which was promulgated by trade organizations that Philip
3 Morris was not only actively participating in and employees’ were chairmen and
4 members of, but also in fact helped financially fund and set up including the TI, TIRC,
5 and CTR whose internal, previously secret and concealed documents include the
6 following statements discussing their conspiracy:
7

8 i. “Our basic position in the cigarette controversy is subject to the charge, and
9 may be subject to a finding, that we are making false or misleading
10 statements to promote the sale of cigarettes” (Previously concealed from
11 Tobacco Institute);

12 ii. “For nearly 20 years, this industry has employed a single strategy to defend
13 itself . . . brilliantly conceived and executed . . . a holding strategy . . . creating
14 doubt about the health charge without actually denying it” (Letter from
15 Vice President of the Tobacco Institute Fred Panzer);

16 iii. “The most important type of story is that which casts doubt on the cause
17 and effect theory of disease and smoking . . . Doubt is our product.”
18 (Previously concealed memo to the Tobacco Institute);

19 iv. Ann Browder, a representative from the Tobacco Institute appearing on WPLG
20 in 1983 stating the following: “We don’t know what causes the illness
21 [cancer] . . . I don’t think there is a causal relationship because cigarette
22 smoking and any illness;”

23 v. “CTR began as an organization called the Tobacco Research Council (TIRC).
24 It was set up as an industry “shield” in 1954 . . . Bill Shinn feels that “special
25 projects” are the best way that monies are spent. On these projects CTR as acted
26
27
28

1 as a front.” (Previously concealment meeting minutes from a CTR meeting held
2 in New York in 1978 where Jim Bowling, Senior Vice President of
3 Corporate Affairs, Bob Seligman, Vice President of Research &
4 Development, and Tom Osdene, Director of Research all from Philip
5 Morris were in attendance along with Bob Shinn who was an attorney at
6 Shook, Hardy, and Bacon)”
7

- 8 f. In conjunction with Defendants R.J. Reynolds and Liggett, spending over
9 \$300,000,000 funding alleged “research” and marketing by the TIRC to create, sustain,
10 and spread a false controversy regarding smoking and health;
11 g. By having their executives such as their Chief Operating Officer, William Campbell,
12 lie under oath before Congress in 1993 stating “to my knowledge, it’s not been proven
13 that cigarette smoking causes cancer.”
14

15 415. Defendant Philip Morris knowingly make false and misleading representations
16 regarding the ingredients in cigarettes, the sources and funding behind alleged “scientific research”
17 regarding cigarettes, and more as described above which lead to a systemic culture in America
18 regarding an alleged cigarette controversy, where people, including Mrs. Thompson, were
19 manipulated into believing cigarettes were safe and not deadly.
20

21 416. Philip Morris’s actions further directly lead to mass marketing of cigarettes in
22 quantities we cannot even comprehend today that seeped into every household and family in
23 American, including Mrs. Thompsons.

24 417. As a direct and proximate result of Philip Morris’s actions and contributions to the TI,
25 TIRC, and CTR, the tobacco industry was able to create and sustain the largest conspiracy and
26 deception this county has ever seen.
27
28

1 418. But for Philip Morris’s direct involvement, NOREEN THOMPSON would not have
2 been exposed to the same degree or intensity of cigarette advertising or have been exposed to the
3 alleged “controversy” regarding cigarettes as she was exposed to.

4 419. But for Philip Morris’s direct involvement, NOREEN THOMPSON would not have
5 began smoking as a child, continued to smoke, become addicted to smoking cigarettes, or died as a
6 result of smoking cigarettes.

7 420. Defendants’ conduct is an actual and proximate or legal cause of NOREEN
8 THOMPSON’S injuries. NOREEN THOMPSON thereby experienced great pain, and anxiety her
9 body and mind. NOREEN THOMPSON sustained injuries and damages in an amount in excess of
10 Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as Administrator of
11 the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.

12 421. As a further actual and proximate or legal result of Defendants’ conduct NOREEN
13 THOMPSON underwent medical treatment and incurred past medical and/or incidental expenses. The
14 exact amount of such damages is unknown at this present time, but NOREEN THOMPSON suffered
15 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY ROWAN, as
16 Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages pursuant to
17 NRS 41.100.

18 422. Defendants’ conduct was despicable and so contemptible that it would be looked down
19 upon and despised by ordinary decent people and was carried on by Defendants with willful and
20 conscious disregard for the safety of anyone in the community.

21 423. Defendants’ outrageous and unconscionable conduct warrants an award of exemplary
22 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
23 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of
24 NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS
25
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27
28

1 41.100.

2 424. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
3 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
4 employees, agents, and/or servants, as set forth herein.

5 425. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the
6 prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorneys'
7 fees and costs of suit.
8

9 **THIRTEENTH CLAIM FOR RELIEF**
10 **(WRONGFUL DEATH – STRICT LIABILITY)**

11 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan**
12 **as Heir of Noreen Thompson Against Defendants, QUICK STOP MARKET, LLC, JOE'S**
13 **BAR, INC., THE POKER PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER**
14 **NUGGET CASINO, and JERRY'S NUGGET**

15 426. Plaintiff repeats and realleges the allegations contained in paragraphs 1-114 and
16 incorporates the same herein by reference.

17 427. Plaintiff brings this wrongful death claim based on a strict liability claim against
18 Defendants QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER PALACE, SILVER
19 NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S NUGGET.
20

21 428. Plaintiff, DOLLY ROWAN, is the heir of NOREEN THOMPSON.

