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

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. 5

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

PHILIP MORRIS USA, INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO

CASE NO. A-20-811091-C

DEPT. NO. V

PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING DEFENDANT PHILIP MORRIS USA INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT UNDER NRCP 12(b)(5)

HEARING REQUESTED

CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; QUICK STOP MARKET, LLC, a domestic limited liability company; JOE'S BAR, INC., a domestic corporation; THE POKER PALACE, a domestic corporation; SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, a domestic limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive

Defendants.

Plaintiff, DOLLY ROWAN, by and through their counsel of record, SEAN K. CLAGGETT, ESQ., of CLAGGETT & SYKES LAW FIRM, hereby moves this Court to reconsider the Court's September 8, 2021 Order Granting Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5), attached hereto as **Exhibit 1**. This motion is made and based upon all papers, pleadings, and records on file herein, the attached memorandum of points and authorities, and any oral argument allowed at the time of the hearing.

I. INTRODUCTION

A Court may reconsider its previous decision if it was clearly erroneous. Plaintiff asks this Court to reconsider its previous dismissal of Plaintiff's NDTPA and civil conspiracy claims against defendant Philip Morris, because that ruling contradicts plain statutory language, all existing case law, and all sister courts' decisions on this very issue, including Judge Nadia Krall's ruling today—September 23, 2021.

As alleged in Plaintiff's amended complaint, Defendant Philip Morris conspired with other tobacco manufacturers to conceal the dangers of smoking and disseminate misinformation to the American public in an attempt to sell cigarettes to consumers, including the decedent in this case, Ms. Noreen Thompson. Due to decades of pervasive marketing and a misinformation campaign denying that cigarettes cause cancer, Ms. Thompson became addicted to smoking, which ultimately caused her lung cancer.

The central issue before this Court is whether the NDTPA and NRS 41.600 grant standing to victims of deceptive trade practices when the victims did not purchase or use the defendant's products. As discussed below, the answer is an affirmative "yes." The plain language of the relevant statutes supports Plaintiff's NDTPA claim. Furthermore, the Nevada Supreme Court, the Ninth Circuit, and the Nevada Federal District Court have proscribed a narrow construction of the NDTPA in similar contexts and granted standing to non-purchasers and non-users of a defendant's products. Since Plaintiff's NDTPA claim is viable, it also suffices as a predicate for the civil conspiracy claim. Therefore, this Court should reinstate Plaintiff's claims against Philip Morris.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. THE FACTS AND CIRCUMSTANCES GIVING RISE TO PLAINTIFF'S AMENDED COMPLAINT.[1]

1. Noreen's Lung Cancer Diagnosis.

In April 2019, Noreen was diagnosed with lung cancer, which was caused by smoking Pall Mall, Camel, Viceroy and Pyramid brand cigarettes. She was addicted to these cigarettes and smoked continuously from approximately 1954 until 2019. As a

[1] Plaintiff's amended complaint provides a full statement of their allegations and claims. *See* **Exhibit 2** at 7–128. This summarized version is designed to provide context for the Court to decide the legal issues presented.

result of her cancer, Noreen passed away on June 19, 2020. *See* Plaintiff's Amended Complaint at 7, ¶ 19, attached hereto as **Exhibit 2**. Pall Mall, Viceroy and Camel cigarettes were designed, manufactured, and sold by Defendant R.J. Reynolds. *See* **Exhibit 2** at 7, ¶ 20-22. Pyramid cigarettes were designed, manufactured, and sold by Defendant Liggett. *See* **Exhibit 2** at 7, ¶ 23.

2. Defendants Purposefully and Intentionally Designed Cigarettes To Be Highly Addictive.

As Plaintiff's amended complaint explains, Defendants purposefully and intentionally designed cigarettes to be highly addictive by, among other things, deliberately manipulating and/or adding compounds in cigarettes such as arsenic, polonium-210, tar, methane, methanol, carbon monoxide, nitrosamines, butane, formaldehyde, tar, carcinogens, and other deadly and poisonous compounds to cigarettes. *See* **Exhibit 2** at 8, ¶ 29. Defendants then concealed the addictive and deadly nature of cigarettes from Plaintiff, the government, and the American public by making knowingly false and misleading statements and by engaging in a $250 billion conspiracy. *See* **Exhibit 2** at 8, ¶ 30.

