

**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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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. 3**

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USA Inc.*

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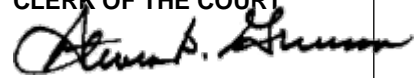
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22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 DOLLY ROWAN, as Special Administrator of  
25 the Estate of NOREEN THOMPSON,

26 Plaintiff,

27 v.

28 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**

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

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

12 13. Plaintiff is informed and believes, and thereon alleges that Defendant, JERRY'S  
13 NUGGET, was and is a domestic corporation authorized to do business within this jurisdiction of Clark  
14 County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the  
15 State of Nevada. JERRY'S NUGGET owns and operates a casino that sells tobacco and cigarette  
16 products located at 7251 Amigo Street, Suite 210, Las Vegas NV 89119. JERRY'S NUGGET is a  
17 retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed  
18 tobacco retailer, selling such items to the public, including Decedent, NOREEN THOMPSON.  
19

20 14. Plaintiff further alleges that Defendants, at all times material to this cause of action,  
21 through their agents, employees, executives, and representatives, conducted, engaged in and carried on a  
22 business venture of selling cigarettes in the State of Nevada and/or maintained an office or agency in this  
23 state and/or committed tortious acts within the State of Nevada and knowingly allowed the Plaintiff to be  
24 exposed to an unreasonably dangerous and addictive product, to-wit: cigarettes and/or cigarette smoke.  
25

26 15. Plaintiff does not know the true names of Defendants Does I through X and sues said  
27 Defendants by fictitious names. Upon information and belief, each of the Defendants designated  
28

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

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

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

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

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

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

- i. Continued and frequent use of cigarettes highly increases one's chances of becoming, and remaining, addicted;
- j. Continued and frequent use of cigarettes highly increases one's chances of developing serious illness and death;
- k. It is extremely difficult to quit smoking;
- l. "Many, but not most, people who would like to stop smoking are able to do so" (Concealed Document, 1982);
- m. "Defendants cannot defend continued smoking as "free choice" if the person is addicted" (Concealed Document 1980), 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.  
25  
26  
27  
28

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.”

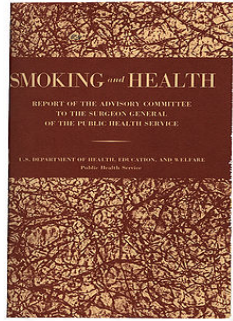
24 “In that spirit, we are cooperating with the U.S. Surgeon General and  
25 his special study group appointed to evaluate presently available  
26 research knowledge. Similar cooperation has been offered to the  
27 American Medical Association’s proposed study.”

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



12 63. The cigarette industry’s *public* response, through TIRC, to the 1964 Surgeon General  
13 Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry  
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

19 64. Despite Defendants’ *public* response, internally they were fully aware of the magnitude  
20 and depth of lies and deception they were promulgating. They knew and understood they were  
21 making fake, misleading promises that would never come to fruition. Their own internal records  
22 reveal that they knew, even back in 1964, that cigarettes were not only hazardous, but deadly:  
23

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

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

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

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.



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

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

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

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

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

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

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

74. The tobacco industry frequently attacked the Surgeon General. For example, the industry preempted the Surgeon General’s 1979 report on national news networks, stating the report 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

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

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  
28

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
- 23           • denying that smoking “is” addictive;
  - 24           • that smoking is not injurious to health;
  - 25           • that it is unknown if smoking causes serious diseases;
- 26  
27  
28

- 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 several prominent  
3 law firms.

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

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 an attorney: “epidemiological  
14 evidence is necessary if for no other reason than to effectively respond to anti-smoking  
15 groups . . . the industry should continue to emphasize the lack of substantive proof of  
16 causation”) (CC188);  
17  
18 b. The Lawyers were involved at every level of alleged scientific “research” pursued by  
19 Defendants and the tobacco industry (“The excessive involvement of external lawyers at  
20 this very basic scientific level is questionable”) (COVB11);  
21  
22 c. The Lawyers allegedly vetted scientific “research” papers and reports as well as public  
23 relations materials to ensure the interests of the conspiracy would be protected;  
24  
25 d. The Lawyers improperly identified “friendly” scientific witnesses, subsidized them with  
26 grants from the Center for Tobacco Research and the Center for Indoor Air Research, paid  
27

28 <sup>1</sup> The allegations herein are not directed to Defendants’ current counsel and/or their representation as  
part of their lawful defense in this case.



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

opposing the conspiracy (“Candidates who have made public statements adverse to the industry on the primary health issue generally are avoided”) (COVB124);

m. The Lawyers hid the source of the money used for special projects to make them appear more acceptable to the public:

i. On November 15, 1978, at a CTR meeting in New York, one attorney told the attendees that “special projects” were the best way money was spent, and said “on these projects, CTR has acted as a ‘front.’” (CC141);

ii. On July 13, 1984, a memorandum from one attorney to another stated, “[the] non-CTR projects fund was originally developed so that companies would not be paying scientists directly.” (SHB118);

iii. On October 1989, a scientist from BAT, Dr. Ray Thornton, was invited by Dr. Helmut Gaisch of PM to a meeting with the Association for Research on Indoor Air (ARIA). Dr. Thornton’s record indicates PM funded ARIA, through a law firm, who in turn supplied money to George Leslie, who in turn set up ARIA. (COVB131);

iv. On April 28, 1992, an attorney wrote that Lorillard and CTR inquired about funding through a law firm’s special account for one Dr. Bennett Jensen. The law firm proposed to give Dr. Jensen \$40,000, not for specific research or with an eye to publication, but solely to maintain a good relationship with him and secure his continued help in contacting other scientists. Dr. Jensen previously received CTR Special Project Funds in 1988. An attorney wrote:

Allinder admits that [the law firm] 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 [the law firm]) 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 a law firm 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 the law firm’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, an attorney from the same law firm sent a letter to a fellow attorney 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, another attorney at the same firm wrote to several other industry attorneys asking them for written comments regarding special projects and congressional hearings. (SHB111.) Two attorneys 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. The two attorneys also recommended 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.

123. Each exposure to 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.

124. Defendants 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 urea, 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 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).

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

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

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

24  
25 135. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are  
26 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of  
27 their employees, agents, and/or servants, as set forth herein.  
28

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.

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

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

13           205. The cigarette manufacturers, including Defendants herein, made literally thousands of  
14 misrepresentations to the decedent and others similarly situated over the course of the last fifty years.  
15 Plaintiff is unable to allege in full these misrepresentations, which are found in thousands of pre-1969  
16 advertisements, continuing press releases, testimony by cigarette manufacturers' officers and employees  
17 before Congress and other governmental entities, etc., that the cigarette manufacturers and their co-  
18 conspirators, THE TOBACCO INSTITUTE, INC. ("TI") formed in 1958, TOBACCO INDUSTRY  
19 RESEARCH COMMITTEE ("TIRC") formed in 1954, and COUNCIL for TOBACCO RESEARCH  
20 ("CTR") formed in 1964 and previously known as the TIRC, both because she does not have access to  
21 this information, and because to allege each and every such misrepresentation and/or false statement here  
22 would entail hundreds or even thousands of pages of pleadings. I Indeed, it is the cigarette manufacturers  
23 themselves, including Defendants herein, that have this knowledge and information, and are in the best  
24 position to know the contents of each and every such misrepresentation and/or false statement.  
25  
26  
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206. Defendants made intentional misrepresentations, false promises, concealed information, and failed to disclose material information concerning the health effects and addictive nature of cigarettes to NOREEN THOMPSON, the public, and the American government.

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

- a. Defendants falsely represented to NOREEN THOMPSON that questions about smoking and health would be answered by unbiased, trustworthy sources;
- b. Defendants misrepresented and confused facts about health hazards of cigarettes and nicotine addiction;
- c. Defendants, along with other cigarette manufacturers, spent billions of dollars hiring lawyers, fake scientists, and public relations firms to misdirect purported “objective” scientific research;
- d. Defendants discouraged meritorious litigation by engaging in “scorched earth” tactics, 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.

- 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                   ii. Despite the congressional ban, the cigarette manufacturers, including
- 19                   Defendants herein, have continued to market and sell even today the same
- 20                   “mild”, “low tar”, and “light” cigarettes, only now these cigarettes are marketed
- 21                   with a new package coloring scheme in order to get around the banned light
- 22                   descriptors.
- 23                   iii. These cigarettes are the same or substantially the same as the pre-prohibition
- 24                   “mild”, “light”, and “low tar” cigarettes. By design, consumers often perceive
- 25
- 26
- 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

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

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.

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

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

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

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

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

241. 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.

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

12           247. Cigarette manufacturers when sued denied that cigarettes were addictive and claimed that  
13 smoking was a matter of free choice and that smokers could simply quit smoking if they so wanted.  
14

15           248. Cigarette manufacturers claimed attorney-client privilege to shield as many documents as  
16 possible from disclosure and destroyed and/or refused to produce documents related to health issues and  
17 plaintiffs' claims.  
18

19           249. Cigarette manufacturers, when sued for smoking-related injuries, conducted the litigation  
20 in such a way as to cause the maximum expenditure of time and resources by the claimants for the  
21 purposes of exhausting their adversaries' resources and to discourage other meritorious litigation.  
22

23           250. These misrepresentations and false statements include, but are not limited to, the  
24 aforementioned statements and actions contained herein, including in the *Historical Allegations of*  
25 *Defendants Unlawful Conduct Giving Rise to the Lawsuit* section above.  
26

27           251. These misrepresentations and false statements also include the following statements  
28 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.

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

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.

19 265. 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  
23 266. 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



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."

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

282. 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. Defendants and the tobacco industry communicated their message through all forms of available media, including newspapers, magazines, and television.

283. Industry spokespersons appeared on news shows, on commercials and public television to state 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.

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

285. 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.

286. 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.

287. The concealed statements and misrepresentations which concealed material information about the health hazards of cigarettes also include the following statements which were heard, read, and relied upon by Decedent, NOREEN THOMPSON, who remembers these 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."  
"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.
- b. "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.
- c. "There is absolutely no proof that cigarettes are addictive." Edward Horrigan, CEO of R.J. Reynolds, Congressional Testimony 1982.
- d. "Claims that cigarettes are addictive [are] irresponsible and scare tactics." Tobacco Industry Response to 1988 United States Surgeon General's Report.
- e. "To my knowledge, it's not been proven that cigarette smoking causes cancer."  
William Campbell, CEO Philip Morris, Congressional Testimony, 1993.

288. The aforementioned acts, false statements and/or misrepresentations which were made and/or caused to be made, either directly or indirectly, by the cigarette manufacturers, including Defendants herein and their co-conspirators, were justifiably relied upon by NOREEN THOMPSON and resulted in NOREEN THOMPSON being unaware of the extent of the danger of the Defendants'

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

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

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."

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

317. 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.

318. Industry spokespersons appeared on news shows, on commercials and public television to state 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.

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

320. 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.

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  
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.

19 325. 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;

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.

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

347. 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.

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

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

350. Specifically, Defendant PHILIP MORRIS conspired with Defendants R.J. REYNOLDS and LIGGETT to conceal the truth regarding the hazardous and deadly nature of 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 i. “Our basic position in the cigarette controversy is subject to the charge, and  
19 may be subject to a finding, that **we are making false or misleading**  
20 **statements to promote the sale of cigarettes**” (Previously concealed from  
21 Tobacco Institute);  
22  
23 ii. “For nearly 20 years, this industry has **employed a single strategy to defend**  
24 **itself** . . . brilliantly conceived and executed . . . a holding strategy . . . **creating**  
25  
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 . . .** [an attorney] feels that  
12 “special projects” are the best way that monies are spent. On these projects CTR  
13 as acted as a front.” (Previously concealment meeting minutes from a CTR  
14 meeting held in New York in 1978 **where Jim Bowling, Senior Vice President**  
15 **of 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 [an attorney at an outside law firm])”
- 18  
19  
20  
21                    f. In conjunction with Defendants R.J. Reynolds and Liggett, spending over  
22 \$300,000,000 funding fraudulent “research” and marketing by the TIRC to create,  
23 sustain, and spread a false controversy regarding smoking and health;
- 24                    g. By having their executives such as their Chief Operating Officer, William Campbell,  
25 lie under oath before Congress in 1993 stating “to my knowledge, it’s not been proven  
26 that cigarette smoking causes cancer.”  
27  
28

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

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.  
25  
26  
27  
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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 [an attorney at an outside law firm])"

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

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

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

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

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

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

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

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

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

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

1 NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS  
2 41.100.

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

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

11 **ELEVENTH CLAIM FOR RELIEF**

12 **(WRONGFUL DEATH – NEVADA DECEPTIVE TRADE PRACTICE ACT)**

13 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan**  
14 **as Heir of Noreen Thompson Against Defendants R.J. Reynolds, Liggett and Philip Morris**  
15

16 383. Plaintiff repeats and realleges the allegations contained in paragraphs 1-114 and 198-  
17 382 herein and incorporates the same herein by reference.

18 384. Plaintiff brings this wrongful death claim based on a deceptive trade practice claim  
19 against Defendants Philip Morris, R.J. Reynolds, and Liggett.  
20

21 385. Plaintiff, NOREEN THOMPSON, is the heir of NOREEN THOMPSON, along with  
22 her siblings.

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

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

27 388. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the  
28 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 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

- 1 smokers could quit smoking if they wanted to;
- 2 b. representing to the public that it was not known whether cigarettes were harmful or
- 3 caused disease;
- 4 c. falsely advertising and promoting cigarettes as safe, not dangerous, and not harmful;
- 5 d. falsely advertising and promoting “filtered” and “light” cigarettes as “low tar” and “low
- 6 nicotine” through print advertisements in magazines and newspapers throughout the
- 7 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- 8 e. falsely representing that questions about smoking and health would be answered by an
- 9 allegedly unbiased, trustworthy source;
- 10 f. misrepresenting and confusing facts about health hazards of cigarettes and addiction;
- 11 g. creating a made up “cigarette controversy;”
- 12 h. taking out a full page advertisement called the “Frank Statement to Cigarette Smokers”
- 13 which falsely assured the public, the American government, and NOREEN
- 14 THOMPSON, that would purportedly “safeguard” the health of smokers, support
- 15 allegedly “disinterested” research into smoking and health, and reveal to the public the
- 16 results of their alleged “objective” research;
- 17 i. falsely assuring the public that TIRC/CTR was an “objective” research committee
- 18 when internal company documents reveals that TIRC/CTR functioned not for the
- 19 promotion of scientific goals, but for public relations, politics, and positioning for
- 20 litigation;
- 21 j. sponsoring, being quoted in, and helping publish articles to mislead the public
- 22 including but not limited to the following: “Smoke-Cancer Tie Termed Obscure”
- 23 (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called
- 24 Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco
- 25
- 26
- 27
- 28

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

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 “cigarette controversy” which was promulgated by trade organizations that Philip  
14 Morris was not only actively participating in and employees’ were chairmen and  
15 members of, but also in fact helped financially fund and set up including the TI, TIRC,  
16 and CTR whose internal, previously secret and concealed documents include the  
17 following statements discussing their conspiracy:

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

doubt about the health charge without actually denying it” (Letter from Vice President of the Tobacco Institute Fred Panzer);

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

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

v. “CTR began as an organization called the Tobacco Research Council (TIRC). It was set up as an industry “shield” in 1954 . . . Bill Shinn feels that “special projects” are the best way that monies are spent. On these projects CTR as acted as a front.” (Previously concealment meeting minutes from a CTR meeting held in New York in 1978 where Jim Bowling, Senior Vice President of Corporate Affairs, Bob Seligman, Vice President of Research & Development, and Tom Osdene, Director of Research all from Philip Morris were in attendance along with [an attorney at an outside law firm])”

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

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

1           395. Defendant, Philip Morris knowingly make false and misleading representations  
2 regarding the ingredients in cigarettes, the sources and funding behind alleged “scientific research”  
3 regarding cigarettes, and more as described above which lead to a systemic culture in America  
4 regarding an alleged cigarette controversy, where people, including Mrs. Thompson, were  
5 manipulated into believing cigarettes were safe and not deadly.  
6

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

10           397. As a direct and proximate result of Philip Morris’s actions and contributions to the TI,  
11 TIRC, and CTR, the tobacco industry was able to create and sustain the largest conspiracy and  
12 deception this county has ever seen.  
13

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

17           399. But for Philip Morris’s direct involvement, Mrs. Thompson would not have began  
18 smoking as a child, continued to smoke, become addicted to smoking cigarettes, or died as a result of  
19 smoking cigarettes.  
20

21           400. Defendants’ conduct was the actual and proximate or legal cause of NOREEN  
22 THOMPSON’S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN  
23 THOMPSON’S love, companionship, comfort, affection, society, and moral support, and have  
24 suffered great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars  
25 (\$15,000.00). As NOREEN THOMPSON’S heir, Plaintiff seeks these damages pursuant to NRS  
26 41.085(4).  
27

28           401. As a further actual and proximate or legal result of Defendants’ conduct, NOREEN

1 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heir,  
2 Plaintiff seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS  
3 41.085(4) in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

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

9 403. 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.

12 404. 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).

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

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

23 **TWELTH CLAIM FOR RELIEF**

24 **(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;”
- h. taking out a full page advertisement called the “Frank Statement to Cigarette Smokers” which falsely assured the public, the American government, and NOREEN THOMPSON, that would purportedly “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and health, and reveal to the public the results of their alleged “objective” research;
- i. falsely assuring the public that TIRC/CTR was an “objective” research committee when internal company documents reveals that TIRC/CTR functioned not for the

- 1 promotion of scientific goals, but for public relations, politics, and positioning for  
2 litigation;
- 3 j. sponsoring, being quoted in, and helping publish articles to mislead the public  
4 including but not limited to the following: “Smoke-Cancer Tie Termed Obscure”  
5 (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called  
6 Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco  
7 Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study”  
8 (1962);
- 9
- 10 k. responding to the 1964 Surgeon General Report which linked cigarette smoking to  
11 health, by falsely assuring the public that (i) cigarettes were not injurious to health, (ii)  
12 the industry would cooperate with the Surgeon General, (iii) more research was needed,  
13 and (iv) if there were any bad elements discovered in cigarettes, the cigarette  
14 manufacturers would remove those elements;
- 15
- 16 l. advertising and promoting cigarettes on television and radio as safe and glamorous, to  
17 the extent that cigarette advertising was the number one most heavily advertised  
18 product on television;
- 19
- 20 m. making knowingly false and misleading statements during a governmental hearing,  
21 including stating that, “there is absolutely no proof that cigarettes are addictive;”
- 22
- 23 n. purposefully targeting children yet openly in press releases falsely claiming, “We don’t  
24 advertise to children . . . Some straight talk about smoking for young people;”
- 25
- 26 o. responding the 1988 United States Surgeon General’s report that nicotine is the drug  
27 in tobacco that causes addiction, by issuing press releases stating, “Claims that  
28 cigarettes are addictive is irresponsible and scare tactics;”
- 29
- 30 p. lying under oath before the United States Congress in 1994 that it was their opinion

1 that it had not been proven that cigarettes were addictive, caused disease, or caused one  
2 single person to die.