22 429. Plaintiff, DOLLY ROWAN, brings this cause of action pursuant to NRS 41.085(4), as
23 heir of NOREEN'S Estate.

24 430. Plaintiff, DOLLY ROWAN, is the Personal Representative of the Estate of NOREEN
25 THOMPSON.

26 431. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the
27 Estate of NOREEN THOMPSON.
28

1 432. Defendants, QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER
2 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S
3 NUGGET, are in the business of distributing, marketing, selling, or otherwise placing cigarette into
4 the stream of commerce.

5 433. Defendants, QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER
6 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S
7 NUGGET, sold cigarettes to the public, including Decedent, NOREEN THOMPSON.

8 434. The aforesaid products were distributed, sold and/or otherwise placed into the stream of
9 commerce by Defendants, QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER
10 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S
11 NUGGET.

12 435. Defendants, QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER
13 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S
14 NUGGET’S, defective and unreasonably dangerous cigarettes reached NOREEN THOMPSON
15 without substantial change from that in which such products were when within the possession of
16 Defendants.

17 436. Defendants, QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER
18 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S
19 NUGGET’S cigarettes were dangerous beyond the expectation of the ordinary user/consumer when
20 used as intended or in a manner reasonably foreseeable by Defendants.

21 437. Defendants, QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER
22 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S
23 NUGGET’S cigarettes were dangerous beyond the expectation of the ordinary consumer, including
24 NOREEN THOMPSON, when used as intended or in a reasonably foreseeable manner.

1 438. Defendants, QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER
2 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S
3 NUGGET’S cigarettes were unreasonably dangerous because a less dangerous design and/or
4 modification was economically and scientifically feasible.

5 439. Defendants’ conduct was the actual and proximate or legal cause of NOREEN
6 THOMPSON’S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN
7 THOMPSON’S love, companionship, comfort, affection, society, and moral support, and has suffered
8 great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars
9 (\$15,000.00). As NOREEN THOMPSON’S heir, Plaintiff seeks these damages pursuant to NRS
10 41.085(4).

11 440. As a further actual and proximate or legal result of Defendants’ conduct, NOREEN
12 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON’S heir,
13 Plaintiff seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS
14 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

15 441. As a further actual and proximate or legal result of Defendants’ conduct, NOREEN
16 THOMPSON’S estate incurred special damages, to include medical expenses and funeral expenses,
17 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of
18 NOREEN THOMPSON’S Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
19 41.085(5).

20 442. Defendants’ conduct was despicable and so contemptible that it would be looked down
21 upon and despised by ordinary decent people and was carried on by Defendants with willful and
22 conscious disregard for the safety of anyone in the community.

23 443. Defendants’ 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
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1 example of Defendants, and to deter similar conduct in the future. As personal representative of
2 NOREEN THOMPSON estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant
3 to NRS 41.085(5).

4 444. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
5 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
6 their employees, agents, and/or servants, as set forth herein.

7 445. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the
8 prosecution of this action, and Plaintiff is therefore entitled to an award of a reasonable amount as
9 attorneys' fees and costs of suit.
10

11 **FOURTEENTH CLAIM FOR RELIEF**

12 **(STRICT PRODUCT LIABILITY)**

13 **Dolly Rowan as Administrator of the Estate of Noreen Thompson**
14 **Against Defendants QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER**
15 **PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and**
16 **JERRY'S NUGGET**

17 446. Plaintiff repeats and realleges the allegations contained in paragraphs 1-114 and 426-
18 445 and incorporate the same herein by reference.

19 447. Plaintiff, DOLLY ROWAN, brings this claim as Administrator of the Estate of
20 NOREEN THOMPSON pursuant to NRS 41.100.

21 448. Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER
22 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S
23 NUGGET, are in the business of distributing, marketing, selling, or otherwise placing cigarette into
24 the stream of commerce.

25 449. Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER
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27
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1 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S
2 NUGGET, sold cigarettes to the public, including to Decedent, NOREEN THOMPSON.

3 450. The aforesaid products were distributed, sold and/or otherwise placed into the stream of
4 commerce by Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER
5 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S
6 NUGGET.
7

8 451. Defendants, C QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER
9 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S
10 NUGGET'S, defective and unreasonably dangerous cigarettes reached NOREEN THOMPSON
11 without substantial change from that in which such products were when within the possession of
12 Defendants.
13

14 452. Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER
15 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S
16 NUGGET'S cigarettes were dangerous beyond the expectation of the ordinary user/consumer when
17 used as intended or in a manner reasonably foreseeable by Defendants.
18

19 453. Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER
20 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S
21 NUGGET'S cigarettes were dangerous beyond the expectation of the ordinary consumer, including
22 NOREEN THOMPSON, when used as intended or in a reasonably foreseeable manner.

23 454. Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER
24 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S
25 NUGGET'S cigarettes were unreasonably dangerous because a less dangerous design and/or
26 modification was economically and scientifically feasible.
27

28 455. Defendants' conduct is an actual and proximate or legal cause of NOREEN

1 THOMPSON'S injuries. NOREEN THOMPSON thereby experienced great pain, and anxiety her
2 body and mind. NOREEN THOMPSON sustained injuries and damages in an amount in excess of
3 Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as Administrator of
4 the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.