3. Historical Allegations of Defendants' Unlawful Conduct.

Lung cancer is a disease manufactured and created by the cigarette industry, including Defendants. *See* **Exhibit 2** at 11, ¶ 38. By February 2, 1953, Defendants had concrete proof that cigarette smoking increased the risk of lung cancer. *See* **Exhibit 2** at 11, ¶ 42. As a result of mounting public awareness regarding the link between cigarette smoking and lung cancer, Defendants grew fearful that their customers would stop smoking, which would in turn bankrupt their companies. *See* **Exhibit 2** at 12, ¶

44. Thus, in order to maximize profits, Defendants intentionally banded together, forming a conspiracy which, for over half a century, fabricated and publicized a disingenuous "open debate" to create and spread doubt about whether cigarettes were or were not harmful. *See* **Exhibit 2** at 12, ¶ 45.

Executives from every cigarette company, except for Liggett, met at the Plaza Hotel on December 14, 1953 to form the conspiracy. *See* **Exhibit 2** at 12, ¶ 47. On December 28, 1953, Defendants again met at the Plaza Hotel where they knowingly and purposefully agreed to create a fake "research committee" called the Tobacco Industry Research Committee ("TIRC") (later renamed the Council for Tobacco Research ("CTR")). *See* **Exhibit 2** at 13, ¶ 49. Paul Hahn, president of American Tobacco, was elected the temporary chairman of TIRC. *Id.* TIRC's *public* mission statement was to supposedly aid and assist with so-called "independent" research into cigarette use and health. *See* **Exhibit 2** at 13, ¶ 50. The formation and purpose of TIRC was announced on January 4, 1954, in a full-page advertisement called "A Frank Statement to Cigarette Smokers" published in 448 newspapers throughout the United States. *See* **Exhibit 2** at 13, ¶ 51.

For the next five decades, TIRC/CTR worked diligently, and quite successfully, to rebuff the public's concern about the dangers of cigarettes. Defendants, through TIRC/CTR, invented the false and misleading notion that there was an "open question" regarding cigarette smoking and health. *See* **Exhibit 2** at 14, ¶ 54. They appeared on television and radio to broadcast this message. *Id.*

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

direction." *See* **Exhibit 2** at 17, ¶ 62. The cigarette industry's public response, through TIRC, to the 1964 Surgeon General Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements. *See* **Exhibit 2** at 17, ¶ 63. As a result, cigarette consumption again began to rise. *Id.* Despite Defendants' public response, internally they were fully aware of the magnitude and depth of the lies and deception they were promulgating. *See* **Exhibit 2** at 17, ¶ 64. They knew and understood that they were making fake, misleading promises that would never come to fruition. *Id.* Their own internal records reveal that they knew, even back in 1964, that cigarettes were not only hazardous, but deadly. *Id.* Defendants' sole priority was to make as much money as quickly as possible, with no concern about the safety and well-being of their customers. *See* **Exhibit 2** at 18, ¶ 67.

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." *See* **Exhibit 2** at 19, ¶ 58. The cigarette industry responded to the "Caution" label by continuing its massive public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the public. *See* **Exhibit 2** at 19, ¶ 69. Throughout this period, Defendants also introduced "filtered" cigarettes—cigarettes falsely marketed, advertised, and promoted as "less tar" and "less nicotine." *See* **Exhibit 2** at 19, ¶ 71. However, internally, in Defendants' previously concealed, hidden documents, discussions regarding the true nature of filtered cigarettes were revealed—filters were

just as harmful, dangerous, and hazardous as unfiltered cigarettes; in fact, they were more dangerous. *See* **Exhibit 2** at 19, ¶ 72.

Throughout the 1960s, 1970s, 1980s, and 1990s, the cigarette industry, including Defendants, spent $250 billion dollars in marketing efforts to promote the sale of cigarettes. *See* **Exhibit 2** at 20, ¶ 75. The cigarette industry spent more money on marketing and advertising cigarettes in ***one day*** than the public health community spent in ***one year***. *See* **Exhibit 2** at 20, ¶ 76.

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. *See* **Exhibit 2** at 21, ¶ 83. The cigarette industry, including Defendants, opposed these warning labels. *See* **Exhibit 2** at 21, ¶ 84. Throughout the 1980s, despite the warning labels having been placed on their cigarette packs, Defendants' representatives at the Tobacco Institute ("TI") publicly stated that whether smoking cigarettes caused cancer and whether cigarettes were addictive remained unknown and that, apparently, "more research was needed." *See* **Exhibit 2** at 21, ¶ 84.

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 addiction to heroin and cocaine. *See* **Exhibit 2** at 22, ¶ 85. 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." *See* **Exhibit 2** at 22, ¶ 86.

In 1994 CEOs from the seven largest cigarette companies, including Defendants, testified under oath before the United States Congress that, in each of their opinions, it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die. *See* **Exhibit 2** at 22, ¶ 88.