3 414. Specifically, Defendant PHILIP MORRIS conspired with Defendants R.J.  
4 REYNOLDS and LIGGETT to knowingly make false and misleading representations regarding the  
5 truth regarding the hazardous and deadly nature of cigarettes and the ingredients in cigarettes by doing  
6 the following including but not limited to:  
7

- 8 a. By advertising “light” and “low tar” cigarettes to the public, including NOREEN  
9 THOMPSON, to help create and sustain the culture and societal and consumer  
10 expectations that “light” cigarettes were better, safer, and healthier than regular  
11 cigarettes;  
12  
13 b. By endeavoring in mass marketing campaigns consistent with R.J. REYNOLDS and  
14 LIGGETT’s campaign regarding the appeal of cigarettes including but not limited to  
15 their Marlboro County and Marlboro Man campaigns;  
16  
17 c. By working with R.J. REYNOLDS and LIGGETT to create “fake science” by hiring  
18 “fake scientists” to spread “fake scientific research” about the health hazards of  
19 smoking cigarettes including but not limited to the following:  
20  
21 i. Working with R.J. Reynolds and Liggett to create the Center for Indoor Air  
22 Research (“CIAR”) whose intent was to broaden the question of indoor air  
23 pollution to avert attention away from tobacco smoking causing disease and  
24 death;  
25  
26 ii. Creating the “White Papers” which rebutted scientific reports which were  
27 critical of tobacco.  
28

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 statements to promote the sale of cigarettes” (Previously concealed from Tobacco Institute);
- ii. “For nearly 20 years, this industry has employed a single strategy to defend itself . . . brilliantly conceived and executed . . . a holding strategy . . . creating doubt about the health charge without actually denying it” (Letter from Vice President of the Tobacco Institute Fred Panzer);
- iii. “The most important type of story is that which casts doubt on the cause and effect theory of disease and smoking . . . Doubt is our product.” (Previously concealed memo to the Tobacco Institute);
- iv. Ann Browder, a representative from the Tobacco Institute appearing on WPLG in 1983 stating the following: “We don’t know what causes the illness [cancer] . . . I don’t think there is a causal relationship because cigarette smoking and any illness;”
- v. “CTR began as an organization called the Tobacco Research Council (TIRC). It was set up as an industry “shield” in 1954 . . . Bill Shinn feels that “special projects” are the best way that monies are spent. On these projects CTR as acted as a front.” (Previously concealment meeting minutes from a CTR meeting held in New York in 1978 where Jim Bowling, Senior Vice President of Corporate Affairs, Bob Seligman, Vice President of Research & Development, and Tom Osdene, Director of Research all from Philip Morris were in attendance along with [an attorney at an outside law firm])”

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

8 415. 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

14 416. 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.

17 417. 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

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

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

28 420. 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  
6 421. As a further actual and proximate or legal result of Defendants' conduct NOREEN  
7 THOMPSON underwent medical treatment and incurred past medical and/or incidental expenses. The  
8 exact amount of such damages is unknown at this present time, but NOREEN THOMPSON suffered  
9 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY ROWAN, as  
10 Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages pursuant to  
11 NRS 41.100.

12  
13 422. 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  
17 423. 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  
23 424. 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  
employees, agents, and/or servants, as set forth herein.

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



**THIRTEENTH 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, 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**

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

427. Plaintiff brings this wrongful death claim based on a strict liability claim against Defendants 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.

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

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

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

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

432. Defendants, 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, are in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

433. Defendants, 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, sold cigarettes to the public, including Decedent, NOREEN THOMPSON.

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

5           435.    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'S, defective and unreasonably dangerous cigarettes reached NOREEN THOMPSON  
8 without substantial change from that in which such products were when within the possession of  
9 Defendants.  
10

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

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

21           438.    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 unreasonably dangerous because a less dangerous design and/or  
24 modification was economically and scientifically feasible.

25           439.    Defendants' conduct was the actual and proximate or legal cause of NOREEN  
26 THOMPSON'S injuries and death. Plaintiff has sustained damages consisting of the loss of NOREEN  
27 THOMPSON'S love, companionship, comfort, affection, society, and moral support, and has suffered  
28

1 great emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars  
2 (\$15,000.00). As NOREEN THOMPSON'S heir, Plaintiff seeks these damages pursuant to NRS  
3 41.085(4).

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

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

13 442. 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.

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

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

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

**FOURTEENTH CLAIM FOR RELIEF**

**(STRICT PRODUCT LIABILITY)**

**Dolly Rowan as Administrator of the Estate of Noreen Thompson  
Against Defendants 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**

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

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

448. Defendants, 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, are in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

449. Defendants, 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, sold cigarettes to the public, including to Decedent, NOREEN THOMPSON.

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

1           451. Defendants, C 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, defective and unreasonably dangerous cigarettes reached NOREEN THOMPSON  
4 without substantial change from that in which such products were when within the possession of  
5 Defendants.

6  
7           452. Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER  
8 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S  
9 NUGGET'S cigarettes were dangerous beyond the expectation of the ordinary user/consumer when  
10 used as intended or in a manner reasonably foreseeable by Defendants.

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

15  
16           454. Defendants, QUICK STOP MARKET, LLC, JOE'S BAR, INC., THE POKER  
17 PALACE, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY'S  
18 NUGGET'S cigarettes were unreasonably dangerous because a less dangerous design and/or  
19 modification was economically and scientifically feasible.

20  
21           455. Defendants' conduct is an actual and proximate or legal cause of NOREEN  
22 THOMPSON'S injuries. NOREEN THOMPSON thereby experienced great pain, and anxiety her  
23 body and mind. NOREEN THOMPSON sustained injuries and damages in an amount in excess of  
24 Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, DOLLY ROWAN, as Administrator of  
25 the Estate of NOREEN THOMPSON, now seeks recovery pursuant to NRS 41.100.

26           456. As a further actual and proximate or legal result of Defendants' conduct, NOREEN  
27 THOMPSON'S underwent medical treatment and incurred past medical and/or incidental expenses.  
28

1 The exact amount of such damages is unknown at this present time, but NOREEN THOMPSON  
2 suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, DOLLY  
3 ROWAN, as Administrator of the Estate of NOREEN THOMPSON seeks recovery of these damages  
4 pursuant to NRS 41.100.

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

9  
10 458. Defendants' outrageous and unconscionable conduct warrants an award of exemplary  
11 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an  
12 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of  
13 NOREEN THOMPSON, DOLLY ROWAN seeks exemplary and punitive damages pursuant to NRS  
14 41.100.

15  
16 459. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are  
17 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its  
18 employees, agents, and/or servants, as set forth herein.

19  
20 460. The actions of Defendants have forced Plaintiff to retain counsel to represent her in the  
21 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as  
22 attorneys' fees and costs of suit.

23 WHEREFORE, Plaintiff, DOLLY ROWAN, as Administrator and Personal Representative of  
24 the Estate of NOREEN THOMPSON expressly reserving the right to amend this Complaint at the  
25 time of trial to include all items of damage not yet ascertained, demands judgment against Defendants,  
26 PHILIP MORRIS USA, INC.; R.J. REYNOLDS TOBACCO COMPANY, individually, and as  
27 successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the  
28 United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which

1 is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP,  
2 LLC.; QUICK STOP MARKET, LLC; JOE'S BAR, INC.; THE POKER PALACE; SILVER  
3 NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO; JERRY'S NUGGET; and DOES I-X;  
4 and ROE BUSINESS ENTITIES XI-XX, and each of them, as follows:  
5

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

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

10 4. For exemplary and punitive damages in excess of Fifteen Thousand Dollars  
11 (\$15,000.00);

12 5. For reasonable attorneys' fees;

13 6. For costs of suit incurred;

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

15 8. For such other relief as to the Court seems just and proper.  
16

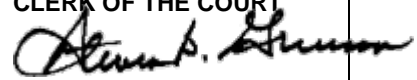
17 DATED this 15<sup>th</sup> day of March 2021.  
18

19 CLAGGETT & SYKES LAW FIRM

20 /s/ Sean K. Claggett

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INC., THE POKER PALACE, SILVER  
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NUGGET CASINO, and JERRY'S NUGGET

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of  
the Estate of NOREEN THOMPSON.

Plaintiff,

vs.

PHILIP MORRIS USA, INC., a foreign  
corporation; R.J. REYNOLDS TOBACCO

Case No. A-20-811091-C  
Dept. No. V

**ANSWER, DEFENSES, AND JURY  
DEMAND OF DEFENDANT JOE'S BAR,  
INC. TO PLAINTIFF'S AMENDED  
COMPLAINT**



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; JOES 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 1-X; and ROE BUSINESS ENTITIES XI-XX. inclusive,

Defendants.

**ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT JOE'S BAR, INC.  
TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Joe's Bar, Inc. ("Joe's Bar"), by and through its counsel of record, Bailey ♦ Kennedy, hereby answers Dolly Rowan's, as Special Administrator of the Estate of Noreen Thompson ("Plaintiff"), Amended Complaint as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Answering Paragraph 1, Joe's Bar states that the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent the allegations require a response, Joe's Bar denies the allegations to the extent they contradict or are inconsistent with the law.

2. Answering Paragraph 2, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

3. Answering Paragraph 3, Joe's Bar is informed and believes that Philip Morris USA, Inc. is a corporation organized in Virginia and is authorized to do business in Clark County, Nevada. Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

4. Answering Paragraph 4, Joe's Bar is informed and believes that R.J. Reynolds

1 Tobacco Company, Inc. (“R.J. Reynolds”) is a corporation organized in North Carolina with its  
2 principal place of business in North Carolina and is authorized to do business in Clark County,  
3 Nevada. Joe’s Bar is without knowledge or information sufficient to form a belief as to the truth of  
4 the remaining allegations contained in said paragraph, and therefore denies them on that basis.

5 5. Answering Paragraph 5, Joe’s Bar is without knowledge or information sufficient to  
6 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
7 on that basis.

8 6. Answering Paragraph 6, Joe’s Bar is informed and believes that Liggett Group, Inc. is  
9 a corporation organized in Delaware with its principal place of business in North Carolina and is  
10 authorized to do business in Clark County Nevada. Joe’s Bar is without knowledge or information  
11 sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph,  
12 and therefore denies them on that basis.

13 7. Answering Paragraph 7, Joe’s Bar is without knowledge or information sufficient to  
14 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
15 on that basis.

16 8. Answering Paragraph 8, Joe’s Bar is without knowledge or information sufficient to  
17 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
18 on that basis.

19 9. Answering Paragraph 9, Joe’s Bar is without knowledge or information sufficient to  
20 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
21 on that basis.

22 10. Answering Paragraph 10, Joe’s Bar admits that it is a Nevada corporation. Joe’s Bar  
23 further admits that it sells tobacco products, including cigarettes, and is licensed with the state of  
24 Nevada to do so. Joe’s Bar is without knowledge or information sufficient to form a belief as to the  
25 truth of any remaining allegations contained in said paragraph, and therefore denies them on that  
26 basis.

27 11. Answering Paragraph 11, Joe’s Bar is without knowledge or information sufficient to  
28 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them

on that basis.

12. Answering Paragraph 12, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

13. Answering Paragraph 13, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

14-17. Answering Paragraphs 14-17, the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent a response is required, Joe's Bar denies the allegations.

**FACTS COMMON TO ALL CLAIMS**

18. Answering Paragraph 18, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 17 of the Amended Complaint as if fully set forth herein.

19. Answering Paragraph 19, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

20. Answering Paragraph 20, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

21. Answering Paragraph 21, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

22. Answering Paragraph 22, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

23. Answering Paragraph 23, Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them

1 on that basis.

2 24. Answering Paragraph 24, Joe's Bar is without knowledge or information sufficient to  
3 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
4 on that basis.

5 25. Answering Paragraph 25, Joe's Bar is without knowledge or information sufficient to  
6 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
7 on that basis.

8 26. Answering Paragraph 26, Joe's Bar is without knowledge or information sufficient to  
9 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
10 on that basis.

11 27. Answering Paragraph 27, Joe's Bar is without knowledge or information sufficient to  
12 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
13 on that basis.

14 28. Answering Paragraph 28, Joe's Bar is without knowledge or information sufficient to  
15 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
16 on that basis.

17 29-35. Paragraphs 29-35 contains no allegations against Joe's Bar; to the extent this  
18 paragraph is attempting to implicitly allege any liability against Joe's Bar, those allegations are  
19 denied.

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

21 36-105. Paragraphs 36 through 105 contain no allegations against Joe's Bar; to the extent  
22 these paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations  
23 are denied.

24 **Conspiratorial Involvement by Defendants' Lawyers**

25 106-114. Paragraphs 106 through 114 contain no allegations against Joe's Bar; to the  
26 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
27 allegations are denied.  
28

**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. Answering Paragraph 115, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 114 of the Amended Complaint as if fully set forth herein.

116-136. Paragraphs 116 through 136 contain no allegations against Joe's Bar; to the extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations are denied.

**SECOND CLAIM FOR RELIEF**

**(NEGLIGENCE)**

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

137. Answering Paragraph 137, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 136 of the Amended Complaint as if fully set forth herein.

138-154. Paragraphs 138 through 154 contain no allegations against Joe's Bar; to the extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations are denied.

**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. Answering Paragraph 155, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 154 of the Amended Complaint as if fully set forth herein.

156-178. Paragraphs 156 through 178 contain no allegations against Joe's Bar; to the

1 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
2 allegations are denied.

3 **FOURTH CLAIM FOR RELIEF**

4 **(STRICT PRODUCTS LIABILITY)**

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

7 179. Answering Paragraph 179, Joe's Bar realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 178 of the Amended Complaint as if fully set  
9 forth herein.

10 180-197. Paragraphs 180 through 197 contain no allegations against Joe's Bar; to the  
11 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
12 allegations are denied.

13 **FIFTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – FRAUDULENT MISREPRESENTATION)**

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

17 198. Answering Paragraph 198, Joe's Bar realleges and incorporates by reference the  
18 responses to the allegations of paragraphs 1 through 197 of the Amended Complaint as if fully set  
19 forth herein.

20 199-234. Paragraphs 199 through 234 contain no allegations against Joe's Bar; to the  
21 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
22 allegations are denied.

23 **SIXTH CLAIM FOR RELIEF**

24 **(FRAUDULENT MISREPRESENTATION)**

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

27 235. Answering Paragraph 235, Joe's Bar realleges and incorporates by reference the  
28 responses to the allegations of paragraphs 1 through 234 of the Amended Complaint as if fully set

1 forth herein.

2 236-266. Paragraphs 236 through 266 contain no allegations against Joe's Bar; to the  
3 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
4 allegations are denied.

5 **SEVENTH CLAIM FOR RELIEF**

6 **(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)**

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

9 267. Answering Paragraph 267, Joe's Bar realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 266 of the Amended Complaint as if fully set  
11 forth herein.

12 268-303. Paragraphs 268 through 303 contain no allegations against Joe's Bar; to the  
13 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
14 allegations are denied.

15 **EIGHTH CLAIM FOR RELIEF**

16 **(FRAUDULENT CONCEALMENT)**

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

19 304. Answering Paragraph 304, Joe's Bar realleges and incorporates by reference the  
20 responses to the allegations of paragraphs 1 through 303 of the Amended Complaint as if fully set  
21 forth herein.

22 305-337. Paragraphs 305 through 337 contain no allegations against Joe's Bar; to the  
23 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
24 allegations are denied.

25 ///

26 ///

27 ///

28 ///

**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. Answering Paragraph 338, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 337 of the Amended Complaint as if fully set forth herein.

339-362. Paragraphs 339 through 362 contain no allegations against Joe's Bar; to the extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations are denied.

**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. Answering Paragraph 363, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 362 of the Amended Complaint as if fully set forth herein.

364-382. Paragraphs 364 through 382 contain no allegations against Joe's Bar; to the extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations are denied.

**ELEVENTH CLAIM FOR RELIEF**

**(WRONGFUL DEATH – NEVADA DECEPTIVE TRADE PRACTICES ACT)**

**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**

383. Answering Paragraph 383, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 382 of the Amended Complaint as if fully set forth herein.

384-406. Paragraphs 384 through 406 contain no allegations against Joe's Bar; to the



1 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
2 allegations are denied.

3 **TWELFTH CLAIM FOR RELIEF**

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

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

7 407. Answering Paragraph 407, Joe's Bar realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 406 of the Amended Complaint as if fully set  
9 forth herein.

10 408-425. Paragraphs 408 through 425 contain no allegations against Joe's Bar; to the  
11 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
12 allegations are denied.

13 **THIRTEENTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – STRICT LIABILITY)**

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

18 426. Answering Paragraph 426, Joe's Bar realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 425 of the Amended Complaint as if fully set  
20 forth herein.

21 427. Answering Paragraph 427, the allegations contain legal conclusions rather than  
22 factual allegations, and therefore, require no response. To the extent a response is required, Joe's  
23 Bar denies the allegations.

24 428. Answering Paragraph 428, Joe's Bar is without knowledge or information sufficient  
25 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
26 them on that basis.

27 429. Answering Paragraph 429, the allegations contain legal conclusions rather than  
28 factual allegations, and therefore, require no response. To the extent a response is required, Joe's

1 Bar denies the allegations.

2 430. Answering Paragraph 430, Joe's Bar is without knowledge or information sufficient  
3 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
4 them on that basis.

5 431. Answering Paragraph 431, the allegations contain legal conclusions rather than  
6 factual allegations, and therefore, require no response. To the extent a response is required, Joe's  
7 Bar denies the allegations.

8 432. Answering Paragraph 432, Joe's Bar admits that it is in the business of selling  
9 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

10 433. Answering Paragraph 433, Joe's Bar admits that it is in the business of selling  
11 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

12 434. Answering Paragraph 434, Joe's Bar admits that it is in the business of selling  
13 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

14 435. Paragraph 435 contains legal conclusions rather than factual allegations, and therefore  
15 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

16 436. Paragraph 436 contains legal conclusions rather than factual allegations, and therefore  
17 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

18 437. Paragraph 437 contains legal conclusions rather than factual allegations, and therefore  
19 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

20 438. Paragraph 438 contains legal conclusions rather than factual allegations, and therefore  
21 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

22 439. Paragraph 439 contains legal conclusions rather than factual allegations, and therefore  
23 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

24 440. Paragraph 440 contains legal conclusions rather than factual allegations, and therefore  
25 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

26 441. Paragraph 441 contains legal conclusions rather than factual allegations, and therefore  
27 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

28 442. Answering Paragraph 442, Joe's Bar denies the allegations.

1 443. Answering Paragraph 443, Joe's Bar denies the allegations.

2 444. Answering Paragraph 444, Joe's Bar denies the allegations.

3 445. Answering Paragraph 445, Joe's Bar denies the allegations.

4 **FOURTEENTH CLAIM FOR RELIEF**

5 **(STRICT PRODUCT LIABILITY)**

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

9 446. Answering Paragraph 446, Joe's Bar realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 445 of the Amended Complaint as if fully set  
11 forth herein.

12 447. Answering Paragraph 447, the allegations contain legal conclusions rather than  
13 factual allegations, and therefore, require no response. To the extent a response is required, Joe's  
14 Bar denies the allegations.

15 448. Answering Paragraph 448, Joe's Bar admits that it is in the business of selling  
16 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

17 449. Answering Paragraph 449, Joe's Bar admits that it is in the business of selling  
18 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

19 450. Answering Paragraph 450, Joe's Bar admits that it is in the business of selling  
20 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

21 451. Paragraph 451 contains legal conclusions rather than factual allegations, and therefore  
22 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

23 452. Paragraph 452 contains legal conclusions rather than factual allegations, and therefore  
24 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

25 453. Paragraph 453 contains legal conclusions rather than factual allegations, and therefore  
26 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

27 454. Paragraph 454 contains legal conclusions rather than factual allegations, and therefore  
28 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

455. Paragraph 455 contains legal conclusions rather than factual allegations, and therefore

1 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

2 456. Paragraph 456 contains legal conclusions rather than factual allegations, and therefore  
3 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

4 457. Answering Paragraph 457, Joe's Bar denies the allegations.