5
6 456. As a further actual and proximate or legal result of Defendants' conduct, NOREEN
7 THOMPSON'S underwent medical treatment and incurred past medical and/or incidental expenses.
8 The exact amount of such damages is unknown at this present time, but NOREEN THOMPSON
9 suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY
10 ROWAN, as Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages
11 pursuant to NRS 41.100.

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

16
17 458. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
18 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
19 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of
20 NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS
21 41.100.

22
23 459. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
24 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
25 employees, agents, and/or servants, as set forth herein.

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

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

11
12
13 1. For general damages in excess of Fifteen Thousand Dollars (\$15,000.00), to be set
14 forth and proven at the time of trial;

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

17 4. For exemplary and punitive damages in excess of Fifteen Thousand Dollars
18 (\$15,000.00);

19
20 5. For reasonable attorneys’ fees;

21 6. For costs of suit incurred;

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

2 DATED this ____ day of _____ 2020.

3 CLAGGETT & SYKES LAW FIRM

4
5 /s/ Sean K. Claggett

6 Sean K. Claggett, Esq.

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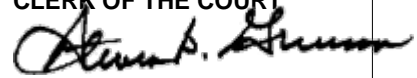
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1 **OPPM**

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15 Telephone: (702) 938-3838

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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

**DEFENDANT PHILIP MORRIS USA
INC.'S OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED WRONGFUL DEATH
COMPLAINT AND PLAINTIFF'S
MOTION TO SUBSTITUTE PARTIES**

Hearing Date: January 7, 2021

Hearing Time: 9:30 a.m.

///





1 Defendant Philip Morris USA Inc., by and through its counsel of record, hereby files this
2 Opposition to Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint and
3 Plaintiff's Motion to Substitute Parties (the "Motion").¹

4 This Motion 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
8 Dated this 10th day of December, 2020.

9
10 WEINBERG, WHEELER, HUDGINS,
11 GUNN & DIAL, LLC

12 /s/ D. Lee Roberts, Jr.

13 D. Lee Roberts, Jr., Esq.

14 Phillip N. Smith, Jr., Esq.

15 Daniela LaBounty, Esq.

16 6385 South Rainbow Blvd., Suite 400

17 Las Vegas, Nevada 89118

18 *Attorney for Defendant Philip Morris USA Inc.*

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¹ Philip Morris USA Inc. adopts in full and incorporates by reference Defendants' Opposition to Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties (filed contemporaneously herewith on behalf of all Defendants). The filing of this additional Opposition should not be construed as a waiver of any argument set forth in Defendants' Opposition or any deficiency of Plaintiff's Complaint described therein.



MEMORANDUM OF POINTS AND AUTHORITY

I. INTRODUCTION

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

On August 25, 2020, after hearing PM USA’s Motion to Dismiss Plaintiff’s original Complaint, this Court ordered Plaintiff to attempt to provide a more definite statement of PM USA’s alleged liability for civil conspiracy or violations of the Nevada Deceptive Trade Practices Act. Order Denying Def. Philip Morris USA Inc.’s Mot. to Dismiss Pls.’ Complaint Under NRCP 12(b)(5) (entered Aug. 25, 2020). In doing so, the Court stated, in pertinent part, that:

. . . the only causes of action alleged against Philip Morris are civil conspiracy and violation of 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’s 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.

Id.

On November 19, 2020, Plaintiff filed her Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff’s Motion to Substitute Parties.² However, Plaintiff’s proposed

² In light of Decedent Noreen Thompson’s passing on June 19, 2020, the parties agreed that Plaintiff would file a motion for leave and proposed amended complaint that would address both the Court’s August 25, 2020 ruling and the substitution of a new plaintiff at the same time. *See* Stipulation Regarding Pl.’s Am. Compl. (dated Aug. 25, 2020).



1 Amended Complaint does not correct the issues raised in this Court's prior ruling as to PM USA.
2 Plaintiff's proposed Amended Complaint again confirms that PM USA ***did not manufacture,***
3 ***distribute, or sell*** the cigarettes that Decedent smoked. Additionally, Plaintiff's proposed
4 Amended Complaint merely includes a handful of additional allegations pertaining to PM USA's
5 generic conduct that are similar in kind to the allegations asserted in Plaintiff's original
6 Complaint. Plaintiff's proposed Amended Complaint does not, and cannot, sufficiently allege
7 that PM USA was in a legal relationship with Decedent, that PM USA owed a legal duty to
8 Decedent, and that PM USA's actions were a legal cause of Decedent's injuries when Decedent
9 never used PM USA's products.

10 Therefore, Plaintiff's Motion should be denied as futile as to PM USA because Plaintiff's
11 proposed Amended Complaint has not, and cannot, correct the issues raised in this Court's prior
12 ruling. *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993) ("It is not an
13 abuse of discretion to deny leave to amend when any proposed amendment would be
14 futile." (quoting *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990))). It is well-
15 established that product use is a fundamental requirement in any product liability action. *See*
16 *Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF), 2009 WL 749532, at *4 (D. Nev. Mar.
17 20, 2009) (applying Nevada state law and recognizing that "[a]mong manufacturers of products,
18 liability rests only with the manufacturer of the product that actually caused the alleged injury
19 because that manufacturer profited from sales of the product and controlled its safety" (citing
20 *Allison v. Merck & Co.*, 110 Nev. 762, 767–68, 878 P.2d 948, 952 (1994))); *see also Baymiller v.*
21 *Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302, 1309–11 (D. Nev. 2012) (similar). As such,
22 regardless of their labels, Plaintiff's civil conspiracy and deceptive trade practices claims (like
23 the rest of Plaintiff's proposed Amended Complaint) still center on the alleged defective nature
24 of Pall Mall, Camel, Viceroy, and Pyramid brand cigarettes. Consequently, to permit Plaintiff to
25 pursue these claims against PM USA, which did not manufacture those products, would run
26 contrary to both the bedrock legal principles in the product liability context and the central
27 objectives of the deceptive trade practices statute.

28 In fact, in another recent smoking and health case pending in the Eighth Judicial District



brought by this same Plaintiff's counsel, Judge Earley granted a similarly situated tobacco company defendant's motion to dismiss *with prejudice* as to the only counts asserted against it for civil conspiracy and violations of the Nevada Deceptive Trade Practices Act because the plaintiff did not smoke that defendant's cigarettes. Order Granting Def. R.J. Reynolds Tobacco Co.'s Mot. to Dismiss Pls.' Am. Compl. Under NRCP 12(b)(5), *Camacho v. Philip Morris USA, Inc.*, No. A-19-807650-C (8th Jud. Dist. Ct.) (entered Aug. 27, 2020). And, this Court should rule similarly here.

For these reasons, set forth more fully below, as well as those appearing in Defendants' Opposition to Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties (filed contemporaneously herewith on behalf of all Defendants), PM USA respectfully requests that the Court enter an order denying Plaintiff's Motion as to PM USA.

II. ARGUMENT

A. Standard of Review

Under Nevada Rule of Civil Procedure 15(a), courts need not grant leave to amend, even if leave is sought in a timely fashion, if the proposed amendment would be "futile." *Allum*, 109 Nev. at 287, 849 P.2d at 302 ("It is not an abuse of discretion to deny leave to amend when any proposed amendment would be futile.") (quoting *Reddy*, 912 F.2d at 296)); *see also Halcrow Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013); *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 971 (Nev. App. 2015) ("A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim, such as one which would not survive a motion to dismiss under NRCP 12(b)(5)[.]").

B. The Court Should Deny Plaintiff's Motion Because Plaintiff's Claims Against PM USA Fail for Lack of Product Use.

Plaintiff seeks to amend her Complaint to allege a product liability action to recover for injuries allegedly caused by a product: cigarettes. Product use is a fundamental requirement in a Nevada product liability action. *See Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF),



2009 WL 749532, at *4–5 (D. Nev. Mar. 20, 2009); *Baymiller v. Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302, 1309–11 (D. Nev. 2012). And, it remains a fundamental requirement in an action for damages allegedly caused by a product “*regardless of whether Plaintiff characterizes her claims as misrepresentation/fraud or claims arising in product liability.*” *Moretti*, 2009 WL 749532, at *4 (emphasis added); *see also Beattie v. Thomas*, 99 Nev. 579, 584, 668 P.2d 268, 272 (1983) (“The requested instruction on the concept of increased risk of harm was an attempt by Beattie to lighten his burden of showing that MedaSonic’s breach, if any, of its duty to warn was a proximate cause of the eventual high amputation of Beattie’s leg.”). Because the claims Plaintiff seeks to assert in this case relate to Decedent’s injuries caused by an allegedly defective product (*i.e.*, Pall Mall, Camel, Viceroy, and Pyramid brand cigarettes), Nevada law requires a relationship between Decedent and PM USA. *See id.*

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

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

This effort to re-plead is futile as PM USA does not—and has never—manufactured the cigarette brands that Plaintiff alleges Decedent smoked. *See* Pl.’s Mot. Ex. 2 at 7 ¶ 19 (“Decedent, NOREEN THOMPSON, was diagnosed on or about April 8, 2019 with lung cancer and passed away on June 19, 2020. NOREEN THOMPSON’s lung cancer and her death therefrom were caused by smoking Pall Mall brand cigarettes, Camel brand cigarettes, Viceroy brand cigarettes, and Pyramid brand cigarettes, to which she was addicted and smoked continuously from approximately 1954 until 2019.”). Indeed, Plaintiff concedes this exact fact in her proposed Amended Complaint. *Id.* at ¶¶ 20–23 (alleging that “[a]t all times material,” Pall Mall, Viceroy, Camel, and Pyramid brand cigarettes “were . . . designed, manufactured, and sold” by Reynolds or Liggett).

For this reason alone, the Court should deny Plaintiff’s motion to amend her Complaint as to PM USA.

C. The Court Should Deny Plaintiff’s Motion Because Plaintiff’s Claims for Deceptive Trade Practices (Eleventh and Twelfth Claims for Relief) Because They Fail Under Nevada Law As To PM USA, As Decedent Never Used a PM USA-Brand Product.

Plaintiff’s proposed Amended Complaint alleges that PM USA engaged in various levels of misconduct that constitute “deceptive trade practice” under Nevada law. *See id.* at ¶¶ 383–425. 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). A deceptive trade



practices claim brought pursuant to section 41.600(1) requires proof that *the defendant committed* consumer fraud *causing damage to the plaintiff*. *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657 (D. Nev. 2009). To succeed on this claim, a plaintiff must show that “(1) an act of consumer fraud by the defendant (2) caused (3) damage to the plaintiff.” *Id.* at 658; *see also* Nev. Rev. Stat. § 41.600(2)(e). Indeed, as referenced above, in another smoking-and-health case in the Eighth Judicial District, Judge Earley granted a motion to dismiss a claim brought under the Nevada Deceptive Trade Practices Act because of lack of product use and, therefore, lack of a legal relationship between the plaintiff and defendant. Order Granting Def. R.J. Reynolds Tobacco Co.’s Mot. to Dismiss Pls.’ Am. Compl. Under NRCP 12(b)(5) at 2, *Camacho v. Philip Morris USA, Inc.*, No. A-19-807650-C (8th Jud. Dist. Ct. Aug. 27, 2020) (“It is undisputed that Plaintiff Sandra Camacho did not purchase or use any R.J. Reynolds product. Plaintiffs therefore could not plead facts sufficient to show that R.J. Reynolds caused damage to . . . Sandra Camacho. Further, Plaintiffs did not plead sufficient facts alleging that Sandra Camacho had any legal relationship with R.J. Reynolds, which is also necessary to support an NDTPA claim.”).