5 458. Answering Paragraph 458, Joe's Bar denies the allegations.

6 459. Answering Paragraph 459, Joe's Bar denies the allegations.

7 460. Answering Paragraph 460, Joe's Bar denies the allegations.

8 Joe's Bar denies that Plaintiff is entitled to judgement against, or any relief whatsoever from,  
9 Joe's Bar in this action and denies any remaining allegations, including, but not limited to, those  
10 contained in the unnumbered paragraph following paragraph 460 beginning "WHEREFORE."

11 **AFFIRMATIVE DEFENSES**

12 **FIRST AFFIRMATIVE DEFENSE**

13 The Amended Complaint fails to state a claim upon which relief may be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred, in whole or in part, by any applicable statutes of limitations and  
16 repose.

17 **THIRD AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred, in whole or in part, by the doctrines of *res judicata*, estoppel,  
19 and by executed releases of the State of Nevada.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred, in whole or in part, because the sale of tobacco products to  
22 persons of legal age is a legal activity in the State of Nevada.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 Any injuries allegedly sustained by Plaintiff and/or Noreen Thompson were produced, if at  
25 all, by an intervening or superseding cause or causes, and any alleged act or omission of Joe's Bar  
26 was not the proximate or competent producing cause of Plaintiff's and/or Noreen Thompson's  
27 alleged injuries or damages. To the extent Plaintiff's and/or Noreen Thompson's alleged injuries  
28 were caused by the use of tobacco products, the proximate cause of such alleged injuries was Noreen

Thompson's choice to use tobacco products.

**SIXTH AFFIRMATIVE DEFENSE**

If Plaintiff and/or Noreen Thompson were injured or damaged, such alleged injuries or damages were caused solely or proximately by the acts, wrongs, or omissions of Plaintiff and/or Noreen Thompson, by preexisting conditions, or by forces and/or things over which Joe's Bar had no control and for which Joe's Bar is not responsible or liable.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's recovery is barred, in whole or in part, by the doctrine of assumption of risk.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's consent.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by settlement or accord and satisfaction of their claims.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff and/or Noreen Thompson failed to mitigate any injuries and damages allegedly suffered.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Amended Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorneys' fees.

**TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's claims are based on an alleged duty to disclose the risks associated with cigarette smoking, such claims are barred because such risks are and have been commonly known.

**THIRTEENTH AFFIRMATIVE DEFENSE**

If any defects existed with respect to tobacco products sold by Joe's Bar, any such alleged defects were open and obvious. Accordingly, Plaintiff cannot recover herein against Joe's Bar.

**FOURTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the Federal Cigarette Labeling and Advertising Act, Pub. L. 89-92, 79 Stat. 282 (1965), and the Public Health Cigarette Smoking Act of 1969, Pub. L. 91-222, 84 Stat. 87 (1969), codified as amended at 15 U.S.C. § 1331 et seq., preempt and bar, in whole or in part, Plaintiff's claims and causes of action. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

**FIFTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the doctrine of conflict preemption preempts and bars, in whole or in part, Plaintiff's claims and causes of action. Congress has specifically foreclosed the removal of tobacco products from the market and, for that reason, any claims of liability based in whole or in part on a duty not to manufacture, market, or sell cigarettes are preempted. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

**SIXTEENTH AFFIRMATIVE DEFENSE**

Joe's Bar is entitled to set-off, should any damages be awarded against it, in the amount of damages or settlement amounts recovered by Plaintiff and/or Noreen Thompson with respect to the same alleged injuries. Joe's Bar is also entitled to have any damages that may be awarded to Plaintiff reduced by the value of any benefit or payment to Plaintiff and/or Noreen Thompson from any collateral source.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because the injuries for which she seeks to recover were allegedly caused by an inherent characteristic of cigarettes which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's comparative negligence, fault, responsibility, or want of due care, including Noreen Thompson's

1 choice to smoke. Plaintiff is, therefore, barred from any recovery, or any recoverable damages must  
2 be reduced in proportion to the amount of negligence attributable to Plaintiff and/or Noreen  
3 Thompson.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff lacks either standing or capacity, or both, to bring some or all of the claims alleged  
6 in the Amended Complaint.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 Plaintiff's product liability claims are barred because the cigarettes sold by Joe's Bar are not  
9 dangerous to an extent beyond that contemplated by the ordinary consumer.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 The Amended Complaint fails to state facts sufficient to entitle Plaintiff to an award of  
12 punitive damages.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 Joe's Bar pleads the defenses available under the applicable products liability statutes of the  
15 State of Nevada.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 Joe's Bar states that as of the relevant times alleged in the Amended Complaint, it did not  
18 know, and in light of the then existing and reasonably available scientific and technological  
19 knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the  
20 injuries and damages complained of in the Amended Complaint; (2) the alleged danger of any such  
21 design characteristics; or (3) any scientifically and technologically feasible and economically  
22 practical alternate design. Joe's Bar further states that the injuries and damages complained of in the  
23 Amended Complaint were not proximately caused by the lack of any such alternate design.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred to the extent Plaintiff seeks to impose liability on Joe's Bar  
26 retroactively or for conduct which was not actionable at the time it occurred.

27 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

28 Plaintiff's design defect claims are barred in whole or in part because Defendants' tobacco

1 products were designed in conformity with the generally recognized state of the art at the time they  
2 were designed, manufactured, tested, packaged, labeled, sold, or distributed.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches, waiver,  
5 equitable estoppel, and ratification.

6 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

7 All cigarettes manufactured to be sold in the United States since 1966, and every United  
8 States cigarette advertisement since 1972, carried warnings that adequately informed Plaintiff and/or  
9 Noreen Thompson of the health risks of smoking cigarettes. Such acts eliminated the elements of  
10 willfulness and reckless disregard necessary to support an award of punitive damages.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
13 conduct unrelated to Plaintiff's and/or Noreen Thompson's alleged harm.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
16 conduct occurring outside the State of Nevada.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 Joe's Bar denies liability for any award of punitive damages not based solely on the specific  
19 allegations of Joe's Bar's conduct made the subject of this lawsuit and that allegedly affected  
20 Plaintiff and/or Noreen Thompson because consideration of other conduct would subject Joe's Bar  
21 to impermissible multiple punishments for the same conduct, in violation of the Fifth and Fourteenth  
22 Amendments to the United States Constitution and comparable provisions of the Nevada  
23 Constitution.

24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred because the alleged conduct of Joe's Bar was undertaken in good  
26 faith and for a valid business purpose.

27 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff's claims for punitive damages against Joe's Bar cannot be sustained because an



1 award of punitive damages under Nevada law, subject to no predetermined limit, such as a  
2 maximum multiple of compensatory damages or a maximum amount of punitive damages that a jury  
3 may impose, and providing no protection against multiple awards of punitive damages for the same  
4 course of conduct, would violate Joe's Bar's due process rights guaranteed by the Fifth and  
5 Fourteenth Amendments to the United States Constitution, and Joe's Bar's due process rights under  
6 Article 1, Sections 6, 8 and 15 of the Nevada Constitution, and would be improper under the  
7 common law and public policies of the State of Nevada.

8 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

9 The monetary relief sought, which is intended in part to punish Joe's Bar, is barred under the  
10 Eighth Amendment of the United States Constitution as well as cognate provisions of the Nevada  
11 Constitution found at Article 1, Section 6 as the imposition of an excessive fine.

12 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims for punitive damages are barred absent the safeguards guaranteed by the  
14 Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the  
15 comparable provisions of the Nevada Constitution in that these claims invoke or authorize  
16 proceedings and remedies which, though nominally civil, are in reality so punitive in purpose and  
17 effect that they transform the relief that Plaintiff seeks into a criminal penalty.

18 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims for punitive damages cannot be sustained because an award of punitive  
20 damages under Nevada law would violate Joe's Bar's due process and equal protection rights  
21 guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and  
22 Joe's Bar's due process rights under Article 1, Sections 8 and 15 of the Nevada Constitution.

23 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims for punitive damages against Joe's Bar cannot be sustained because an  
25 award of punitive damages in this case, combined with any prior, contemporaneous or subsequent  
26 judgments or settlements against Joe's Bar that include punitive damages arising out of the same  
27 marketing, sale or use of Defendants' tobacco products, would be impermissible multiple  
28 punishment in violation of the due process and equal protection rights guaranteed by the Fifth and

1 Fourteenth Amendments to the United States Constitution and the comparable provisions of the  
2 Nevada Constitution.

3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

4 Any award of punitive damages that is disproportionate to the amount of actual damages that  
5 does not bear a reasonable relationship to actual damages and that does not correlate to the actual  
6 cause of any injury violates Joe's Bar's rights under the Due Process clause of the Fourteenth  
7 Amendment to the United States Constitution and the comparable provisions of the Nevada  
8 Constitution.

9 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
11 damages under Nevada law by a jury that (1) is not provided constitutionally adequate standards of  
12 sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a  
13 punitive damages award; (2) is not adequately instructed on the limits of punitive damages imposed  
14 by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from  
15 awarding punitive damages, or determining the amount of an award of punitive damages, in whole  
16 or in part on the basis of invidiously discriminatory characteristics, including without limitation the  
17 residence, wealth, and corporate status of Joe's Bar; (4) is permitted to award punitive damages  
18 under a standard for determining liability for punitive damages that is vague and arbitrary and does  
19 not define with sufficient clarity the conduct or mental state that makes punitive damages  
20 permissible; (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each  
21 and every element of a claim for punitive damages; and (6) is not subject to trial court and appellate  
22 judicial review for reasonableness and furtherance of legitimate purposes on the basis of  
23 constitutionally adequate and objective standards, would violate Joe's Bar's due process and equal  
24 protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States  
25 Constitution and applicable provisions of the Nevada Constitution, and would be improper under the  
26 common law and public policy of Nevada.

27 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

28 To the extent that the laws of other jurisdictions apply, Joe's Bar invokes each and every

1 constitutional defense available to it under the Constitutions (or similar charters) of each of the 50  
2 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and  
3 possessions. This specifically includes, but is not limited to, provisions relating to due process,  
4 access to the courts, freedom of speech, freedom of association, freedom to petition the government  
5 for redress of grievances, and limitations on compensatory and punitive damages.

6 **FORTIETH AFFIRMATIVE DEFENSE**

7 In the event Plaintiff establishes liability on the part of Joe's Bar, which liability  
8 Joe's Bar specifically denies, any alleged injuries or damages were caused in whole or in part by the  
9 negligence of Plaintiff and/or Noreen Thompson, thereby barring Plaintiff's recovery in whole or in  
10 part.

11 **FORTY-FIRST AFFIRMATIVE DEFENSE**

12 Plaintiff's claim for punitive damages against Joe's Bar cannot be sustained because NRS  
13 42.005(2) impermissibly singles out and exempts products liability cases from the limits otherwise  
14 imposed on the recovery of punitive damages, leaving their assessment to the standardless discretion  
15 of the finder of fact. Further, the statute and Nevada cases decided under it do not comply with the  
16 minimum standards established by the United States Supreme Court in this evolving area of the law,  
17 and they improperly permit multiple awards of punitive damages for the same alleged act or acts,  
18 without regard to where the injury occurred.

19 **FORTY-SECOND AFFIRMATIVE DEFENSE**

20 Plaintiff's claim for punitive damages against Joe's Bar cannot be sustained because an  
21 award of punitive damages under Nevada law, without a bifurcated trial, would violate  
22 Joe's Bar's right to equal protection and due process under the Fifth and Fourteenth Amendments to  
23 the United States Constitution and under Article 1, Section 8 of the Nevada Constitution.

24 **FORTY-THIRD AFFIRMATIVE DEFENSE**

25 Any affirmative defenses pled by any other Defendant and not pled by Joe's Bar are  
26 incorporated herein to the extent they do not conflict with Joe's Bar's affirmative defenses.

27 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

28 Joe's Bar hereby gives notice that it intends to rely upon any other defense that may become

1 available or appear during the discovery proceedings in this case and hereby reserves its right to  
2 amend its Answer to assert any such defenses based on Nevada law, or other defenses that may  
3 become available in the course of litigation.

4 WHEREFORE, having fully answered Plaintiff's Amended Complaint, Joe's Bar prays for  
5 judgment against Plaintiff as follows:

6 1. That Plaintiff's claims for relief be dismissed with prejudice and that Plaintiff take  
7 nothing thereby;

8 2. For an award of costs and attorneys' fees incurred in the defense of this action, as  
9 may be permitted by law; and

10 3. For such other and further relief as the Court deems just and proper.

11 **JURY DEMAND**

12 Joe's Bar demands a trial by jury of all claims triable as of right by jury.

13 DATED this 29<sup>th</sup> day of March, 2021.

14 BAILEY❖KENNEDY

15  
16 By: /s/ Joseph A. Liebman  
17 DENNIS L. KENNEDY  
JOSEPH A. LIEBMAN

18 KING & SPALDING  
19 VALENTIN LEPPERT  
(ADMITTED PRO HAC VICE)  
20 SPENCER MILES DIAMOND  
(ADMITTED PRO HAC VICE)

21 KING & SPALDING  
22 URSULA MARIE HENNINGER  
(ADMITTED PRO HAC VICE)

23 *Attorneys for Defendants*  
24 R.J. REYNOLDS TOBACCO COMPANY,  
25 QUICK STOP MARKET, LLC, JOE'S  
26 BAR, INC., THE POKER PALACE,  
SILVER NUGGET GAMING, LLC d/b/a  
JERRY'S NUGGET

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY❖KENNEDY and that on the 29<sup>th</sup> day of March, 2021, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT JOE'S BAR, INC. TO PLAINTIFF'S AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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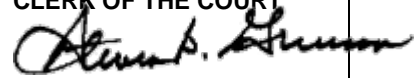
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NUGGET CASINO, and JERRY'S NUGGET

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of  
the Estate of NOREEN THOMPSON.

Plaintiff,

vs.

PHILIP MORRIS USA, INC., a foreign  
corporation; R.J. REYNOLDS TOBACCO

Case No. A-20-811091-C  
Dept. No. V

**ANSWER, DEFENSES, AND JURY  
DEMAND OF DEFENDANT  
JERRY'S NUGGET TO PLAINTIFF'S  
AMENDED COMPLAINT**

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; JOES 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 1-X; and ROE BUSINESS ENTITIES XI-XX. inclusive,

Defendants.

**ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT JERRY'S NUGGET TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Jerry's Nugget, by and through its counsel of record, Bailey ♦ Kennedy, hereby answers Dolly Rowan's, as Special Administrator of the Estate of Noreen Thompson ("Plaintiff"), Amended Complaint as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Answering Paragraph 1, Jerry's Nugget states that the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent the allegations require a response, Jerry's Nugget denies the allegations to the extent they contradict or are inconsistent with the law.

2. Answering Paragraph 2, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

3. Answering Paragraph 3, Jerry's Nugget is informed and believes that Philip Morris USA, Inc. is a corporation organized in Virginia and is authorized to do business in Clark County, Nevada. Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

1           4.       Answering Paragraph 4, Jerry's Nugget is informed and believes that R.J. Reynolds  
2 Tobacco Company, Inc. ("R.J. Reynolds") is a corporation organized in North Carolina with its  
3 principal place of business in North Carolina and is authorized to do business in Clark County,  
4 Nevada. Jerry's Nugget is without knowledge or information sufficient to form a belief as to the  
5 truth of the remaining allegations contained in said paragraph, and therefore denies them on that  
6 basis.

7           5.       Answering Paragraph 5, Jerry's Nugget is without knowledge or information  
8 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
9 denies them on that basis.

10          6.       Answering Paragraph 6, Jerry's Nugget is informed and believes that Liggett Group,  
11 Inc. is a corporation organized in Delaware with its principal place of business in North Carolina and  
12 is authorized to do business in Clark County Nevada. Jerry's Nugget is without knowledge or  
13 information sufficient to form a belief as to the truth of the remaining allegations contained in said  
14 paragraph, and therefore denies them on that basis.

15          7.       Answering Paragraph 7, Jerry's Nugget is without knowledge or information  
16 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
17 denies them on that basis.

18          8.       Answering Paragraph 8, Jerry's Nugget is without knowledge or information  
19 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
20 denies them on that basis.

21          9.       Answering Paragraph 9, Jerry's Nugget is without knowledge or information  
22 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
23 denies them on that basis.

24          10.      Answering Paragraph 10, Jerry's Nugget is without knowledge or information  
25 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
26 denies them on that basis.

27          11.      Answering Paragraph 11, Jerry's Nugget is without knowledge or information  
28 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore



denies them on that basis.

12. Answering Paragraph 12, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

13. Answering Paragraph 13, Jerry's Nugget admits that it is a Nevada corporation. Jerry's Nugget further admits that it sells tobacco products, including cigarettes, and is licensed with the state of Nevada to do so. Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in said paragraph, and therefore denies them on that basis.

14-17. Answering Paragraphs 14-17, the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent a response is required, Jerry's Nugget denies the allegations.

**FACTS COMMON TO ALL CLAIMS**

18. Answering Paragraph 18, Jerry's Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 17 of the Amended Complaint as if fully set forth herein.

19. Answering Paragraph 19, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

20. Answering Paragraph 20, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

21. Answering Paragraph 21, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

22. Answering Paragraph 22, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

23. Answering Paragraph 23, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

24. Answering Paragraph 24, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

25. Answering Paragraph 25, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

26. Answering Paragraph 26, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

27. Answering Paragraph 27, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

28. Answering Paragraph 28, Jerry's Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

29-35. Paragraphs 29-35 contain no allegations against Jerry's Nugget; to the extent this paragraph is attempting to implicitly allege any liability against Jerry's Nugget, those allegations are denied.

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

36-105. Paragraphs 36 through 105 contain no allegations against Jerry's Nugget; to the extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those allegations are denied.

#### **Conspiratorial Involvement by Defendants' Lawyers**

106-114. Paragraphs 106 through 114 contain no allegations against Jerry's Nugget; to the extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those

allegations are denied.

**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. Answering Paragraph 115, Jerry's Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 114 of the Amended Complaint as if fully set forth herein.

116-136. Paragraphs 116 through 136 contain no allegations against Jerry's Nugget; to the extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those allegations are denied.

**SECOND CLAIM FOR RELIEF**

**(NEGLIGENCE)**

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

137. Answering Paragraph 137, Jerry's Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 136 of the Amended Complaint as if fully set forth herein.

138-154. Paragraphs 138 through 154 contain no allegations against Jerry's Nugget; to the extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those allegations are denied.

**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. Answering Paragraph 155, Jerry's Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 154 of the Amended Complaint as if fully set forth herein.

1 156-178. Paragraphs 156 through 178 contain no allegations against Jerry's Nugget; to the  
2 extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
3 allegations are denied.

4 **FOURTH CLAIM FOR RELIEF**

5 **(STRICT PRODUCTS LIABILITY)**

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

8 179. Answering Paragraph 179, Jerry's Nugget realleges and incorporates by reference the  
9 responses to the allegations of paragraphs 1 through 178 of the Amended Complaint as if fully set  
10 forth herein.

11 180-197. Paragraphs 180 through 197 contain no allegations against Jerry's Nugget; to the  
12 extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
13 allegations are denied.