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

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

It is undisputed that Dow Chemical did not have a fiduciary relationship, a special relationship, or a relationship of any kind with the Mahlums. Instead, the Mahlums claim that Dow Chemical’s duty to disclose arose because it possessed 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).

Moreover, Plaintiff does not allege in her proposed Amended Complaint that Decedent ever purchased or smoked cigarettes manufactured by PM USA. *See generally* Pl.’s Mot. Ex. 2. Indeed, Plaintiff unambiguously seeks to plead that Decedent’s alleged lung cancer “was caused by smoking Pall Mall brand cigarettes, Camel brand cigarettes, Viceroy brand cigarettes, and Pyramid brand cigarettes, to which she was addicted and smoked continuously from approximately 1954 until 2019.” *Id.* at ¶ 19. Thus, since Decedent never purchased or smoked cigarettes manufactured by PM USA, there simply is no connection between PM USA’s alleged deceptive trade practices or fraudulent concealment as they relate to the health risk of its products and Decedent’s alleged lung cancer. Plaintiff has not stated and cannot state a cause of action for fraud against PM USA and, for the same reason, cannot state a claim for the predicate consumer fraud required to properly allege “deceptive trade practice” under Nevada law.

For these reasons, Plaintiff has failed to state a claim against PM USA for deceptive trade practices in her Amended Complaint, and the Court should deny Plaintiff’s motion.

D. The Court Should Deny Plaintiff’s Motion Because Plaintiff’s Claims for Civil Conspiracy To Defraud (Ninth and Tenth Claims for Relief) Fail Under Nevada Law As To PM USA, As Plaintiff Did Not (And Cannot) Plead the Underlying Torts As To PM USA.

The allegations in Plaintiff’s proposed Amended Complaint attempt to assert claims for civil conspiracy to defraud. When determining whether a plaintiff properly has pleaded such a claim, a court should look to “[t]he substance of [the] allegations,” irrespective of how a plaintiff chooses to “title” her claim for relief in the complaint. *See Goodwin v. Exec. Trustee Servs., LLC*, 680 F. Supp. 2d 1244, 1255 (D. Nev. 2010) (applying Nevada law, finding that plaintiff failed to state a claim for civil conspiracy to defraud, and noting that while the title for plaintiff’s claim stated “‘Conspiracy to Commit Fraud and Conversion’ . . . [t]he substance of this claim’s

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1 allegations focuses on the fraud underlying the alleged conspiracy, not conversion”).³ The
2 allegations of civil conspiracy to defraud are nothing more than an attempt to impose liability on
3 PM USA for harm allegedly caused by a product, even though no product liability claim can be
4 stated against it under Nevada law: Product use is a fundamental requirement in a Nevada
5 product liability action “*regardless of whether Plaintiff characterizes her claims as*
6 *misrepresentation/fraud or claims arising in product liability.*” *Moretti*, 2009 WL 749532, at *4
7 (citing *Kite v. Zimmer US, Inc.*, No. 2:06-cv-0745-RCJ (RJJ), 2006 WL 3386765, at *4 (D. Nev.
8 Nov. 22, 2006)) (explaining that “because defendant ‘did not supply the Device, it cannot be
9 liable for negligent product liability or negligent misrepresentation because it did not owe the
10 Plaintiffs a duty of care”).

11 Just as a plaintiff cannot assert a claim for product liability if she cannot establish that a
12 particular manufacturer’s product caused an alleged injury, a plaintiff similarly cannot sustain a
13 civil conspiracy claim against a manufacturer whose product did not harm the plaintiff. In
14 *Chavers v. Gatke Corporation*, 107 Cal. App. 4th 606, 612, 132 Cal. Rptr. 2d 198, 201
15 (2003), *as modified* (Apr. 25, 2003), the plaintiff asserted a conspiracy claim and product
16 liability causes of action based on allegations that Gatke was part of an industry-wide effort to
17 suppress information concerning the hazards of asbestos. However, the plaintiff was unable to
18 prove that a product Gatke manufactured caused the injury. The court explained that “[a] duty,
19 however, independent of the conspiracy itself, must exist in order for substantive liability to
20 attach.” *Id.* at 202. Without sufficient product identification evidence, the defendant owed no
21 duty to the plaintiff, and without such a duty, no basis existed to find the manufacturer liable for
22 conspiracy. *Id.* “[B]efore one can be held liable for civil conspiracy, he must be capable of
23 being *individually liable for the underlying wrong as a matter of substantive tort law*. And that
24 requirement, of course, means he must have owed a legal duty of care to the plaintiff, one that
25

26 ³ To the extent Plaintiff responds that the conspiracy claim relates to the NDTPA claim, a claim arising
27 under the NDTPA is a fraud-based claim. See *Chattem v. BAC Home Loan Servicing LP*, No. 2:11-cv-
28 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 was breached to the latter's injury." *Id.* at 201 (emphasis in original); *see also Applied Equip.*
2 *Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514, 869 P.2d 454, 459 (1994) ("Conspiracy is
3 not an independent tort; it cannot create a duty or abrogate an immunity. It allows tort recovery
4 only against a party who already owes the duty and is not immune from liability based on
5 applicable substantive tort law principles.").