14 **FIFTH CLAIM FOR RELIEF**

15 **(WRONGFUL DEATH – FRAUDULENT MISREPRESENTATION)**

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

18 198. Answering Paragraph 198, Jerry's Nugget realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 197 of the Amended Complaint as if fully set  
20 forth herein.

21 199–234. Paragraphs 199 through 234 contain no allegations against Jerry's Nugget; to the  
22 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
23 allegations are denied.

24 **SIXTH CLAIM FOR RELIEF**

25 **(FRAUDULENT MISREPRESENTATION)**

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

28 235. Answering Paragraph 235, Jerry's Nugget realleges and incorporates by reference the

1 responses to the allegations of paragraphs 1 through 234 of the Amended Complaint as if fully set  
2 forth herein.

3 236-266. Paragraphs 236 through 266 contain no allegations against Jerry's Nugget; to the  
4 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
5 allegations are denied.

6 **SEVENTH CLAIM FOR RELIEF**

7 **(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)**

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

10 267. Answering Paragraph 267, Jerry's Nugget realleges and incorporates by reference the  
11 responses to the allegations of paragraphs 1 through 266 of the Amended Complaint as if fully set  
12 forth herein.

13 268-303. Paragraphs 268 through 303 contain no allegations against Jerry's Nugget; to the  
14 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
15 allegations are denied.

16 **EIGHTH CLAIM FOR RELIEF**

17 **(FRAUDULENT CONCEALMENT)**

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

20 304. Answering Paragraph 304, Jerry's Nugget realleges and incorporates by reference the  
21 responses to the allegations of paragraphs 1 through 303 of the Amended Complaint as if fully set  
22 forth herein.

23 305-337. Paragraphs 305 through 337 contain no allegations against Jerry's Nugget; to the  
24 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
25 allegations are denied.

26 ///

27 ///

28 ///

**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. Answering Paragraph 338, Jerry's Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 337 of the Amended Complaint as if fully set forth herein.

339-362. Paragraphs 339 through 362 contain no allegations against Jerry's Nugget; to the extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those allegations are denied.

**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. Answering Paragraph 363, Jerry's Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 362 of the Amended Complaint as if fully set forth herein.

364-382. Paragraphs 364 through 382 contain no allegations against Jerry's Nugget; to the extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those allegations are denied.

**ELEVENTH CLAIM FOR RELIEF**

**(WRONGFUL DEATH – NEVADA DECEPTIVE TRADE PRACTICES ACT)**

**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**

383. Answering Paragraph 383, Jerry's Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 382 of the Amended Complaint as if fully set forth herein.

384-406. Paragraphs 384 through 406 contain no allegations against Jerry's Nugget; to the

1 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
2 allegations are denied.

3 **TWELFTH CLAIM FOR RELIEF**

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

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

7 407. Answering Paragraph 407, Jerry's Nugget realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 406 of the Amended Complaint as if fully set  
9 forth herein.

10 408-425. Paragraphs 408 through 425 contain no allegations against Jerry's Nugget; to the  
11 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
12 allegations are denied.

13 **THIRTEENTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – STRICT LIABILITY)**

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

18 426. Answering Paragraph 426, Jerry's Nugget realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 425 of the Amended Complaint as if fully set  
20 forth herein.

21 427. Answering Paragraph 427, the allegations contain legal conclusions rather than  
22 factual allegations, and therefore, require no response. To the extent a response is required, Jerry's  
23 Nugget denies the allegations.

24 428. Answering Paragraph 428, Jerry's Nugget is without knowledge or information  
25 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
26 denies them on that basis.

27 429. Answering Paragraph 429, the allegations contain legal conclusions rather than  
28 factual allegations, and therefore, require no response. To the extent a response is required, Jerry's

1 Nugget denies the allegations.

2 430. Answering Paragraph 430, Jerry's Nugget is without knowledge or information  
3 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
4 denies them on that basis.

5 431. Answering Paragraph 431, the allegations contain legal conclusions rather than  
6 factual allegations, and therefore, require no response. To the extent a response is required, Jerry's  
7 Nugget denies the allegations.

8 432. Answering Paragraph 432, Jerry's Nugget admits that it is in the business of selling  
9 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

10 433. Answering Paragraph 433, Jerry's Nugget admits that it is in the business of selling  
11 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

12 434. Answering Paragraph 434, Jerry's Nugget admits that it is in the business of selling  
13 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

14 435. Paragraph 435 contains legal conclusions rather than factual allegations, and therefore  
15 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

16 436. Paragraph 436 contains legal conclusions rather than factual allegations, and therefore  
17 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

18 437. Paragraph 437 contains legal conclusions rather than factual allegations, and therefore  
19 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

20 438. Paragraph 438 contains legal conclusions rather than factual allegations, and therefore  
21 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

22 439. Paragraph 439 contains legal conclusions rather than factual allegations, and therefore  
23 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

24 440. Paragraph 440 contains legal conclusions rather than factual allegations, and therefore  
25 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

26 441. Paragraph 441 contains legal conclusions rather than factual allegations, and therefore  
27 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

28 442. Answering Paragraph 442, Jerry's Nugget denies the allegations.



1 443. Answering Paragraph 443, Jerry's Nugget denies the allegations.

2 444. Answering Paragraph 444, Jerry's Nugget denies the allegations.

3 445. Answering Paragraph 445, Jerry's Nugget denies the allegations.

4 **FOURTEENTH CLAIM FOR RELIEF**

5 **(STRICT PRODUCT LIABILITY)**

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

9 446. Answering Paragraph 446, Jerry's Nugget realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 445 of the Amended Complaint as if fully set  
11 forth herein.

12 447. Answering Paragraph 447, the allegations contain legal conclusions rather than  
13 factual allegations, and therefore, require no response. To the extent a response is required, Jerry's  
14 Nugget denies the allegations.

15 448. Answering Paragraph 448, Jerry's Nugget admits that it is in the business of selling  
16 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

17 449. Answering Paragraph 449, Jerry's Nugget admits that it is in the business of selling  
18 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

19 450. Answering Paragraph 450, Jerry's Nugget admits that it is in the business of selling  
20 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

21 451. Paragraph 451 contains legal conclusions rather than factual allegations, and therefore  
22 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

23 452. Paragraph 452 contains legal conclusions rather than factual allegations, and therefore  
24 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

25 453. Paragraph 453 contains legal conclusions rather than factual allegations, and therefore  
26 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

27 454. Paragraph 454 contains legal conclusions rather than factual allegations, and therefore  
28 requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

455. Paragraph 455 contains legal conclusions rather than factual allegations, and therefore

requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

456. Paragraph 456 contains legal conclusions rather than factual allegations, and therefore requires no response. To the extent a response is required, Jerry's Nugget denies the allegations.

457. Answering Paragraph 457, Jerry's Nugget denies the allegations.

458. Answering Paragraph 458, Jerry's Nugget denies the allegations.

459. Answering Paragraph 459, Jerry's Nugget denies the allegations.

460. Answering Paragraph 460, Jerry's Nugget denies the allegations.

Jerry's Nugget denies that Plaintiff is entitled to judgement against, or any relief whatsoever from, Jerry's Nugget in this action and denies any remaining allegations, including, but not limited to, those contained in the unnumbered paragraph following paragraph 460 beginning "WHEREFORE."

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim upon which relief may be granted.

### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by any applicable statutes of limitations and repose.

### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrines of *res judicata*, estoppel, and by executed releases of the State of Nevada.

### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the sale of tobacco products to persons of legal age is a legal activity in the State of Nevada.

### **FIFTH AFFIRMATIVE DEFENSE**

Any injuries allegedly sustained by Plaintiff and/or Noreen Thompson were produced, if at all, by an intervening or superseding cause or causes, and any alleged act or omission of Jerry's Nugget was not the proximate or competent producing cause of Plaintiff's and/or Noreen Thompson's alleged injuries or damages. To the extent Plaintiff's and/or Noreen Thompson's

1 alleged injuries were caused by the use of tobacco products, the proximate cause of such alleged  
2 injuries was Noreen Thompson's choice to use tobacco products.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 If Plaintiff and/or Noreen Thompson were injured or damaged, such alleged injuries or  
5 damages were caused solely or proximately by the acts, wrongs, or omissions of Plaintiff and/or  
6 Noreen Thompson, by preexisting conditions, or by forces and/or things over which Jerry's Nugget  
7 had no control and for which Jerry's Nugget is not responsible or liable.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiff's recovery is barred, in whole or in part, by the doctrine of assumption of risk.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's  
12 consent.

13 **NINTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claims are barred, in whole or in part, by settlement or accord and satisfaction of  
15 their claims.

16 **TENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred, in whole or in part, because Plaintiff and/or Noreen Thompson  
18 failed to mitigate any injuries and damages allegedly suffered.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 The Amended Complaint fails to allege facts, or a cause of action, sufficient to support a  
21 claim for attorneys' fees.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 To the extent Plaintiff's claims are based on an alleged duty to disclose the risks associated  
24 with cigarette smoking, such claims are barred because such risks are and have been commonly  
25 known.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 If any defects existed with respect to tobacco products sold by Jerry's Nugget, any such  
28 alleged defects were open and obvious. Accordingly, Plaintiff cannot recover herein against

1 Jerry's Nugget.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 By operation of the Supremacy Clause, Article VI, Clause 2, of the United States  
4 Constitution, the Federal Cigarette Labeling and Advertising Act, Pub. L. 89-92, 79 Stat. 282 (1965),  
5 and the Public Health Cigarette Smoking Act of 1969, Pub. L. 91-222, 84 Stat. 87 (1969), codified  
6 as amended at 15 U.S.C. § 1331 et seq., preempt and bar, in whole or in part, Plaintiff's claims and  
7 causes of action. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 By operation of the Supremacy Clause, Article VI, Clause 2, of the United States  
10 Constitution, the doctrine of conflict preemption preempts and bars, in whole or in part, Plaintiff's  
11 claims and causes of action. Congress has specifically foreclosed the removal of tobacco products  
12 from the market and, for that reason, any claims of liability based in whole or in part on a duty not to  
13 manufacture, market, or sell cigarettes are preempted. *See FDA v. Brown & Williamson Tobacco*  
14 *Corp.*, 529 U.S. 120 (2000).

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 Jerry's Nugget is entitled to set-off, should any damages be awarded against it, in the amount  
17 of damages or settlement amounts recovered by Plaintiff and/or Noreen Thompson with respect to  
18 the same alleged injuries. Jerry's Nugget is also entitled to have any damages that may be awarded  
19 to Plaintiff reduced by the value of any benefit or payment to Plaintiff and/or Noreen Thompson  
20 from any collateral source.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred because the injuries for which she seeks to recover were  
23 allegedly caused by an inherent characteristic of cigarettes which is a generic aspect of the product  
24 that cannot be eliminated without substantially compromising the product's usefulness or desirability  
25 and which is recognized by the ordinary person with the ordinary knowledge common to the  
26 community.

27 **EIGHTEENTH AFFIRMATIVE DEFENSE**

28 Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's

1 comparative negligence, fault, responsibility, or want of due care, including Noreen Thompson's  
2 choice to smoke. Plaintiff is, therefore, barred from any recovery, or any recoverable damages must  
3 be reduced in proportion to the amount of negligence attributable to Plaintiff and/or Noreen  
4 Thompson.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 Plaintiff lacks either standing or capacity, or both, to bring some or all of the claims alleged  
7 in the Amended Complaint.

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 Plaintiff's product liability claims are barred because the cigarettes sold by Jerry's Nugget  
10 are not dangerous to an extent beyond that contemplated by the ordinary consumer.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 The Amended Complaint fails to state facts sufficient to entitle Plaintiff to an award of  
13 punitive damages.

14 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

15 Jerry's Nugget pleads the defenses available under the applicable products liability statutes of  
16 the State of Nevada.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 Jerry's Nugget states that as of the relevant times alleged in the Amended Complaint, it did  
19 not know, and in light of the then existing and reasonably available scientific and technological  
20 knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the  
21 injuries and damages complained of in the Amended Complaint; (2) the alleged danger of any such  
22 design characteristics; or (3) any scientifically and technologically feasible and economically  
23 practical alternate design. Jerry's Nugget further states that the injuries and damages complained of  
24 in the Amended Complaint were not proximately caused by the lack of any such alternate design.

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 Plaintiff's claims are barred to the extent Plaintiff seeks to impose liability on Jerry's Nugget  
27 retroactively or for conduct which was not actionable at the time it occurred.

28

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's design defect claims are barred in whole or in part because Defendants' tobacco products were designed in conformity with the generally recognized state of the art at the time they were designed, manufactured, tested, packaged, labeled, sold, or distributed.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches, waiver, equitable estoppel, and ratification.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

All cigarettes manufactured to be sold in the United States since 1966, and every United States cigarette advertisement since 1972, carried warnings that adequately informed Plaintiff and/or Noreen Thompson of the health risks of smoking cigarettes. Such acts eliminated the elements of willfulness and reckless disregard necessary to support an award of punitive damages.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are barred to the extent that they are based upon conduct unrelated to Plaintiff's and/or Noreen Thompson's alleged harm.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are barred to the extent that they are based upon conduct occurring outside the State of Nevada.

**THIRTIETH AFFIRMATIVE DEFENSE**

Jerry's Nugget denies liability for any award of punitive damages not based solely on the specific allegations of Jerry's Nugget's conduct made the subject of this lawsuit and that allegedly affected Plaintiff and/or Noreen Thompson because consideration of other conduct would subject Jerry's Nugget to impermissible multiple punishments for the same conduct, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and comparable provisions of the Nevada Constitution.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because the alleged conduct of Jerry's Nugget was undertaken in good faith and for a valid business purpose.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages against Jerry's Nugget cannot be sustained because an award of punitive damages under Nevada law, subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of punitive damages that a jury may impose, and providing no protection against multiple awards of punitive damages for the same course of conduct, would violate Jerry's Nugget's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Jerry's Nugget's due process rights under Article 1, Sections 6, 8 and 15 of the Nevada Constitution, and would be improper under the common law and public policies of the State of Nevada.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

The monetary relief sought, which is intended in part to punish Jerry's Nugget, is barred under the Eighth Amendment of the United States Constitution as well as cognate provisions of the Nevada Constitution found at Article 1, Section 6 as the imposition of an excessive fine.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are barred absent the safeguards guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the comparable provisions of the Nevada Constitution in that these claims invoke or authorize proceedings and remedies which, though nominally civil, are in reality so punitive in purpose and effect that they transform the relief that Plaintiff seeks into a criminal penalty.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages cannot be sustained because an award of punitive damages under Nevada law would violate Jerry's Nugget's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Jerry's Nugget's due process rights under Article 1, Sections 8 and 15 of the Nevada Constitution.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages against Jerry's Nugget cannot be sustained because an award of punitive damages in this case, combined with any prior, contemporaneous or subsequent judgments or settlements against Jerry's Nugget that include punitive damages arising out of the

1 same marketing, sale or use of Defendants' tobacco products, would be impermissible multiple  
2 punishment in violation of the due process and equal protection rights guaranteed by the Fifth and  
3 Fourteenth Amendments to the United States Constitution and the comparable provisions of the  
4 Nevada Constitution.

5 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

6 Any award of punitive damages that is disproportionate to the amount of actual damages that  
7 does not bear a reasonable relationship to actual damages and that does not correlate to the actual  
8 cause of any injury violates Jerry's Nugget's rights under the Due Process clause of the Fourteenth  
9 Amendment to the United States Constitution and the comparable provisions of the Nevada  
10 Constitution.

11 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
13 damages under Nevada law by a jury that (1) is not provided constitutionally adequate standards of  
14 sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a  
15 punitive damages award; (2) is not adequately instructed on the limits of punitive damages imposed  
16 by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from  
17 awarding punitive damages, or determining the amount of an award of punitive damages, in whole  
18 or in part on the basis of invidiously discriminatory characteristics, including without limitation the  
19 residence, wealth, and corporate status of Jerry's Nugget; (4) is permitted to award punitive damages  
20 under a standard for determining liability for punitive damages that is vague and arbitrary and does  
21 not define with sufficient clarity the conduct or mental state that makes punitive damages  
22 permissible; (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each  
23 and every element of a claim for punitive damages; and (6) is not subject to trial court and appellate  
24 judicial review for reasonableness and furtherance of legitimate purposes on the basis of  
25 constitutionally adequate and objective standards, would violate Jerry's Nugget's due process and  
26 equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States  
27 Constitution and applicable provisions of the Nevada Constitution, and would be improper under the  
28 common law and public policy of Nevada.



**THIRTY-NINTH AFFIRMATIVE DEFENSE**

To the extent that the laws of other jurisdictions apply, Jerry's Nugget invokes each and every constitutional defense available to it under the Constitutions (or similar charters) of each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions. This specifically includes, but is not limited to, provisions relating to due process, access to the courts, freedom of speech, freedom of association, freedom to petition the government for redress of grievances, and limitations on compensatory and punitive damages.

**FORTIETH AFFIRMATIVE DEFENSE**

In the event Plaintiff establishes liability on the part of Jerry's Nugget, which liability Jerry's Nugget specifically denies, any alleged injuries or damages were caused in whole or in part by the negligence of Plaintiff and/or Noreen Thompson, thereby barring Plaintiff's recovery in whole or in part.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages against Jerry's Nugget cannot be sustained because NRS 42.005(2) impermissibly singles out and exempts products liability cases from the limits otherwise imposed on the recovery of punitive damages, leaving their assessment to the standardless discretion of the finder of fact. Further, the statute and Nevada cases decided under it do not comply with the minimum standards established by the United States Supreme Court in this evolving area of the law, and they improperly permit multiple awards of punitive damages for the same alleged act or acts, without regard to where the injury occurred.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages against Jerry's Nugget cannot be sustained because an award of punitive damages under Nevada law, without a bifurcated trial, would violate Jerry's Nugget's right to equal protection and due process under the Fifth and Fourteenth Amendments to the United States Constitution and under Article 1, Section 8 of the Nevada Constitution.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

Any affirmative defenses pled by any other Defendant and not pled by Jerry's Nugget are

incorporated herein to the extent they do not conflict with Jerry's Nugget's affirmative defenses.

#### **FORTY-FOURTH AFFIRMATIVE DEFENSE**

Jerry's Nugget hereby gives notice that it intends to rely upon any other defense that may become available or appear during the discovery proceedings in this case and hereby reserves its right to amend its Answer to assert any such defenses based on Nevada law, or other defenses that may become available in the course of litigation.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Jerry's Nugget prays for judgment against Plaintiff as follows:

1. That Plaintiff's claims for relief be dismissed with prejudice and that Plaintiff take nothing thereby;
2. For an award of costs and attorneys' fees incurred in the defense of this action, as may be permitted by law; and
3. For such other and further relief as the Court deems just and proper.

#### **JURY DEMAND**

Jerry's Nugget demands a trial by jury of all claims triable as of right by jury.

DATED this 29<sup>th</sup> day of March, 2021.

BAILEY❖KENNEDY

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

KING & SPALDING  
VALENTIN LEPPERT  
(ADMITTED PRO HAC VICE)  
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*Attorneys for Defendants*  
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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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY❖KENNEDY and that on the 29<sup>th</sup> day of March, 2021, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT JERRY'S NUGGET TO PLAINTIFF'S AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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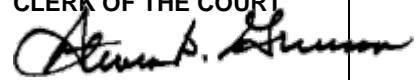
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NUGGET CASINO, and JERRY'S NUGGET

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of  
the Estate of NOREEN THOMPSON.