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

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

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



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

10 For these reasons, the Court should deny Plaintiff’s motion seeking to assert a cause of
11 action for civil conspiracy to defraud against PM USA.

12 **III. CONCLUSION**

13 For the foregoing reasons, as well as for the reasons set forth in Defendants’ Opposition
14 to Plaintiff’s Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff’s
15 Motion to Substitute Parties (filed contemporaneously herewith on behalf of all Defendants),
16 Defendant Philip Morris USA Inc. requests that the Court deny Plaintiff’s Motion for Leave to
17 File Amended Wrongful Death Complaint and Plaintiff’s Motion to Substitute Parties.

18
19 Dated this 10th day of December, 2020.

20
21 WEINBERG, WHEELER, HUDGINS,
22 GUNN & DIAL, LLC

23 /s/ D. Lee Roberts, Jr.

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Attorney for Defendant Philip Morris USA Inc.



CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2020, a true and correct copy of the foregoing **DEFENDANT PHILIP MORRIS USA INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED WRONGFUL DEATH COMPLAINT AND PLAINTIFF'S MOTION TO SUBSTITUTE PARTIES** 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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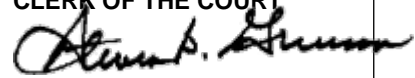
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DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of
the Estate of 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;

CASE NO. A-20-811091-C

DEPT. NO. XVI

PLAINTIFF'S REPLY TO
DEFENDANTS, PHILIP MORRIS USA
INC.'S OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED WRONGFUL DEATH
COMPLAINT AND PLAINTIFF'S
MOTION TO SUBTITUTE PARTIES

Hearing Date: January 7, 2021

Hearing Time: 9:30AM

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

6
7 Defendants.

8 Plaintiff, DOLLY ROWAN, as Special Administrator of the Estate of NOREEN
9 THOMPSON, by and through her attorneys of record, hereby submits this Reply to Defendant,
10 PHILIP MORRIS USA INC.'S Opposition to Plaintiff's Motion for Leave to Amend Wrongful Death
11 Complaint and Plaintiff's Motion to Substitute Parties.

12 This Reply is based upon the pleadings and papers on file in this action, the points and
13 authorities set forth herein, and argument to be made by counsel at the time of the hearing.

14 Dated this 30th day of December, 2020.

15
16 CLAGGETT & SYKES LAW FIRM

17 /s/ Sean K. Claggett

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28

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT IN REPLY

Plaintiff's Motion to Amend Complaint and Motion to Substitute is legally sufficient. Defendant does not state any legal authority to support its opposition, and in fact all of the arguments contained in its opposition are merely a recitation of Defendant's putative Motion to Dismiss¹ and as such, should be rejected outright as a motion to dismiss is not proper at this stage in the pleadings.

II. PROCEDURAL BACKGROUND

Defendant's opposition is baseless as its assertions are not proper for an opposition to a motion to amend and instead are subject to a motion to dismiss. As this Court is aware, after hearing argument on Defendant Philip Morris' original Motion to Dismiss, this Court granted in part and denied in part the motion, and granted Defendant's motion for more definite statement as to civil conspiracy and violation of deceptive trade practice counts. *See Order attached as Exhibit 1.* Due to an agreement among the parties because the original Plaintiff, Noreen Thompson, passed away, the Plaintiff incorporated said amendments in the proposed Amended Complaint relating to this Motion to Amend and Motion to Substitute Parties. Defendant now attempts to improperly argue a second Motion to Dismiss in its opposition to this pending motion.

III. ARGUMENT

First of all, Defendant's argument is improper at this stage of the pleading process. Defendant cites no authority or basis to deny the amendment to the complaint beyond reciting its anticipated motion to dismiss. As such, this opposition should be rejected, and Plaintiff's motion should be granted.

¹ Defendants' R.J. Reynolds Tobacco Company and Liggett Group original motion to dismiss was denied by Judge Bare in his minute order on August 17, 2020. Defendant, Philip Morris' original motion to dismiss was denied in part and granted in part with an instruction to Plaintiff to amend her complaint to add more allegations to the conspiracy and deceptive trade practice counts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 30th day of December 2020, I served a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO DEFENDANTS, PHILIP MORRIS USA INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED WRONGFUL DEATH COMPLAINT AND PLAINTIFF'S MOTION TO SUBSTITUTE PARTIES** is served on the following person(s) by electronic service pursuant to NRCp 5(b) and NEFCR 9:

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/s/ Maria Alvarez

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NOREEN THOMPSON,

Plaintiff,

v.

CASE NO. A-20-811091-C

DEPT. NO. 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

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED WRONGFUL DEATH
COMPLAINT, AND PLAINTIFF'S
MOTION TO SUBSTITUTE PARTIES**

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.

Plaintiff’s Motion for Leave to File Amended Wrongful Death Complaint, and Plaintiff’s
Motion to Substitute Parties came before the Court on February 11, 2021.