Plaintiff,

vs.

PHILIP MORRIS USA, INC., a foreign  
corporation; R.J. REYNOLDS TOBACCO

Case No. A-20-811091-C  
Dept. No. V

**ANSWER, DEFENSES, AND JURY  
DEMAND OF DEFENDANT  
QUICK STOP MARKET, LLC TO  
PLAINTIFF'S AMENDED COMPLAINT**

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; JOES 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 1-X; and ROE BUSINESS ENTITIES XI-XX. inclusive,

Defendants.

**ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT QUICK STOP MARKET, LLC TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Quick Stop Market, LLC ("Quick Stop"), by and through its counsel of record, Bailey ♦ Kennedy, hereby answers Dolly Rowan's, as Special Administrator of the Estate of Noreen Thompson ("Plaintiff"), Amended Complaint as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Answering Paragraph 1, Quick Stop states that the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent the allegations require a response, Quick Stop denies the allegations to the extent they contradict or are inconsistent with the law.

2. Answering Paragraph 2, Quick Stop is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

3. Answering Paragraph 3, Quick Stop is informed and believes that Philip Morris USA, Inc. is a corporation organized in Virginia and is authorized to do business in Clark County, Nevada. Quick Stop is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

4. Answering Paragraph 4, Quick Stop is informed and believes that R.J. Reynolds

1 Tobacco Company, Inc. (“R.J. Reynolds”) is a corporation organized in North Carolina with its  
2 principal place of business in North Carolina and is authorized to do business in Clark County,  
3 Nevada. Quick Stop is without knowledge or information sufficient to form a belief as to the truth  
4 of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

5         5.         Answering Paragraph 5, Quick Stop is without knowledge or information sufficient to  
6 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
7 on that basis.

8         6.         Answering Paragraph 6, Quick Stop is informed and believes that Liggett Group, Inc.  
9 is a corporation organized in Delaware with its principal place of business in North Carolina and is  
10 authorized to do business in Clark County Nevada. Quick Stop is without knowledge or information  
11 sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph,  
12 and therefore denies them on that basis.

13         7.         Answering Paragraph 7, Quick Stop is without knowledge or information sufficient to  
14 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
15 on that basis.

16         8.         Answering Paragraph 8, Quick Stop is without knowledge or information sufficient to  
17 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
18 on that basis.

19         9.         Answering Paragraph 9, Quick Stop admits that Quick Stop Market, LLC is a Nevada  
20 limited liability company located at 3407 E. Lake Mead Blvd, North Las Vegas NV 89030. Quick  
21 Stop further admits that Quick Stop is a retailer of tobacco products, including cigarettes, and is  
22 licensed with the state of Nevada as a tobacco retailer. Quick Stop is without knowledge or  
23 information sufficient to form a belief as to the truth of any remaining allegations contained in said  
24 paragraph, and therefore denies them on that basis.

25         10.        Answering Paragraph 10, Quick Stop is without knowledge or information sufficient  
26 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
27 them on that basis.

28         11.        Answering Paragraph 11, Quick Stop is without knowledge or information sufficient

1 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
2 them on that basis.

3 12. Answering Paragraph 12, Quick Stop is without knowledge or information sufficient  
4 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
5 them on that basis.

6 13. Answering Paragraph 13, Quick Stop is without knowledge or information sufficient  
7 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
8 them on that basis.

9 14-17. Answering Paragraphs 14-17, the allegations contain legal conclusions rather than  
10 factual allegations, and therefore, require no response. To the extent a response is required, Quick  
11 Stop denies the allegations.

12 **FACTS COMMON TO ALL CLAIMS**

13 18. Answering Paragraph 18, Quick Stop realleges and incorporates by reference the  
14 responses to the allegations of paragraphs 1 through 17 of the Amended Complaint as if fully set  
15 forth herein.

16 19. Answering Paragraph 19, Quick Stop is without knowledge or information sufficient  
17 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
18 them on that basis.

19 20. Answering Paragraph 20, Quick Stop is without knowledge or information sufficient  
20 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
21 them on that basis.

22 21. Answering Paragraph 21, Quick Stop is without knowledge or information sufficient  
23 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
24 them on that basis.

25 22. Answering Paragraph 22, Quick Stop is without knowledge or information sufficient  
26 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
27 them on that basis.

28 23. Answering Paragraph 23, Quick Stop is without knowledge or information sufficient

1 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
2 them on that basis.

3 24. Answering Paragraph 24, Quick Stop is without knowledge or information sufficient  
4 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
5 them on that basis.

6 25. Answering Paragraph 25, Quick Stop is without knowledge or information sufficient  
7 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
8 them on that basis.

9 26. Answering Paragraph 26, Quick Stop is without knowledge or information sufficient  
10 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
11 them on that basis.

12 27. Answering Paragraph 27, Quick Stop is without knowledge or information sufficient  
13 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
14 them on that basis.

15 28. Answering Paragraph 28, Quick Stop is without knowledge or information sufficient  
16 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
17 them on that basis.

18 29-35. Paragraphs 29-35 contain no allegations against Quick Stop; to the extent this  
19 paragraph is attempting to implicitly allege any liability against Quick Stop, those allegations are  
20 denied.

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

22 36-105. Paragraphs 36 through 105 contain no allegations against Quick Stop; to the extent  
23 these paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
24 allegations are denied.

25 **Conspiratorial Involvement by Defendants' Lawyers**

26 106-114. Paragraphs 106 through 114 contain no allegations against Quick Stop; to the  
27 extent these paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
28 allegations are denied.



**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. Answering Paragraph 115, Quick Stop realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 114 of the Amended Complaint as if fully set forth herein.

116-136. Paragraphs 116 through 136 contain no allegations against Quick Stop; to the extent these paragraphs are attempting to implicitly allege any liability against Quick Stop, those allegations are denied.

**SECOND CLAIM FOR RELIEF**

**(NEGLIGENCE)**

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

137. Answering Paragraph 137, Quick Stop realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 136 of the Amended Complaint as if fully set forth herein.

138-154. Paragraphs 138 through 154 contain no allegations against Quick Stop; to the extent these paragraphs are attempting to implicitly allege any liability against Quick Stop, those allegations are denied.

**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. Answering Paragraph 155, Quick Stop realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 154 of the Amended Complaint as if fully set forth herein.

156-178. Paragraphs 156 through 178 contain no allegations against Quick Stop; to the

1 extent these paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
2 allegations are denied.

3 **FOURTH CLAIM FOR RELIEF**

4 **(STRICT PRODUCTS LIABILITY)**

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

7 179. Answering Paragraph 179, Quick Stop realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 178 of the Amended Complaint as if fully set  
9 forth herein.

10 180-197. Paragraphs 180 through 197 contain no allegations against Quick Stop; to the  
11 extent these paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
12 allegations are denied.

13 **FIFTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – FRAUDULENT MISREPRESENTATION)**

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

17 198. Answering Paragraph 198, Quick Stop realleges and incorporates by reference the  
18 responses to the allegations of paragraphs 1 through 197 of the Amended Complaint as if fully set  
19 forth herein.

20 199–234. Paragraphs 199 through 234 contain no allegations against Quick Stop; to the  
21 extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
22 allegations are denied.

23 **SIXTH CLAIM FOR RELIEF**

24 **(FRAUDULENT MISREPRESENTATION)**

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

27 235. Answering Paragraph 235, Quick Stop realleges and incorporates by reference the  
28 responses to the allegations of paragraphs 1 through 234 of the Amended Complaint as if fully set

1 forth herein.

2 236-266. Paragraphs 236 through 266 contain no allegations against Quick Stop; to the  
3 extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
4 allegations are denied.

5 **SEVENTH CLAIM FOR RELIEF**

6 **(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)**

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

9 267. Answering Paragraph 267, Quick Stop realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 266 of the Amended Complaint as if fully set  
11 forth herein.

12 268-303. Paragraphs 268 through 303 contain no allegations against Quick Stop; to the  
13 extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
14 allegations are denied.

15 **EIGHTH CLAIM FOR RELIEF**

16 **(FRAUDULENT CONCEALMENT)**

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

19 304. Answering Paragraph 304, Quick Stop realleges and incorporates by reference the  
20 responses to the allegations of paragraphs 1 through 303 of the Amended Complaint as if fully set  
21 forth herein.

22 305-337. Paragraphs 305 through 337 contain no allegations against Quick Stop; to the  
23 extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
24 allegations are denied.

25 ///

26 ///

27 ///

28 ///

**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. Answering Paragraph 338, Quick Stop realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 337 of the Amended Complaint as if fully set forth herein.

339-362. Paragraphs 339 through 362 contain no allegations against Quick Stop; to the extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those allegations are denied.

**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. Answering Paragraph 363, Quick Stop realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 362 of the Amended Complaint as if fully set forth herein.

364-382. Paragraphs 364 through 382 contain no allegations against Quick Stop; to the extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those allegations are denied.

**ELEVENTH CLAIM FOR RELIEF**

**(WRONGFUL DEATH – NEVADA DECEPTIVE TRADE PRACTICES ACT)**

**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**

383. Answering Paragraph 383, Quick Stop realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 382 of the Amended Complaint as if fully set forth herein.

384-406. Paragraphs 384 through 406 contain no allegations against Quick Stop; to the

1 extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
2 allegations are denied.

3 **TWELFTH CLAIM FOR RELIEF**

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

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

7 407. Answering Paragraph 407, Quick Stop realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 406 of the Amended Complaint as if fully set  
9 forth herein.

10 408-425. Paragraphs 408 through 425 contain no allegations against Quick Stop; to the  
11 extent those paragraphs are attempting to implicitly allege any liability against Quick Stop, those  
12 allegations are denied.

13 **THIRTEENTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – STRICT LIABILITY)**

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

18 426. Answering Paragraph 426, Quick Stop realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 425 of the Amended Complaint as if fully set  
20 forth herein.

21 427. Answering Paragraph 427, the allegations contain legal conclusions rather than  
22 factual allegations, and therefore, require no response. To the extent a response is required, Quick  
23 Stop denies the allegations.

24 428. Answering Paragraph 428, Quick Stop is without knowledge or information sufficient  
25 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
26 them on that basis.

27 429. Answering Paragraph 429, the allegations contain legal conclusions rather than  
28 factual allegations, and therefore, require no response. To the extent a response is required, Quick

1 Stop denies the allegations.

2 430. Answering Paragraph 430, Quick Stop is without knowledge or information sufficient  
3 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
4 them on that basis.

5 431. Answering Paragraph 431, the allegations contain legal conclusions rather than  
6 factual allegations, and therefore, require no response. To the extent a response is required, Quick  
7 Stop denies the allegations.

8 432. Answering Paragraph 432, Quick Stop admits that it is in the business of selling  
9 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

10 433. Answering Paragraph 433, Quick Stop admits that it is in the business of selling  
11 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

12 434. Answering Paragraph 434, Quick Stop admits that it is in the business of selling  
13 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

14 435. Paragraph 435 contains legal conclusions rather than factual allegations, and therefore  
15 requires no response. To the extent a response is required, Quick Stop denies the allegations.

16 436. Paragraph 436 contains legal conclusions rather than factual allegations, and therefore  
17 requires no response. To the extent a response is required, Quick Stop denies the allegations.

18 437. Paragraph 437 contains legal conclusions rather than factual allegations, and therefore  
19 requires no response. To the extent a response is required, Quick Stop denies the allegations.

20 438. Paragraph 438 contains legal conclusions rather than factual allegations, and therefore  
21 requires no response. To the extent a response is required, Quick Stop denies the allegations.

22 439. Paragraph 439 contains legal conclusions rather than factual allegations, and therefore  
23 requires no response. To the extent a response is required, Quick Stop denies the allegations.

24 440. Paragraph 440 contains legal conclusions rather than factual allegations, and therefore  
25 requires no response. To the extent a response is required, Quick Stop denies the allegations.

26 441. Paragraph 441 contains legal conclusions rather than factual allegations, and therefore  
27 requires no response. To the extent a response is required, Quick Stop denies the allegations.

28 442. Answering Paragraph 442, Quick Stop denies the allegations.

1 443. Answering Paragraph 443, Quick Stop denies the allegations.

2 444. Answering Paragraph 444, Quick Stop denies the allegations.

3 445. Answering Paragraph 445, Quick Stop denies the allegations.

4 **FOURTEENTH CLAIM FOR RELIEF**

5 **(STRICT PRODUCT LIABILITY)**

6 **Dolly Rowan as Administrator of the Estate of Noreen Thompson Against Defendants**  
7 **QUICK STOP MARKET, LLC, JOE’S BAR, INC., THE POKER PALACE, SILVER**  
8 **NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, and JERRY’S NUGGET**

9 446. Answering Paragraph 446, Quick Stop realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 445 of the Amended Complaint as if fully set  
11 forth herein.

12 447. Answering Paragraph 447, the allegations contain legal conclusions rather than  
13 factual allegations, and therefore, require no response. To the extent a response is required, Quick  
14 Stop denies the allegations.

15 448. Answering Paragraph 448, Quick Stop admits that it is in the business of selling  
16 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

17 449. Answering Paragraph 449, Quick Stop admits that it is in the business of selling  
18 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

19 450. Answering Paragraph 450, Quick Stop admits that it is in the business of selling  
20 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

21 451. Paragraph 451 contains legal conclusions rather than factual allegations, and therefore  
22 requires no response. To the extent a response is required, Quick Stop denies the allegations.

23 452. Paragraph 452 contains legal conclusions rather than factual allegations, and therefore  
24 requires no response. To the extent a response is required, Quick Stop denies the allegations.

25 453. Paragraph 453 contains legal conclusions rather than factual allegations, and therefore  
26 requires no response. To the extent a response is required, Quick Stop denies the allegations.

27 454. Paragraph 454 contains legal conclusions rather than factual allegations, and therefore  
28 requires no response. To the extent a response is required, Quick Stop denies the allegations.

455. Paragraph 455 contains legal conclusions rather than factual allegations, and therefore

requires no response. To the extent a response is required, Quick Stop denies the allegations.

456. Paragraph 456 contains legal conclusions rather than factual allegations, and therefore requires no response. To the extent a response is required, Quick Stop denies the allegations.

457. Answering Paragraph 457, Quick Stop denies the allegations.

458. Answering Paragraph 458, Quick Stop denies the allegations.

459. Answering Paragraph 459, Quick Stop denies the allegations.

460. Answering Paragraph 460, Quick Stop denies the allegations.

Quick Stop denies that Plaintiff is entitled to judgement against, or any relief whatsoever from, Quick Stop in this action and denies any remaining allegations, including, but not limited to, those contained in the unnumbered paragraph following paragraph 460 beginning "WHEREFORE."

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by any applicable statutes of limitations and repose.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrines of *res judicata*, estoppel, and by executed releases of the State of Nevada.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the sale of tobacco products to persons of legal age is a legal activity in the State of Nevada.

#### **FIFTH AFFIRMATIVE DEFENSE**

Any injuries allegedly sustained by Plaintiff and/or Noreen Thompson were produced, if at all, by an intervening or superseding cause or causes, and any alleged act or omission of Quick Stop was not the proximate or competent producing cause of Plaintiff's and/or Noreen Thompson's alleged injuries or damages. To the extent Plaintiff's and/or Noreen Thompson's alleged injuries were caused by the use of tobacco products, the proximate cause of such alleged injuries was Noreen



Thompson's choice to use tobacco products.

**SIXTH AFFIRMATIVE DEFENSE**

If Plaintiff and/or Noreen Thompson were injured or damaged, such alleged injuries or damages were caused solely or proximately by the acts, wrongs, or omissions of Plaintiff and/or Noreen Thompson, by preexisting conditions, or by forces and/or things over which Quick Stop had no control and for which Quick Stop is not responsible or liable.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's recovery is barred, in whole or in part, by the doctrine of assumption of risk.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's consent.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by settlement or accord and satisfaction of their claims.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff and/or Noreen Thompson failed to mitigate any injuries and damages allegedly suffered.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Amended Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorneys' fees.

**TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's claims are based on an alleged duty to disclose the risks associated with cigarette smoking, such claims are barred because such risks are and have been commonly known.

**THIRTEENTH AFFIRMATIVE DEFENSE**

If any defects existed with respect to tobacco products sold by Quick Stop, any such alleged defects were open and obvious. Accordingly, Plaintiff cannot recover herein against Quick Stop.

**FOURTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the Federal Cigarette Labeling and Advertising Act, Pub. L. 89-92, 79 Stat. 282 (1965), and the Public Health Cigarette Smoking Act of 1969, Pub. L. 91-222, 84 Stat. 87 (1969), codified as amended at 15 U.S.C. § 1331 et seq., preempt and bar, in whole or in part, Plaintiff's claims and causes of action. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

**FIFTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the doctrine of conflict preemption preempts and bars, in whole or in part, Plaintiff's claims and causes of action. Congress has specifically foreclosed the removal of tobacco products from the market and, for that reason, any claims of liability based in whole or in part on a duty not to manufacture, market, or sell cigarettes are preempted. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

**SIXTEENTH AFFIRMATIVE DEFENSE**

Quick Stop is entitled to set-off, should any damages be awarded against it, in the amount of damages or settlement amounts recovered by Plaintiff and/or Noreen Thompson with respect to the same alleged injuries. Quick Stop is also entitled to have any damages that may be awarded to Plaintiff reduced by the value of any benefit or payment to Plaintiff and/or Noreen Thompson from any collateral source.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because the injuries for which she seeks to recover were allegedly caused by an inherent characteristic of cigarettes which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's comparative negligence, fault, responsibility, or want of due care, including Noreen Thompson's

1 choice to smoke. Plaintiff is, therefore, barred from any recovery, or any recoverable damages must  
2 be reduced in proportion to the amount of negligence attributable to Plaintiff and/or Noreen  
3 Thompson.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff lacks either standing or capacity, or both, to bring some or all of the claims alleged  
6 in the Amended Complaint.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 Plaintiff's product liability claims are barred because the cigarettes sold by Quick Stop are  
9 not dangerous to an extent beyond that contemplated by the ordinary consumer.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 The Amended Complaint fails to state facts sufficient to entitle Plaintiff to an award of  
12 punitive damages.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 Quick Stop pleads the defenses available under the applicable products liability statutes of  
15 the State of Nevada.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 Quick Stop states that as of the relevant times alleged in the Amended Complaint, it did not  
18 know, and in light of the then existing and reasonably available scientific and technological  
19 knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the  
20 injuries and damages complained of in the Amended Complaint; (2) the alleged danger of any such  
21 design characteristics; or (3) any scientifically and technologically feasible and economically  
22 practical alternate design. Quick Stop further states that the injuries and damages complained of in  
23 the Amended Complaint were not proximately caused by the lack of any such alternate design.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred to the extent Plaintiff seeks to impose liability on Quick Stop  
26 retroactively or for conduct which was not actionable at the time it occurred.

27 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

28 Plaintiff's design defect claims are barred in whole or in part because Defendants' tobacco

1 products were designed in conformity with the generally recognized state of the art at the time they  
2 were designed, manufactured, tested, packaged, labeled, sold, or distributed.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches, waiver,  
5 equitable estoppel, and ratification.

6 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

7 All cigarettes manufactured to be sold in the United States since 1966, and every United  
8 States cigarette advertisement since 1972, carried warnings that adequately informed Plaintiff and/or  
9 Noreen Thompson of the health risks of smoking cigarettes. Such acts eliminated the elements of  
10 willfulness and reckless disregard necessary to support an award of punitive damages.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
13 conduct unrelated to Plaintiff's and/or Noreen Thompson's alleged harm.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
16 conduct occurring outside the State of Nevada.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 Quick Stop denies liability for any award of punitive damages not based solely on the  
19 specific allegations of Quick Stop's conduct made the subject of this lawsuit and that allegedly  
20 affected Plaintiff and/or Noreen Thompson because consideration of other conduct would subject  
21 Quick Stop to impermissible multiple punishments for the same conduct, in violation of the Fifth and  
22 Fourteenth Amendments to the United States Constitution and comparable provisions of the Nevada  
23 Constitution.

24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred because the alleged conduct of Quick Stop was undertaken in  
26 good faith and for a valid business purpose.

27 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff's claims for punitive damages against Quick Stop cannot be sustained because an

1 award of punitive damages under Nevada law, subject to no predetermined limit, such as a  
2 maximum multiple of compensatory damages or a maximum amount of punitive damages that a jury  
3 may impose, and providing no protection against multiple awards of punitive damages for the same  
4 course of conduct, would violate Quick Stop's due process rights guaranteed by the Fifth and  
5 Fourteenth Amendments to the United States Constitution, and Quick Stop's due process rights  
6 under Article 1, Sections 6, 8 and 15 of the Nevada Constitution, and would be improper under the  
7 common law and public policies of the State of Nevada.

8 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

9 The monetary relief sought, which is intended in part to punish Quick Stop, is barred under  
10 the Eighth Amendment of the United States Constitution as well as cognate provisions of the Nevada  
11 Constitution found at Article 1, Section 6 as the imposition of an excessive fine.

12 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims for punitive damages are barred absent the safeguards guaranteed by the  
14 Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the  
15 comparable provisions of the Nevada Constitution in that these claims invoke or authorize  
16 proceedings and remedies which, though nominally civil, are in reality so punitive in purpose and  
17 effect that they transform the relief that Plaintiff seeks into a criminal penalty.

18 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims for punitive damages cannot be sustained because an award of punitive  
20 damages under Nevada law would violate Quick Stop's due process and equal protection rights  
21 guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and  
22 Quick Stop's due process rights under Article 1, Sections 8 and 15 of the Nevada Constitution.

23 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims for punitive damages against Quick Stop cannot be sustained because an  
25 award of punitive damages in this case, combined with any prior, contemporaneous or subsequent  
26 judgments or settlements against Quick Stop that include punitive damages arising out of the same  
27 marketing, sale or use of Defendants' tobacco products, would be impermissible multiple  
28 punishment in violation of the due process and equal protection rights guaranteed by the Fifth and

1 Fourteenth Amendments to the United States Constitution and the comparable provisions of the  
2 Nevada Constitution.

3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

4 Any award of punitive damages that is disproportionate to the amount of actual damages that  
5 does not bear a reasonable relationship to actual damages and that does not correlate to the actual  
6 cause of any injury violates Quick Stop's rights under the Due Process clause of the Fourteenth  
7 Amendment to the United States Constitution and the comparable provisions of the Nevada  
8 Constitution.

9 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
11 damages under Nevada law by a jury that (1) is not provided constitutionally adequate standards of  
12 sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a  
13 punitive damages award; (2) is not adequately instructed on the limits of punitive damages imposed  
14 by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from  
15 awarding punitive damages, or determining the amount of an award of punitive damages, in whole  
16 or in part on the basis of invidiously discriminatory characteristics, including without limitation the  
17 residence, wealth, and corporate status of Quick Stop; (4) is permitted to award punitive damages  
18 under a standard for determining liability for punitive damages that is vague and arbitrary and does  
19 not define with sufficient clarity the conduct or mental state that makes punitive damages  
20 permissible; (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each  
21 and every element of a claim for punitive damages; and (6) is not subject to trial court and appellate  
22 judicial review for reasonableness and furtherance of legitimate purposes on the basis of  
23 constitutionally adequate and objective standards, would violate Quick Stop's due process and equal  
24 protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States  
25 Constitution and applicable provisions of the Nevada Constitution, and would be improper under the  
26 common law and public policy of Nevada.

27 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

28 To the extent that the laws of other jurisdictions apply, Quick Stop invokes each and every

1 constitutional defense available to it under the Constitutions (or similar charters) of each of the 50  
2 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and  
3 possessions. This specifically includes, but is not limited to, provisions relating to due process,  
4 access to the courts, freedom of speech, freedom of association, freedom to petition the government  
5 for redress of grievances, and limitations on compensatory and punitive damages.

6 **FORTIETH AFFIRMATIVE DEFENSE**

7 In the event Plaintiff establishes liability on the part of Quick Stop, which liability  
8 Quick Stop specifically denies, any alleged injuries or damages were caused in whole or in part by  
9 the negligence of Plaintiff and/or Noreen Thompson, thereby barring Plaintiff's recovery in whole or  
10 in part.

11 **FORTY-FIRST AFFIRMATIVE DEFENSE**

12 Plaintiff's claim for punitive damages against Quick Stop cannot be sustained because NRS  
13 42.005(2) impermissibly singles out and exempts products liability cases from the limits otherwise  
14 imposed on the recovery of punitive damages, leaving their assessment to the standardless discretion  
15 of the finder of fact. Further, the statute and Nevada cases decided under it do not comply with the  
16 minimum standards established by the United States Supreme Court in this evolving area of the law,  
17 and they improperly permit multiple awards of punitive damages for the same alleged act or acts,  
18 without regard to where the injury occurred.

19 **FORTY-SECOND AFFIRMATIVE DEFENSE**

20 Plaintiff's claim for punitive damages against Quick Stop cannot be sustained because an  
21 award of punitive damages under Nevada law, without a bifurcated trial, would violate  
22 Quick Stop's right to equal protection and due process under the Fifth and Fourteenth Amendments  
23 to the United States Constitution and under Article 1, Section 8 of the Nevada Constitution.

24 **FORTY-THIRD AFFIRMATIVE DEFENSE**

25 Any affirmative defenses pled by any other Defendant and not pled by Quick Stop are  
26 incorporated herein to the extent they do not conflict with Quick Stop's affirmative defenses.

27 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

28 Quick Stop hereby gives notice that it intends to rely upon any other defense that may

become available or appear during the discovery proceedings in this case and hereby reserves its right to amend its Answer to assert any such defenses based on Nevada law, or other defenses that may become available in the course of litigation.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Quick Stop prays for judgment against Plaintiff as follows:

1. That Plaintiff's claims for relief be dismissed with prejudice and that Plaintiff take nothing thereby;
2. For an award of costs and attorneys' fees incurred in the defense of this action, as may be permitted by law; and
3. For such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Quick Stop demands a trial by jury of all claims triable as of right by jury.

DATED this 29<sup>th</sup> day of March, 2021.

BAILEY❖KENNEDY

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

KING & SPALDING  
VALENTIN LEPPERT  
(ADMITTED PRO HAC VICE)  
SPENCER MILES DIAMOND  
(ADMITTED PRO HAC VICE)

KING & SPALDING  
URSULA MARIE HENNINGER  
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BAR, INC., THE POKER PALACE,  
SILVER NUGGET GAMING, LLC d/b/a  
SILVER NUGGET CASINO, and  
JERRY'S NUGGET



**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY❖KENNEDY and that on the 29<sup>th</sup> day of March, 2021, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT QUICK STOP MARKET, LLC TO PLAINTIFF'S AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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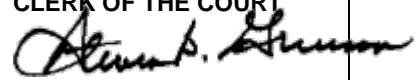
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NUGGET CASINO, and JERRY'S NUGGET

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of  
the Estate of NOREEN THOMPSON.

Plaintiff,

vs.

PHILIP MORRIS USA, INC., a foreign  
corporation; R.J. REYNOLDS TOBACCO

Case No. A-20-811091-C  
Dept. No. V

**ANSWER, DEFENSES, AND JURY  
DEMAND OF DEFENDANT THE  
POKER PALACE TO PLAINTIFF'S  
AMENDED COMPLAINT**

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; JOES 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 1-X; and ROE BUSINESS ENTITIES XI-XX. inclusive,

Defendants.

**ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT THE POKER PALACE  
TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant The Poker Palace ("Poker Palace"), by and through its counsel of record, Bailey ♦ Kennedy, hereby answers Dolly Rowan's, as Special Administrator of the Estate of Noreen Thompson ("Plaintiff"), Amended Complaint as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Answering Paragraph 1, Poker Palace states that the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent the allegations require a response, Poker Palace denies the allegations to the extent they contradict or are inconsistent with the law.

2. Answering Paragraph 2, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

3. Answering Paragraph 3, Poker Palace is informed and believes that Philip Morris USA, Inc. is a corporation organized in Virginia and is authorized to do business in Clark County, Nevada. Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

4. Answering Paragraph 4, Poker Palace is informed and believes that R.J. Reynolds

1 Tobacco Company, Inc. (“R.J. Reynolds”) is a corporation organized in North Carolina with its  
2 principal place of business in North Carolina and is authorized to do business in Clark County,  
3 Nevada. Poker Palace is without knowledge or information sufficient to form a belief as to the truth  
4 of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

5         5.         Answering Paragraph 5, Poker Palace is without knowledge or information sufficient  
6 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
7 them on that basis.

8         6.         Answering Paragraph 6, Poker Palace is informed and believes that Liggett Group,  
9 Inc. is a corporation organized in Delaware with its principal place of business in North Carolina and  
10 is authorized to do business in Clark County Nevada. Poker Palace is without knowledge or  
11 information sufficient to form a belief as to the truth of the remaining allegations contained in said  
12 paragraph, and therefore denies them on that basis.

13         7.         Answering Paragraph 7, Poker Palace is without knowledge or information sufficient  
14 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
15 them on that basis.

16         8.         Answering Paragraph 8, Poker Palace is without knowledge or information sufficient  
17 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
18 them on that basis.

19         9.         Answering Paragraph 9, Poker Palace is without knowledge or information sufficient  
20 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
21 them on that basis.

22         10.        Answering Paragraph 10, Poker Palace is without knowledge or information  
23 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
24 denies them on that basis.

25         11.        Answering Paragraph 11, Poker Palace admits that it is a Nevada corporation. Poker  
26 Palace further admits that it sells tobacco products, including cigarettes, and is licensed with the state  
27 of Nevada to do so. Poker Palace is without knowledge or information sufficient to form a belief as  
28 to the truth of any remaining allegations contained in said paragraph, and therefore denies them on

1 that basis.

2 12. Answering Paragraph 12, Poker Palace is without knowledge or information  
3 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
4 denies them on that basis.

5 13. Answering Paragraph 13, Poker Palace is without knowledge or information  
6 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
7 denies them on that basis.

8 14-17. Answering Paragraphs 14-17, the allegations contain legal conclusions rather than  
9 factual allegations, and therefore, require no response. To the extent a response is required, Poker  
10 Palace denies the allegations.

11 **FACTS COMMON TO ALL CLAIMS**

12 18. Answering Paragraph 18, Poker Palace realleges and incorporates by reference the  
13 responses to the allegations of paragraphs 1 through 17 of the Amended Complaint as if fully set  
14 forth herein.

15 19. Answering Paragraph 19, Poker Palace is without knowledge or information  
16 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
17 denies them on that basis.

18 20. Answering Paragraph 20, Poker Palace is without knowledge or information  
19 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
20 denies them on that basis.

21 21. Answering Paragraph 21, Poker Palace is without knowledge or information  
22 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
23 denies them on that basis.

24 22. Answering Paragraph 22, Poker Palace is without knowledge or information  
25 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
26 denies them on that basis.

27 23. Answering Paragraph 23, Poker Palace is without knowledge or information  
28 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore

denies them on that basis.

24. Answering Paragraph 24, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

25. Answering Paragraph 25, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

26. Answering Paragraph 26, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

27. Answering Paragraph 27, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

28. Answering Paragraph 28, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

29-35. Paragraphs 29-35 contain no allegations against Poker Palace; to the extent this paragraph is attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

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

36-105. Paragraphs 36 through 105 contain no allegations against Poker Palace; to the extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

#### **Conspiratorial Involvement by Defendants' Lawyers**

106-114. Paragraphs 106 through 114 contain no allegations against Poker Palace; to the extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

**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. Answering Paragraph 115, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 114 of the Amended Complaint as if fully set forth herein.

116-136. Paragraphs 116 through 136 contain no allegations against Poker Palace; to the extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

**SECOND CLAIM FOR RELIEF**

**(NEGLIGENCE)**

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

137. Answering Paragraph 137, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 136 of the Amended Complaint as if fully set forth herein.

138-154. Paragraphs 138 through 154 contain no allegations against Poker Palace; to the extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

**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. Answering Paragraph 155, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 154 of the Amended Complaint as if fully set forth herein.

156-178. Paragraphs 156 through 178 contain no allegations against Poker Palace; to the

1 extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
2 allegations are denied.

3 **FOURTH CLAIM FOR RELIEF**

4 **(STRICT PRODUCTS LIABILITY)**

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

7 179. Answering Paragraph 179, Poker Palace realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 178 of the Amended Complaint as if fully set  
9 forth herein.

10 180-197. Paragraphs 180 through 197 contain no allegations against Poker Palace; to the  
11 extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
12 allegations are denied.

13 **FIFTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – FRAUDULENT MISREPRESENTATION)**

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

17 198. Answering Paragraph 198, Poker Palace realleges and incorporates by reference the  
18 responses to the allegations of paragraphs 1 through 197 of the Amended Complaint as if fully set  
19 forth herein.

20 199–234. Paragraphs 199 through 234 contain no allegations against Poker Palace; to the  
21 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
22 allegations are denied.

23 **SIXTH CLAIM FOR RELIEF**

24 **(FRAUDULENT MISREPRESENTATION)**

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

27 235. Answering Paragraph 235, Poker Palace realleges and incorporates by reference the  
28 responses to the allegations of paragraphs 1 through 234 of the Amended Complaint as if fully set



1 forth herein.

2 236-266. Paragraphs 236 through 266 contain no allegations against Poker Palace; to the  
3 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
4 allegations are denied.

5 **SEVENTH CLAIM FOR RELIEF**

6 **(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)**

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

9 267. Answering Paragraph 267, Poker Palace realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 266 of the Amended Complaint as if fully set  
11 forth herein.

12 268-303. Paragraphs 268 through 303 contain no allegations against Poker Palace; to the  
13 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
14 allegations are denied.

15 **EIGHTH CLAIM FOR RELIEF**

16 **(FRAUDULENT CONCEALMENT)**

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

19 304. Answering Paragraph 304, Poker Palace realleges and incorporates by reference the  
20 responses to the allegations of paragraphs 1 through 303 of the Amended Complaint as if fully set  
21 forth herein.

22 305-337. Paragraphs 305 through 337 contain no allegations against Poker Palace; to the  
23 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
24 allegations are denied.

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28 ///

**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. Answering Paragraph 338, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 337 of the Amended Complaint as if fully set forth herein.

339-362. Paragraphs 339 through 362 contain no allegations against Poker Palace; to the extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

**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. Answering Paragraph 363, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 362 of the Amended Complaint as if fully set forth herein.

364-382. Paragraphs 364 through 382 contain no allegations against Poker Palace; to the extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

**ELEVENTH CLAIM FOR RELIEF**

**(WRONGFUL DEATH – NEVADA DECEPTIVE TRADE PRACTICES ACT)**

**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**

383. Answering Paragraph 383, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 382 of the Amended Complaint as if fully set forth herein.

384-406. Paragraphs 384 through 406 contain no allegations against Poker Palace; to the

1 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
2 allegations are denied.

3 **TWELFTH CLAIM FOR RELIEF**

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

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

7 407. Answering Paragraph 407, Poker Palace realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 406 of the Amended Complaint as if fully set  
9 forth herein.

10 408-425. Paragraphs 408 through 425 contain no allegations against Poker Palace; to the  
11 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those  
12 allegations are denied.

13 **THIRTEENTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – STRICT LIABILITY)**

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

18 426. Answering Paragraph 426, Poker Palace realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 425 of the Amended Complaint as if fully set  
20 forth herein.

21 427. Answering Paragraph 427, the allegations contain legal conclusions rather than  
22 factual allegations, and therefore, require no response. To the extent a response is required, Poker  
23 Palace denies the allegations.

24 428. Answering Paragraph 428, Poker Palace is without knowledge or information  
25 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
26 denies them on that basis.

27 429. Answering Paragraph 429, the allegations contain legal conclusions rather than  
28 factual allegations, and therefore, require no response. To the extent a response is required, Poker

1 Palace denies the allegations.

2 430. Answering Paragraph 430, Poker Palace is without knowledge or information  
3 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
4 denies them on that basis.

5 431. Answering Paragraph 431, the allegations contain legal conclusions rather than  
6 factual allegations, and therefore, require no response. To the extent a response is required, Poker  
7 Palace denies the allegations.

8 432. Answering Paragraph 432, Poker Palace admits that it is in the business of selling  
9 cigarettes. Poker Palace denies all remaining or inconsistent allegations.

10 433. Answering Paragraph 433, Poker Palace admits that it is in the business of selling  
11 cigarettes. Poker Palace denies all remaining or inconsistent allegations.

12 434. Answering Paragraph 434, Poker Palace admits that it is in the business of selling  
13 cigarettes. Poker Palace denies all remaining or inconsistent allegations.

14 435. Paragraph 435 contains legal conclusions rather than factual allegations, and therefore  
15 requires no response. To the extent a response is required, Poker Palace denies the allegations.

16 436. Paragraph 436 contains legal conclusions rather than factual allegations, and therefore  
17 requires no response. To the extent a response is required, Poker Palace denies the allegations.

18 437. Paragraph 437 contains legal conclusions rather than factual allegations, and therefore  
19 requires no response. To the extent a response is required, Poker Palace denies the allegations.

20 438. Paragraph 438 contains legal conclusions rather than factual allegations, and therefore  
21 requires no response. To the extent a response is required, Poker Palace denies the allegations.

22 439. Paragraph 439 contains legal conclusions rather than factual allegations, and therefore  
23 requires no response. To the extent a response is required, Poker Palace denies the allegations.

24 440. Paragraph 440 contains legal conclusions rather than factual allegations, and therefore  
25 requires no response. To the extent a response is required, Poker Palace denies the allegations.

26 441. Paragraph 441 contains legal conclusions rather than factual allegations, and therefore  
27 requires no response. To the extent a response is required, Poker Palace denies the allegations.

28 442. Answering Paragraph 442, Poker Palace denies the allegations.

1 443. Answering Paragraph 443, Poker Palace denies the allegations.

2 444. Answering Paragraph 444, Poker Palace denies the allegations.

3 445. Answering Paragraph 445, Poker Palace denies the allegations.

4 **FOURTEENTH CLAIM FOR RELIEF**

5 **(STRICT PRODUCT LIABILITY)**

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

9 446. Answering Paragraph 446, Poker Palace realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 445 of the Amended Complaint as if fully set  
11 forth herein.

12 447. Answering Paragraph 447, the allegations contain legal conclusions rather than  
13 factual allegations, and therefore, require no response. To the extent a response is required, Poker  
14 Palace denies the allegations.

15 448. Answering Paragraph 448, Poker Palace admits that it is in the business of selling  
16 cigarettes. Poker Palace denies all remaining or inconsistent allegations.