APPEARANCES

The Parties appeared as follows:

- For Plaintiff Noreen Thompson – Matthew Granda, 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., 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 Plaintiff’s Motion is **Granted in Part and Denied in
Part.**

This matter came before the Court for a hearing on Plaintiff’s Motion to Amend Complaint
and Motion to Substitute Parties. After hearing the oral arguments, the Court took the matter UNDER
ADVISEMENT. After a review of the pleadings, oral arguments at the hearing, and good cause shown,
the Court FINDS and ORDERS as follows.

NRCP 15 governs a Motion to Amend Complaint. A party may amend its pleadings only with
the opposing party’s written consent or the Court’s leave. The Court should freely give leave when
justice so requires. NRCP 15(a)(2). The District Court may and should liberally allow an amendment
to the pleadings if prejudice does not result. *Schwartz v. Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137,

1 1139 (1979). Motions for leave to amend pleadings should be granted unless a strong reason exists
2 not to do so, such as prejudice to the opponent or lack of good faith by the moving party. *Nutton v.*
3 *Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Ct. App. 2015). The liberality embodied
4 in the rule requires courts to err on the side of caution and permit amendments that appear arguable or
5 even borderline, because denial of a proposed pleading amendment amounts to denial of the
6 opportunity to explore any potential merit it might have had. *Id.* at 292, 975. Moreover, when a
7 complaint can be amended to state a claim for relief, leave to amend, rather than dismissal, is the
8 preferred remedy. *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 734, 119 Nev. 1, 22 (2003). Sufficient
9 reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on
10 the part of the movant. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). Leave to amend
11 a pleading should not be granted if the proposed amendment would be futile. *Halcrow, Inc. v. Eighth*
12 *Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013). A proposed amendment may be
13 deemed futile, as grounds for denying leave to amend a complaint, if the plaintiff seeks to amend the
14 complaint in order to plead an impermissible claim. *Id.* Motion for leave to amend is addressed to
15 sound discretion of trial court, and its action in denying the motion should not be held to be error
16 unless such discretion has been abused. *Stephens v. S. Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d
17 138, 139 (1973).

18 The Court FINDS and CONCLUDES that all Defendants consent to the substitution and
19 amending the complaint to include a wrongful death claim. Thus, under NRCP 25 and NRCP 15(a)(2),
20 there is no reason why the substitution and amendment should not be granted.

21 The Court FINDS and CONCLUDES that Defendants joint opposition under NRCP 12(f),
22 *Born v. Eisenman*, 114 Nev. 854 (1997) and *Butler v. State*, 120 Nev. 879 (2004) is procedurally
23 defective. As the Plaintiff has stipulated at the hearing to remove the mention of the specific law firms
24 previously involved in prior tobacco litigations from the proposed Amended Complaint, the correct
25 procedure is to allow Plaintiff to file her Amended Complaint, with the changes stipulated at the
26 hearing, and if Defendants wish to make similar objections, they may then do so.

27 The Court FINDS and CONCLUDES that Defendant Philip Morris USA, Inc.'s Opposition is
28 similarly procedurally defective. As Plaintiff points out in the reply, additional factual allegations

regarding Philip Morris USA, Inc.'s alleged role in civil conspiracy and violation of Nevada Deceptive Trade Practices Act were made. Defendant Philip Morris USA, Inc. has not had a chance to respond to those points. Thus, again, the correct procedure is to allow Plaintiff to file her Amended Complaint and if Philip Morris USA, Inc. wishes to file a motion to dismiss, it may do so.

Pursuant to NRCP 15(a)(3), Defendants shall have fourteen (14) days from the service of Plaintiff's Amended Complaint to respond to Plaintiff's Amended Complaint.

Dated this 11th day of March, 2021

DATED this ____ day of March 2021.

V. Barisich

~~18B-FA8-9152-ABAE~~
 Verónica M. Barisich
 District Court Judge

<p>Respectfully Submitted By: CLAGGETT & SYKES LAW FIRM</p> <p>/s/ Sean K. Claggett 3/3/21</p> <hr/> <p>Sean K. Claggett, Esq. Date Nevada Bar No. 008407 Micah S. Echols, Esq. Nevada Bar No. 008437 4101 Meadows Lane, Suite 100 Las Vegas, Nevada 89107</p> <p>Kimberly L Wald, Esq. Florida Bar No. 112263 500 North Federal Highway, Suite 200 Fort Lauderdale FL 33301 <i>Attorneys for Plaintiff</i></p>	<p>Reviewed as to Form and Content: WEINBERG WHEELER HUDGINS GUN & DIAL</p> <p>/s/ D. Lee Roberts 3/3/21</p> <hr/> <p>D. Lee Roberts, Jr. Date Nevada Bar No. 8877 6385 South Rainbow Boulevard, Suite 400 Las Vegas, Nevada 89118 <i>Attorneys for Defendant, Philip Morris USA, Inc.</i></p>
<p>Reviewed as to Form and Content: BAILEY KENNEDY</p> <p>/s/ Joseph Liebman 3/3/21</p> <hr/> <p>Dennis L. Kennedy, Esq. Date Joseph 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></p>	<p>Reviewed as to Form and Content: LEWIS ROCA ROTHGERBER CHRISTIE</p> <p>/s/ J. Christopher Jorgensen 3/3/21</p> <hr/> <p>J. Christopher Jorgensen, Esq. Date Nevada Bar No. 5382 3993 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169 <i>Attorneys for Defendant, Liggett Group, LLC</i></p>

Moises Garcia

From: Jorgensen, J. Christopher <CJorgensen@lrrc.com>
Sent: Wednesday, March 03, 2021 8:04 AM
To: Kelly Anne Luther; Kimberly Wald; Diamond, Spencer; Roberts, Lee; Henninger, Ursula; Jackson, Brian (SHB; Heinz, Lindsey (SHB; Leppert, Val
Cc: Matt Granda; Moises Garcia; Micah Echols; Phillip Holden; Michael Hersh; Fan Li; Deana Foster; 'Dennis Kennedy'; 'Joseph Liebman'; Keehfus, Jason
Subject: RE: Thompson v. PM et al.