17 449. Answering Paragraph 449, Poker Palace admits that it is in the business of selling  
18 cigarettes. Poker Palace denies all remaining or inconsistent allegations.

19 450. Answering Paragraph 450, Poker Palace admits that it is in the business of selling  
20 cigarettes. Poker Palace denies all remaining or inconsistent allegations.

21 451. Paragraph 451 contains legal conclusions rather than factual allegations, and therefore  
22 requires no response. To the extent a response is required, Poker Palace denies the allegations.

23 452. Paragraph 452 contains legal conclusions rather than factual allegations, and therefore  
24 requires no response. To the extent a response is required, Poker Palace denies the allegations.

25 453. Paragraph 453 contains legal conclusions rather than factual allegations, and therefore  
26 requires no response. To the extent a response is required, Poker Palace denies the allegations.

27 454. Paragraph 454 contains legal conclusions rather than factual allegations, and therefore  
28 requires no response. To the extent a response is required, Poker Palace denies the allegations.

455. Paragraph 455 contains legal conclusions rather than factual allegations, and therefore

1 requires no response. To the extent a response is required, Poker Palace denies the allegations.

2 456. Paragraph 456 contains legal conclusions rather than factual allegations, and therefore  
3 requires no response. To the extent a response is required, Poker Palace denies the allegations.

4 457. Answering Paragraph 457, Poker Palace denies the allegations.

5 458. Answering Paragraph 458, Poker Palace denies the allegations.

6 459. Answering Paragraph 459, Poker Palace denies the allegations.

7 460. Answering Paragraph 460, Poker Palace denies the allegations.

8 Poker Palace denies that Plaintiff is entitled to judgement against, or any relief whatsoever  
9 from, Poker Palace in this action and denies any remaining allegations, including, but not limited to,  
10 those contained in the unnumbered paragraph following paragraph 460 beginning "WHEREFORE."

## 11 **AFFIRMATIVE DEFENSES**

### 12 **FIRST AFFIRMATIVE DEFENSE**

13 The Amended Complaint fails to state a claim upon which relief may be granted.

### 14 **SECOND AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred, in whole or in part, by any applicable statutes of limitations and  
16 repose.

### 17 **THIRD AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred, in whole or in part, by the doctrines of *res judicata*, estoppel,  
19 and by executed releases of the State of Nevada.

### 20 **FOURTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred, in whole or in part, because the sale of tobacco products to  
22 persons of legal age is a legal activity in the State of Nevada.

### 23 **FIFTH AFFIRMATIVE DEFENSE**

24 Any injuries allegedly sustained by Plaintiff and/or Noreen Thompson were produced, if at  
25 all, by an intervening or superseding cause or causes, and any alleged act or omission of Poker  
26 Palace was not the proximate or competent producing cause of Plaintiff's and/or Noreen  
27 Thompson's alleged injuries or damages. To the extent Plaintiff's and/or Noreen Thompson's  
28 alleged injuries were caused by the use of tobacco products, the proximate cause of such alleged

injuries was Noreen Thompson's choice to use tobacco products.

#### **SIXTH AFFIRMATIVE DEFENSE**

If Plaintiff and/or Noreen Thompson were injured or damaged, such alleged injuries or damages were caused solely or proximately by the acts, wrongs, or omissions of Plaintiff and/or Noreen Thompson, by preexisting conditions, or by forces and/or things over which Poker Palace had no control and for which Poker Palace is not responsible or liable.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's recovery is barred, in whole or in part, by the doctrine of assumption of risk.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's consent.

#### **NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by settlement or accord and satisfaction of their claims.

#### **TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff and/or Noreen Thompson failed to mitigate any injuries and damages allegedly suffered.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

The Amended Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorneys' fees.

#### **TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's claims are based on an alleged duty to disclose the risks associated with cigarette smoking, such claims are barred because such risks are and have been commonly known.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

If any defects existed with respect to tobacco products sold by Poker Palace, any such alleged defects were open and obvious. Accordingly, Plaintiff cannot recover herein against Poker Palace.

**FOURTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the Federal Cigarette Labeling and Advertising Act, Pub. L. 89-92, 79 Stat. 282 (1965), and the Public Health Cigarette Smoking Act of 1969, Pub. L. 91-222, 84 Stat. 87 (1969), codified as amended at 15 U.S.C. § 1331 et seq., preempt and bar, in whole or in part, Plaintiff's claims and causes of action. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

**FIFTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the doctrine of conflict preemption preempts and bars, in whole or in part, Plaintiff's claims and causes of action. Congress has specifically foreclosed the removal of tobacco products from the market and, for that reason, any claims of liability based in whole or in part on a duty not to manufacture, market, or sell cigarettes are preempted. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

**SIXTEENTH AFFIRMATIVE DEFENSE**

Poker Palace is entitled to set-off, should any damages be awarded against it, in the amount of damages or settlement amounts recovered by Plaintiff and/or Noreen Thompson with respect to the same alleged injuries. Poker Palace is also entitled to have any damages that may be awarded to Plaintiff reduced by the value of any benefit or payment to Plaintiff and/or Noreen Thompson from any collateral source.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because the injuries for which she seeks to recover were allegedly caused by an inherent characteristic of cigarettes which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's comparative negligence, fault, responsibility, or want of due care, including Noreen Thompson's



1 choice to smoke. Plaintiff is, therefore, barred from any recovery, or any recoverable damages must  
2 be reduced in proportion to the amount of negligence attributable to Plaintiff and/or Noreen  
3 Thompson.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff lacks either standing or capacity, or both, to bring some or all of the claims alleged  
6 in the Amended Complaint.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 Plaintiff's product liability claims are barred because the cigarettes sold by Poker Palace are  
9 not dangerous to an extent beyond that contemplated by the ordinary consumer.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 The Amended Complaint fails to state facts sufficient to entitle Plaintiff to an award of  
12 punitive damages.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 Poker Palace pleads the defenses available under the applicable products liability statutes of  
15 the State of Nevada.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 Poker Palace states that as of the relevant times alleged in the Amended Complaint, it did not  
18 know, and in light of the then existing and reasonably available scientific and technological  
19 knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the  
20 injuries and damages complained of in the Amended Complaint; (2) the alleged danger of any such  
21 design characteristics; or (3) any scientifically and technologically feasible and economically  
22 practical alternate design. Poker Palace further states that the injuries and damages complained of in  
23 the Amended Complaint were not proximately caused by the lack of any such alternate design.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred to the extent Plaintiff seeks to impose liability on Poker Palace  
26 retroactively or for conduct which was not actionable at the time it occurred.

27 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

28 Plaintiff's design defect claims are barred in whole or in part because Defendants' tobacco

1 products were designed in conformity with the generally recognized state of the art at the time they  
2 were designed, manufactured, tested, packaged, labeled, sold, or distributed.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches, waiver,  
5 equitable estoppel, and ratification.

6 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

7 All cigarettes manufactured to be sold in the United States since 1966, and every United  
8 States cigarette advertisement since 1972, carried warnings that adequately informed Plaintiff and/or  
9 Noreen Thompson of the health risks of smoking cigarettes. Such acts eliminated the elements of  
10 willfulness and reckless disregard necessary to support an award of punitive damages.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
13 conduct unrelated to Plaintiff's and/or Noreen Thompson's alleged harm.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
16 conduct occurring outside the State of Nevada.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 Poker Palace denies liability for any award of punitive damages not based solely on the  
19 specific allegations of Poker Palace's conduct made the subject of this lawsuit and that allegedly  
20 affected Plaintiff and/or Noreen Thompson because consideration of other conduct would subject  
21 Poker Palace to impermissible multiple punishments for the same conduct, in violation of the Fifth  
22 and Fourteenth Amendments to the United States Constitution and comparable provisions of the  
23 Nevada Constitution.

24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred because the alleged conduct of Poker Palace was undertaken in  
26 good faith and for a valid business purpose.

27 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff's claims for punitive damages against Poker Palace cannot be sustained because an

1 award of punitive damages under Nevada law, subject to no predetermined limit, such as a  
2 maximum multiple of compensatory damages or a maximum amount of punitive damages that a jury  
3 may impose, and providing no protection against multiple awards of punitive damages for the same  
4 course of conduct, would violate Poker Palace's due process rights guaranteed by the Fifth and  
5 Fourteenth Amendments to the United States Constitution, and Poker Palace's due process rights  
6 under Article 1, Sections 6, 8 and 15 of the Nevada Constitution, and would be improper under the  
7 common law and public policies of the State of Nevada.

8 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

9 The monetary relief sought, which is intended in part to punish Poker Palace, is barred under  
10 the Eighth Amendment of the United States Constitution as well as cognate provisions of the Nevada  
11 Constitution found at Article 1, Section 6 as the imposition of an excessive fine.

12 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims for punitive damages are barred absent the safeguards guaranteed by the  
14 Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the  
15 comparable provisions of the Nevada Constitution in that these claims invoke or authorize  
16 proceedings and remedies which, though nominally civil, are in reality so punitive in purpose and  
17 effect that they transform the relief that Plaintiff seeks into a criminal penalty.

18 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims for punitive damages cannot be sustained because an award of punitive  
20 damages under Nevada law would violate Poker Palace's due process and equal protection rights  
21 guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and  
22 Poker Palace's due process rights under Article 1, Sections 8 and 15 of the Nevada Constitution.

23 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims for punitive damages against Poker Palace cannot be sustained because an  
25 award of punitive damages in this case, combined with any prior, contemporaneous or subsequent  
26 judgments or settlements against Poker Palace that include punitive damages arising out of the same  
27 marketing, sale or use of Defendants' tobacco products, would be impermissible multiple  
28 punishment in violation of the due process and equal protection rights guaranteed by the Fifth and

1 Fourteenth Amendments to the United States Constitution and the comparable provisions of the  
2 Nevada Constitution.

3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

4 Any award of punitive damages that is disproportionate to the amount of actual damages that  
5 does not bear a reasonable relationship to actual damages and that does not correlate to the actual  
6 cause of any injury violates Poker Palace's rights under the Due Process clause of the Fourteenth  
7 Amendment to the United States Constitution and the comparable provisions of the Nevada  
8 Constitution.

9 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
11 damages under Nevada law by a jury that (1) is not provided constitutionally adequate standards of  
12 sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a  
13 punitive damages award; (2) is not adequately instructed on the limits of punitive damages imposed  
14 by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from  
15 awarding punitive damages, or determining the amount of an award of punitive damages, in whole  
16 or in part on the basis of invidiously discriminatory characteristics, including without limitation the  
17 residence, wealth, and corporate status of Poker Palace; (4) is permitted to award punitive damages  
18 under a standard for determining liability for punitive damages that is vague and arbitrary and does  
19 not define with sufficient clarity the conduct or mental state that makes punitive damages  
20 permissible; (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each  
21 and every element of a claim for punitive damages; and (6) is not subject to trial court and appellate  
22 judicial review for reasonableness and furtherance of legitimate purposes on the basis of  
23 constitutionally adequate and objective standards, would violate Poker Palace's due process and  
24 equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States  
25 Constitution and applicable provisions of the Nevada Constitution, and would be improper under the  
26 common law and public policy of Nevada.

27 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

28 To the extent that the laws of other jurisdictions apply, Poker Palace invokes each and every

1 constitutional defense available to it under the Constitutions (or similar charters) of each of the 50  
2 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and  
3 possessions. This specifically includes, but is not limited to, provisions relating to due process,  
4 access to the courts, freedom of speech, freedom of association, freedom to petition the government  
5 for redress of grievances, and limitations on compensatory and punitive damages.

6 **FORTIETH AFFIRMATIVE DEFENSE**

7 In the event Plaintiff establishes liability on the part of Poker Palace, which liability  
8 Poker Palace specifically denies, any alleged injuries or damages were caused in whole or in part by  
9 the negligence of Plaintiff and/or Noreen Thompson, thereby barring Plaintiff's recovery in whole or  
10 in part.

11 **FORTY-FIRST AFFIRMATIVE DEFENSE**

12 Plaintiff's claim for punitive damages against Poker Palace cannot be sustained because NRS  
13 42.005(2) impermissibly singles out and exempts products liability cases from the limits otherwise  
14 imposed on the recovery of punitive damages, leaving their assessment to the standardless discretion  
15 of the finder of fact. Further, the statute and Nevada cases decided under it do not comply with the  
16 minimum standards established by the United States Supreme Court in this evolving area of the law,  
17 and they improperly permit multiple awards of punitive damages for the same alleged act or acts,  
18 without regard to where the injury occurred.

19 **FORTY-SECOND AFFIRMATIVE DEFENSE**

20 Plaintiff's claim for punitive damages against Poker Palace cannot be sustained because an  
21 award of punitive damages under Nevada law, without a bifurcated trial, would violate  
22 Poker Palace's right to equal protection and due process under the Fifth and Fourteenth Amendments  
23 to the United States Constitution and under Article 1, Section 8 of the Nevada Constitution.

24 **FORTY-THIRD AFFIRMATIVE DEFENSE**

25 Any affirmative defenses pled by any other Defendant and not pled by Poker Palace are  
26 incorporated herein to the extent they do not conflict with Poker Palace's affirmative defenses.

27 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

28 Poker Palace hereby gives notice that it intends to rely upon any other defense that may

become available or appear during the discovery proceedings in this case and hereby reserves its right to amend its Answer to assert any such defenses based on Nevada law, or other defenses that may become available in the course of litigation.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Poker Palace prays for judgment against Plaintiff as follows:

1. That Plaintiff's claims for relief be dismissed with prejudice and that Plaintiff take nothing thereby;
2. For an award of costs and attorneys' fees incurred in the defense of this action, as may be permitted by law; and
3. For such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Poker Palace demands a trial by jury of all claims triable as of right by jury.

DATED this 29<sup>th</sup> day of March, 2021.

BAILEY❖KENNEDY

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

KING & SPALDING  
VALENTIN LEPPERT  
(ADMITTED PRO HAC VICE)  
SPENCER MILES DIAMOND  
(ADMITTED PRO HAC VICE)

KING & SPALDING  
URSULA MARIE HENNINGER  
(ADMITTED PRO HAC VICE)

*Attorneys for Defendants*  
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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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 29<sup>th</sup> day of March, 2021, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT THE POKER PALACE TO PLAINTIFF'S AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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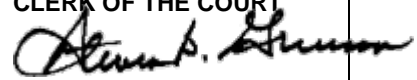
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--	--

/s/ Sharon L. Murnane  
Employee of BAILEY ♦ KENNEDY



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INC., THE POKER PALACE, SILVER  
20 NUGGET GAMING, LLC d/b/a SILVER  
NUGGET CASINO, and JERRY'S NUGGET

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

23  
24 DOLLY ROWAN, as Special Administrator of  
the Estate of NOREEN THOMPSON.

25 Plaintiff,

26 vs.

27 PHILIP MORRIS USA, INC., a foreign  
28 corporation; R.J. REYNOLDS TOBACCO

Case No. A-20-811091-C  
Dept. No. V

**ANSWER, DEFENSES, AND JURY  
DEMAND OF DEFENDANT SILVER  
NUGGET GAMING, LLC d/b/a SILVER  
NUGGET CASINO TO PLAINTIFF'S  
AMENDED COMPLAINT**



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; JOES 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 1-X; and ROE BUSINESS ENTITIES XI-XX. inclusive,

Defendants.

**ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Silver Nugget Gaming, LLC d/b/a Silver Nugget Casino ("Silver Nugget"), by and through its counsel of record, Bailey ♦ Kennedy, hereby answers Dolly Rowan's, as Special Administrator of the Estate of Noreen Thompson ("Plaintiff"), Amended Complaint as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Answering Paragraph 1, Silver Nugget states that the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent the allegations require a response, Silver Nugget denies the allegations to the extent they contradict or are inconsistent with the law.

2. Answering Paragraph 2, Silver Nugget is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

3. Answering Paragraph 3, Silver Nugget is informed and believes that Philip Morris USA, Inc. is a corporation organized in Virginia and is authorized to do business in Clark County, Nevada. Silver Nugget is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

1           4.       Answering Paragraph 4, Silver Nugget is informed and believes that R.J. Reynolds  
2 Tobacco Company, Inc. (“R.J. Reynolds”) is a corporation organized in North Carolina with its  
3 principal place of business in North Carolina and is authorized to do business in Clark County,  
4 Nevada. Silver Nugget is without knowledge or information sufficient to form a belief as to the truth  
5 of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

6           5.       Answering Paragraph 5, Silver Nugget is without knowledge or information sufficient  
7 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
8 them on that basis.

9           6.       Answering Paragraph 6, Silver Nugget is informed and believes that Liggett Group,  
10 Inc. is a corporation organized in Delaware with its principal place of business in North Carolina and  
11 is authorized to do business in Clark County Nevada. Silver Nugget is without knowledge or  
12 information sufficient to form a belief as to the truth of the remaining allegations contained in said  
13 paragraph, and therefore denies them on that basis.

14          7.       Answering Paragraph 7, Silver Nugget is without knowledge or information sufficient  
15 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
16 them on that basis.

17          8.       Answering Paragraph 8, Silver Nugget is without knowledge or information sufficient  
18 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
19 them on that basis.

20          9.       Answering Paragraph 9, Silver Nugget is without knowledge or information sufficient  
21 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
22 them on that basis.

23          10.      Answering Paragraph 10, Silver Nugget is without knowledge or information  
24 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
25 denies them on that basis.

26          11.      Answering Paragraph 11, Silver Nugget is without knowledge or information  
27 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
28 denies them on that basis.



1 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
2 denies them on that basis.

3 24. Answering Paragraph 24, Silver Nugget is without knowledge or information  
4 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
5 denies them on that basis.

6 25. Answering Paragraph 25, Silver Nugget is without knowledge or information  
7 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
8 denies them on that basis.

9 26. Answering Paragraph 26, Silver Nugget is without knowledge or information  
10 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
11 denies them on that basis.

12 27. Answering Paragraph 27, Silver Nugget is without knowledge or information  
13 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
14 denies them on that basis.

15 28. Answering Paragraph 28, Silver Nugget is without knowledge or information  
16 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
17 denies them on that basis.

18 29-35. Paragraphs 29-35 contain no allegations against Silver Nugget; to the extent this  
19 paragraph is attempting to implicitly allege any liability against Silver Nugget, those allegations are  
20 denied.

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

22 36-105. Paragraphs 36 through 105 contain no allegations against Silver Nugget; to the  
23 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
24 allegations are denied.

25 **Conspiratorial Involvement by Defendants' Lawyers**

26 106-114. Paragraphs 106 through 114 contain no allegations against Silver Nugget; to the  
27 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
28 allegations are denied.

**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. Answering Paragraph 115, Silver Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 114 of the Amended Complaint as if fully set forth herein.

116-136. Paragraphs 116 through 136 contain no allegations against Silver Nugget; to the extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, those allegations are denied.

**SECOND CLAIM FOR RELIEF**

**(NEGLIGENCE)**

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

137. Answering Paragraph 137, Silver Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 136 of the Amended Complaint as if fully set forth herein.

138-154. Paragraphs 138 through 154 contain no allegations against Silver Nugget; to the extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, those allegations are denied.

**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. Answering Paragraph 155, Silver Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 154 of the Amended Complaint as if fully set forth herein.

156-178. Paragraphs 156 through 178 contain no allegations against Silver Nugget; to the

1 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
2 allegations are denied.

3 **FOURTH CLAIM FOR RELIEF**

4 **(STRICT PRODUCTS LIABILITY)**

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

7 179. Answering Paragraph 179, Silver Nugget realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 178 of the Amended Complaint as if fully set  
9 forth herein.