I approve and authorize the use of me e-signature

Thanks

Chris

Christopher Jorgensen

Partner
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Cc: Matt Granda <MGranda@claggettlaw.com>; Moises Garcia <MGarcia@claggettlaw.com>; Micah Echols <Micah@claggettlaw.com>; Phillip Holden <Phillip@integrityforjustice.com>; Michael Hersh <mah@kulaw.com>; Fan Li <fli@kulaw.com>; Deana Foster <deana@kulaw.com>; 'Dennis Kennedy' <DKennedy@baileykennedy.com>; 'Joseph Liebman' <JLiebman@baileykennedy.com>; Keehfus, Jason <JKeehfus@KSLAW.com>
Subject: RE: Thompson v. PM et al.

[EXTERNAL]

You can use mine in case Chris doesn't see this in time to approve the use of his before you submit.

From: Kimberly L. Wald [<mailto:klw@kulaw.com>]
Sent: Wednesday, March 3, 2021 10:53 AM
To: Kelly Anne Luther <KLuther@kasowitz.com>; Diamond, Spencer <SDiamond@KSLAW.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Roberts, Lee <LRoberts@wwhgd.com>; Henninger, Ursula <uhenninger@KSLAW.com>; Jackson, Brian (SHB <BJACKSON@shb.com>; Heinz, Lindsey (SHB <LHEINZ@shb.com>; Leppert, Val <VLeppert@KSLAW.com>
Cc: Matt Granda <MGranda@claggettlaw.com>; Moises Garcia <MGarcia@claggettlaw.com>; Micah Echols <Micah@claggettlaw.com>; Phillip Holden <Phillip@integrityforjustice.com>; Michael Hersh <mah@kulaw.com>; Fan Li <fli@kulaw.com>; Deana Foster <deana@kulaw.com>; 'Dennis Kennedy' <DKennedy@baileykennedy.com>; 'Joseph

Liebman' <JLiebman@baileykennedy.com>; Keehfus, Jason <JKeehfus@KSLAW.com>

Subject: RE: Thompson v. PM et al.

Thank you Kelly. Would you like us to use your signature or Mr. Jorgensens?

Kelley | Uustal

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Sent: Wednesday, March 3, 2021 10:48 AM

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Cc: Matt Granda <MGranda@claggettlaw.com>; Moises Garcia <MGarcia@claggettlaw.com>; Micah Echols <Micah@claggettlaw.com>; Phillip Holden <Phillip@integrityforjustice.com>; Michael Hersh <mah@kulaw.com>; Fan Li <fli@kulaw.com>; Deana Foster <deana@kulaw.com>; 'Dennis Kennedy' <DKennedy@baileykennedy.com>; 'Joseph Liebman' <JLiebman@baileykennedy.com>; Keehfus, Jason <JKeehfus@KSLAW.com>

Subject: RE: Thompson v. PM et al.

Approved for Liggett

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

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Moises Garcia

From: Roberts, Lee <LRoberts@wwhgd.com>
Sent: Wednesday, March 03, 2021 8:54 AM
To: Joseph Liebman; Kimberly Wald
Cc: Diamond, Spencer; Jorgensen, J. Christopher; Henninger, Ursula; Kelly Anne Luther; Jackson, Brian (SHB; Heinz, Lindsey (SHB; Leppert, Val; Matt Granda; Moises Garcia; Micah Echols; Phillip Holden; Michael Hersh; Fan Li; Deana Foster; Dennis Kennedy; Keehfus, Jason
Subject: Re: Thompson v. PM et al.

Approved

[cid:REVISEE-sig2020_5801a862-4942-4e3a-94ab-425c0ea8e329.png]

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Sent: Wednesday, March 3, 2021 8:46:37 AM
To: Kimberly L. Wald
Cc: Diamond, Spencer; Jorgensen, J. Christopher; Roberts, Lee; Henninger, Ursula; Kelly Anne Luther; Jackson, Brian (SHB; Heinz, Lindsey (SHB; Leppert, Val; Matt Granda; Moises Garcia; Micah Echols; Phillip Holden; Michael Hersh; Fan Li; Deana Foster; Dennis Kennedy; Keehfus, Jason
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Moises Garcia

From: Joseph Liebman <JLiebman@baileykennedy.com>
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Subject: Re: Thompson v. PM et al.

Approved.

Sent from my iPad

On Mar 3, 2021, at 7:42 AM, Kimberly L. Wald <klw@kulaw.com> wrote:

Spencer,

Thank you, I accepted all of your changes. Can counsel for all parties please confirm your approval of the order so we may submit it to the court?

Thank you,
Kim

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Subject: RE: Thompson v. PM et al.

Kim,

Attached are a few very minor redlines on behalf of Defendants. Please confirm that these are good with you. Thanks.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Noreen Thompson, Plaintiff(s) | CASE NO: A-20-811091-C
7 vs. | DEPT. NO. Department 5
8 Philip Morris USA Inc,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 Court. The foregoing Order was served via the court's electronic eFile system to all
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