10 180-197. Paragraphs 180 through 197 contain no allegations against Silver Nugget; to the  
11 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
12 allegations are denied.

13 **FIFTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – FRAUDULENT MISREPRESENTATION)**

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

17 198. Answering Paragraph 198, Silver Nugget realleges and incorporates by reference the  
18 responses to the allegations of paragraphs 1 through 197 of the Amended Complaint as if fully set  
19 forth herein.

20 199–234. Paragraphs 199 through 234 contain no allegations against Silver Nugget; to the  
21 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
22 allegations are denied.

23 **SIXTH CLAIM FOR RELIEF**

24 **(FRAUDULENT MISREPRESENTATION)**

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

27 235. Answering Paragraph 235, Silver Nugget realleges and incorporates by reference the  
28 responses to the allegations of paragraphs 1 through 234 of the Amended Complaint as if fully set

1 forth herein.

2 236-266. Paragraphs 236 through 266 contain no allegations against Silver Nugget; to the  
3 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
4 allegations are denied.

5 **SEVENTH CLAIM FOR RELIEF**

6 **(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)**

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

9 267. Answering Paragraph 267, Silver Nugget realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 266 of the Amended Complaint as if fully set  
11 forth herein.

12 268-303. Paragraphs 268 through 303 contain no allegations against Silver Nugget; to the  
13 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
14 allegations are denied.

15 **EIGHTH CLAIM FOR RELIEF**

16 **(FRAUDULENT CONCEALMENT)**

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

19 304. Answering Paragraph 304, Silver Nugget realleges and incorporates by reference the  
20 responses to the allegations of paragraphs 1 through 303 of the Amended Complaint as if fully set  
21 forth herein.

22 305-337. Paragraphs 305 through 337 contain no allegations against Silver Nugget; to the  
23 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
24 allegations are denied.

25 ///

26 ///

27 ///

28 ///

**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. Answering Paragraph 338, Silver Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 337 of the Amended Complaint as if fully set forth herein.

339-362. Paragraphs 339 through 362 contain no allegations against Silver Nugget; to the extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those allegations are denied.

**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. Answering Paragraph 363, Silver Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 362 of the Amended Complaint as if fully set forth herein.

364-382. Paragraphs 364 through 382 contain no allegations against Silver Nugget; to the extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those allegations are denied.

**ELEVENTH CLAIM FOR RELIEF**

**(WRONGFUL DEATH – NEVADA DECEPTIVE TRADE PRACTICES ACT)**

**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**

383. Answering Paragraph 383, Silver Nugget realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 382 of the Amended Complaint as if fully set forth herein.

384-406. Paragraphs 384 through 406 contain no allegations against Silver Nugget; to the



1 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
2 allegations are denied.

3 **TWELFTH CLAIM FOR RELIEF**

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

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

7 407. Answering Paragraph 407, Silver Nugget realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 406 of the Amended Complaint as if fully set  
9 forth herein.

10 408-425. Paragraphs 408 through 425 contain no allegations against Silver Nugget; to the  
11 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those  
12 allegations are denied.

13 **THIRTEENTH CLAIM FOR RELIEF**

14 **(WRONGFUL DEATH – STRICT LIABILITY)**

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

18 426. Answering Paragraph 426, Silver Nugget realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 425 of the Amended Complaint as if fully set  
20 forth herein.

21 427. Answering Paragraph 427, the allegations contain legal conclusions rather than  
22 factual allegations, and therefore, require no response. To the extent a response is required, Silver  
23 Nugget denies the allegations.

24 428. Answering Paragraph 428, Silver Nugget is without knowledge or information  
25 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
26 denies them on that basis.

27 429. Answering Paragraph 429, the allegations contain legal conclusions rather than  
28 factual allegations, and therefore, require no response. To the extent a response is required, Silver

1 Nugget denies the allegations.

2 430. Answering Paragraph 430, Silver Nugget is without knowledge or information  
3 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
4 denies them on that basis.

5 431. Answering Paragraph 431, the allegations contain legal conclusions rather than  
6 factual allegations, and therefore, require no response. To the extent a response is required, Silver  
7 Nugget denies the allegations.

8 432. Answering Paragraph 432, Silver Nugget admits that it is in the business of selling  
9 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

10 433. Answering Paragraph 433, Silver Nugget admits that it is in the business of selling  
11 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

12 434. Answering Paragraph 434, Silver Nugget admits that it is in the business of selling  
13 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

14 435. Paragraph 435 contains legal conclusions rather than factual allegations, and therefore  
15 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

16 436. Paragraph 436 contains legal conclusions rather than factual allegations, and therefore  
17 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

18 437. Paragraph 437 contains legal conclusions rather than factual allegations, and therefore  
19 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

20 438. Paragraph 438 contains legal conclusions rather than factual allegations, and therefore  
21 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

22 439. Paragraph 439 contains legal conclusions rather than factual allegations, and therefore  
23 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

24 440. Paragraph 440 contains legal conclusions rather than factual allegations, and therefore  
25 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

26 441. Paragraph 441 contains legal conclusions rather than factual allegations, and therefore  
27 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

28 442. Answering Paragraph 442, Silver Nugget denies the allegations.

1 443. Answering Paragraph 443, Silver Nugget denies the allegations.

2 444. Answering Paragraph 444, Silver Nugget denies the allegations.

3 445. Answering Paragraph 445, Silver Nugget denies the allegations.

4 **FOURTEENTH CLAIM FOR RELIEF**

5 **(STRICT PRODUCT LIABILITY)**

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

9 446. Answering Paragraph 446, Silver Nugget realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 445 of the Amended Complaint as if fully set  
11 forth herein.

12 447. Answering Paragraph 447, the allegations contain legal conclusions rather than  
13 factual allegations, and therefore, require no response. To the extent a response is required, Silver  
14 Nugget denies the allegations.

15 448. Answering Paragraph 448, Silver Nugget admits that it is in the business of selling  
16 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

17 449. Answering Paragraph 449, Silver Nugget admits that it is in the business of selling  
18 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

19 450. Answering Paragraph 450, Silver Nugget admits that it is in the business of selling  
20 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

21 451. Paragraph 451 contains legal conclusions rather than factual allegations, and therefore  
22 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

23 452. Paragraph 452 contains legal conclusions rather than factual allegations, and therefore  
24 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

25 453. Paragraph 453 contains legal conclusions rather than factual allegations, and therefore  
26 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

27 454. Paragraph 454 contains legal conclusions rather than factual allegations, and therefore  
28 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

455. Paragraph 455 contains legal conclusions rather than factual allegations, and therefore

1 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

2 456. Paragraph 456 contains legal conclusions rather than factual allegations, and therefore  
3 requires no response. To the extent a response is required, Silver Nugget denies the allegations.

4 457. Answering Paragraph 457, Silver Nugget denies the allegations.

5 458. Answering Paragraph 458, Silver Nugget denies the allegations.

6 459. Answering Paragraph 459, Silver Nugget denies the allegations.

7 460. Answering Paragraph 460, Silver Nugget denies the allegations.

8 Silver Nugget denies that Plaintiff is entitled to judgement against, or any relief whatsoever  
9 from, Silver Nugget in this action and denies any remaining allegations, including, but not limited to,  
10 those contained in the unnumbered paragraph following paragraph 460 beginning "WHEREFORE."

### 11 **AFFIRMATIVE DEFENSES**

#### 12 **FIRST AFFIRMATIVE DEFENSE**

13 The Amended Complaint fails to state a claim upon which relief may be granted.

#### 14 **SECOND AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred, in whole or in part, by any applicable statutes of limitations and  
16 repose.

#### 17 **THIRD AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred, in whole or in part, by the doctrines of *res judicata*, estoppel,  
19 and by executed releases of the State of Nevada.

#### 20 **FOURTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred, in whole or in part, because the sale of tobacco products to  
22 persons of legal age is a legal activity in the State of Nevada.

#### 23 **FIFTH AFFIRMATIVE DEFENSE**

24 Any injuries allegedly sustained by Plaintiff and/or Noreen Thompson were produced, if at  
25 all, by an intervening or superseding cause or causes, and any alleged act or omission of Silver  
26 Nugget was not the proximate or competent producing cause of Plaintiff's and/or Noreen  
27 Thompson's alleged injuries or damages. To the extent Plaintiff's and/or Noreen Thompson's  
28 alleged injuries were caused by the use of tobacco products, the proximate cause of such alleged

injuries was Noreen Thompson's choice to use tobacco products.

#### **SIXTH AFFIRMATIVE DEFENSE**

If Plaintiff and/or Noreen Thompson were injured or damaged, such alleged injuries or damages were caused solely or proximately by the acts, wrongs, or omissions of Plaintiff and/or Noreen Thompson, by preexisting conditions, or by forces and/or things over which Silver Nugget had no control and for which Silver Nugget is not responsible or liable.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's recovery is barred, in whole or in part, by the doctrine of assumption of risk.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's consent.

#### **NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by settlement or accord and satisfaction of their claims.

#### **TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff and/or Noreen Thompson failed to mitigate any injuries and damages allegedly suffered.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

The Amended Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorneys' fees.

#### **TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's claims are based on an alleged duty to disclose the risks associated with cigarette smoking, such claims are barred because such risks are and have been commonly known.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

If any defects existed with respect to tobacco products sold by Silver Nugget, any such alleged defects were open and obvious. Accordingly, Plaintiff cannot recover herein against Silver Nugget.

**FOURTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the Federal Cigarette Labeling and Advertising Act, Pub. L. 89-92, 79 Stat. 282 (1965), and the Public Health Cigarette Smoking Act of 1969, Pub. L. 91-222, 84 Stat. 87 (1969), codified as amended at 15 U.S.C. § 1331 et seq., preempt and bar, in whole or in part, Plaintiff's claims and causes of action. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

**FIFTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, the doctrine of conflict preemption preempts and bars, in whole or in part, Plaintiff's claims and causes of action. Congress has specifically foreclosed the removal of tobacco products from the market and, for that reason, any claims of liability based in whole or in part on a duty not to manufacture, market, or sell cigarettes are preempted. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

**SIXTEENTH AFFIRMATIVE DEFENSE**

Silver Nugget is entitled to set-off, should any damages be awarded against it, in the amount of damages or settlement amounts recovered by Plaintiff and/or Noreen Thompson with respect to the same alleged injuries. Silver Nugget is also entitled to have any damages that may be awarded to Plaintiff reduced by the value of any benefit or payment to Plaintiff and/or Noreen Thompson from any collateral source.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because the injuries for which she seeks to recover were allegedly caused by an inherent characteristic of cigarettes which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's and/or Noreen Thompson's comparative negligence, fault, responsibility, or want of due care, including Noreen Thompson's

1 choice to smoke. Plaintiff is, therefore, barred from any recovery, or any recoverable damages must  
2 be reduced in proportion to the amount of negligence attributable to Plaintiff and/or Noreen  
3 Thompson.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff lacks either standing or capacity, or both, to bring some or all of the claims alleged  
6 in the Amended Complaint.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 Plaintiff's product liability claims are barred because the cigarettes sold by Silver Nugget are  
9 not dangerous to an extent beyond that contemplated by the ordinary consumer.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 The Amended Complaint fails to state facts sufficient to entitle Plaintiff to an award of  
12 punitive damages.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 Silver Nugget pleads the defenses available under the applicable products liability statutes of  
15 the State of Nevada.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 Silver Nugget states that as of the relevant times alleged in the Amended Complaint, it did  
18 not know, and in light of the then existing and reasonably available scientific and technological  
19 knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the  
20 injuries and damages complained of in the Amended Complaint; (2) the alleged danger of any such  
21 design characteristics; or (3) any scientifically and technologically feasible and economically  
22 practical alternate design. Silver Nugget further states that the injuries and damages complained of  
23 in the Amended Complaint were not proximately caused by the lack of any such alternate design.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred to the extent Plaintiff seeks to impose liability on Silver Nugget  
26 retroactively or for conduct which was not actionable at the time it occurred.

27 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

28 Plaintiff's design defect claims are barred in whole or in part because Defendants' tobacco

1 products were designed in conformity with the generally recognized state of the art at the time they  
2 were designed, manufactured, tested, packaged, labeled, sold, or distributed.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches, waiver,  
5 equitable estoppel, and ratification.

6 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

7 All cigarettes manufactured to be sold in the United States since 1966, and every United  
8 States cigarette advertisement since 1972, carried warnings that adequately informed Plaintiff and/or  
9 Noreen Thompson of the health risks of smoking cigarettes. Such acts eliminated the elements of  
10 willfulness and reckless disregard necessary to support an award of punitive damages.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
13 conduct unrelated to Plaintiff's and/or Noreen Thompson's alleged harm.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims for punitive damages are barred to the extent that they are based upon  
16 conduct occurring outside the State of Nevada.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 Silver Nugget denies liability for any award of punitive damages not based solely on the  
19 specific allegations of Silver Nugget's conduct made the subject of this lawsuit and that allegedly  
20 affected Plaintiff and/or Noreen Thompson because consideration of other conduct would subject  
21 Silver Nugget to impermissible multiple punishments for the same conduct, in violation of the Fifth  
22 and Fourteenth Amendments to the United States Constitution and comparable provisions of the  
23 Nevada Constitution.

24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred because the alleged conduct of Silver Nugget was undertaken in  
26 good faith and for a valid business purpose.

27 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff's claims for punitive damages against Silver Nugget cannot be sustained because an



1 award of punitive damages under Nevada law, subject to no predetermined limit, such as a  
2 maximum multiple of compensatory damages or a maximum amount of punitive damages that a jury  
3 may impose, and providing no protection against multiple awards of punitive damages for the same  
4 course of conduct, would violate Silver Nugget's due process rights guaranteed by the Fifth and  
5 Fourteenth Amendments to the United States Constitution, and Silver Nugget's due process rights  
6 under Article 1, Sections 6, 8 and 15 of the Nevada Constitution, and would be improper under the  
7 common law and public policies of the State of Nevada.

8 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

9 The monetary relief sought, which is intended in part to punish Silver Nugget, is barred  
10 under the Eighth Amendment of the United States Constitution as well as cognate provisions of the  
11 Nevada Constitution found at Article 1, Section 6 as the imposition of an excessive fine.

12 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims for punitive damages are barred absent the safeguards guaranteed by the  
14 Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the  
15 comparable provisions of the Nevada Constitution in that these claims invoke or authorize  
16 proceedings and remedies which, though nominally civil, are in reality so punitive in purpose and  
17 effect that they transform the relief that Plaintiff seeks into a criminal penalty.

18 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims for punitive damages cannot be sustained because an award of punitive  
20 damages under Nevada law would violate Silver Nugget's due process and equal protection rights  
21 guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and  
22 Silver Nugget's due process rights under Article 1, Sections 8 and 15 of the Nevada Constitution.

23 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims for punitive damages against Silver Nugget cannot be sustained because an  
25 award of punitive damages in this case, combined with any prior, contemporaneous or subsequent  
26 judgments or settlements against Silver Nugget that include punitive damages arising out of the same  
27 marketing, sale or use of Defendants' tobacco products, would be impermissible multiple  
28 punishment in violation of the due process and equal protection rights guaranteed by the Fifth and

1 Fourteenth Amendments to the United States Constitution and the comparable provisions of the  
2 Nevada Constitution.

3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

4 Any award of punitive damages that is disproportionate to the amount of actual damages that  
5 does not bear a reasonable relationship to actual damages and that does not correlate to the actual  
6 cause of any injury violates Silver Nugget's rights under the Due Process clause of the Fourteenth  
7 Amendment to the United States Constitution and the comparable provisions of the Nevada  
8 Constitution.

9 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
11 damages under Nevada law by a jury that (1) is not provided constitutionally adequate standards of  
12 sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a  
13 punitive damages award; (2) is not adequately instructed on the limits of punitive damages imposed  
14 by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from  
15 awarding punitive damages, or determining the amount of an award of punitive damages, in whole  
16 or in part on the basis of invidiously discriminatory characteristics, including without limitation the  
17 residence, wealth, and corporate status of Silver Nugget; (4) is permitted to award punitive damages  
18 under a standard for determining liability for punitive damages that is vague and arbitrary and does  
19 not define with sufficient clarity the conduct or mental state that makes punitive damages  
20 permissible; (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each  
21 and every element of a claim for punitive damages; and (6) is not subject to trial court and appellate  
22 judicial review for reasonableness and furtherance of legitimate purposes on the basis of  
23 constitutionally adequate and objective standards, would violate Silver Nugget's due process and  
24 equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States  
25 Constitution and applicable provisions of the Nevada Constitution, and would be improper under the  
26 common law and public policy of Nevada.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

To the extent that the laws of other jurisdictions apply, Silver Nugget invokes each and every constitutional defense available to it under the Constitutions (or similar charters) of each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions. This specifically includes, but is not limited to, provisions relating to due process, access to the courts, freedom of speech, freedom of association, freedom to petition the government for redress of grievances, and limitations on compensatory and punitive damages.

**FORTIETH AFFIRMATIVE DEFENSE**

In the event Plaintiff establishes liability on the part of Silver Nugget, which liability Silver Nugget specifically denies, any alleged injuries or damages were caused in whole or in part by the negligence of Plaintiff and/or Noreen Thompson, thereby barring Plaintiff's recovery in whole or in part.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages against Silver Nugget cannot be sustained because NRS 42.005(2) impermissibly singles out and exempts products liability cases from the limits otherwise imposed on the recovery of punitive damages, leaving their assessment to the standardless discretion of the finder of fact. Further, the statute and Nevada cases decided under it do not comply with the minimum standards established by the United States Supreme Court in this evolving area of the law, and they improperly permit multiple awards of punitive damages for the same alleged act or acts, without regard to where the injury occurred.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages against Silver Nugget cannot be sustained because an award of punitive damages under Nevada law, without a bifurcated trial, would violate Silver Nugget's right to equal protection and due process under the Fifth and Fourteenth Amendments to the United States Constitution and under Article 1, Section 8 of the Nevada Constitution.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

Any affirmative defenses pled by any other Defendant and not pled by Silver Nugget are

incorporated herein to the extent they do not conflict with Silver Nugget's affirmative defenses.

#### **FORTY-FOURTH AFFIRMATIVE DEFENSE**

Silver Nugget hereby gives notice that it intends to rely upon any other defense that may become available or appear during the discovery proceedings in this case and hereby reserves its right to amend its Answer to assert any such defenses based on Nevada law, or other defenses that may become available in the course of litigation.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Silver Nugget prays for judgment against Plaintiff as follows:

1. That Plaintiff's claims for relief be dismissed with prejudice and that Plaintiff take nothing thereby;
2. For an award of costs and attorneys' fees incurred in the defense of this action, as may be permitted by law; and
3. For such other and further relief as the Court deems just and proper.

#### **JURY DEMAND**

Silver Nugget demands a trial by jury of all claims triable as of right by jury.

DATED this 29<sup>th</sup> day of March, 2021.

BAILEY❖KENNEDY

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

KING & SPALDING  
VALENTIN LEPPERT  
(ADMITTED PRO HAC VICE)  
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SILVER NUGGET GAMING, LLC d/b/a  
SILVER NUGGET CASINO, and  
JERRY'S NUGGET

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY❖KENNEDY and that on the 29<sup>th</sup> day of March, 2021, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO TO PLAINTIFF'S AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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/s/ Sharon L. Murnane  
Employee of BAILEY❖KENNEDY