This sophisticated conspiracy involved hundreds of billions of dollars spent on marketing efforts, massive deception including lying under oath before Congress and other governmental entities, forming fake organizations with fake scientists and fake research, and creating a "brilliantly conceived" public relations campaign designed to create and sustain doubt and confusion regarding a—made-up—cigarette controversy. *See* **Exhibit 2** at 22, ¶ 89. This conspiracy is memorialized through Defendants' own documents, authored by their own executives and scientists, including in over 14 million previously-concealed records. *See* **Exhibit 2** at 24, ¶ 102.

4. <u>Plaintiff's Claims Against Defendants.</u>

In the amended complaint, Plaintiff asserted the following claims against Defendants: (1) wrongful death – negligence: Dolly Rowan against R.J. Reynolds and Liggett (*see* **Exhibit 2** at 31-36); (2) negligence: Ms. Rowan against R.J. Reynolds and Liggett (*see* **Exhibit 2** at 36-41); (3) wrongful death – strict liability: Ms. Rowan against R.J. Reynolds and Liggett (*see* **Exhibit 2** at 41-45); (4) strict products liability: Ms. Rowan against R.J. Reynolds and Liggett (5) wrongful death – fraudulent misrepresentation: Ms. Rowan against R.J. Reynolds and Liggett (*see* **Exhibit 2** at 46-60); (6) fraudulent misrepresentation: Ms. Rowan against R.J. Reynolds and Liggett; (*see* **Exhibit 2** at 60-71) (7) wrongful death – fraudulent concealment: Ms. Rowan against R.J. Reynolds and Liggett; (*see* **Exhibit 2** at 71-81) (8) fraudulent concealment: Ms.

Rowan against R.J. Reynolds and Liggett; (*see* **Exhibit 2** at 81-90 (9) wrongful death – civil conspiracy: Ms. Rowan against R.J. Reynolds, Liggett and Philip Morris; (*see* **Exhibit 2** at 91-98) (10) civil conspiracy: Ms. Rowan against R.J. Reynolds, Liggett and Philip Morris; (*see* **Exhibit 2** at 99-106) (11) wrongful death – violation of NDTPA: Ms. Rowan against R.J. Reynolds, Liggett and Philip Morris; (*see* **Exhibit 2** at 106-114) (12) violation of NDTPA: Ms. Rowan against R.J. Reynolds, Liggett and Philip Morris; (*see* **Exhibit 2** at 115-122) (13) wrongful death – strict liability: Ms. Rowan against Quick Stop Market, Joe's Bar, the Poker Palace, Silver Nugget Gaming, and Jerry's Nugget; (*see* **Exhibit 2** at 123-126) (14) strict product liability: Ms. Rowan against Quick Stop Market, Joe's Bar, the Poker Palace, Silver Nugget Gaming, and Jerry's Nugget. (*see* **Exhibit 2** at 126-128)

B. PHILIP MORRIS' MOTION TO DISMISS UNDER NRCP 12(b)(5) AND PLAINTIFF'S OPPOSITION.

On March 29, 2021, Philip Morris filed a motion to dismiss under NRCP 12(b)(5), arguing that because Noreen did not actually use its product, there could be no claim based upon a "disguised" product liability claim. *See* **Exhibit 3** at 5-7. Philip Morris also argued that Plaintiff's claim for violation of the NDTPA failed, due to the lack of any legal relationship and causation. *See* **Exhibit 3** at 7-10. Philip Morris finally argued that if Plaintiff's NDTPA claims against Philip Morris were dismissed, Plaintiff's civil conspiracy claim against Philip Morris would also need to be dismissed because it is a derivative claim. *See* **Exhibit 3** at 10. In response, Plaintiff argued that her claims do not fail for lack of product use. *See* Plaintiff's Opposition to Defendant Philip Morris' Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5), attached hereto

as **Exhibit 4** at 10-20. Additionally, Plaintiff explained that her allegations regarding Defendants' massive conspiracy were based upon combined actors, including Philip Morris, such that Plaintiff's claims for violation of the NDTPA and civil conspiracy could not be dismissed. *See* **Exhibit 4** at 20-23.

This Court heard argument on both motions to dismiss. *See* Court Minutes, attached hereto as **Exhibit 5**. At the conclusion of the hearing, This Court did not make a decision but took the matters under advisement. *See* **Exhibit 5**.

C. THIS COURT'S PREVIOUS ORDER RESOLVING THE MOTIONS TO DISMISS.

On September 8, 2021, this Court ruled that "since [Noreen Thompson] did not purchase or use Philip Morris' cigarettes, Plaintiff cannot make a showing of alleged duty by Philip Morris." Consequently, this Court dismissed Plaintiff's NDTPA claims against Philip Morris. *See* Order Granting Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5), attached hereto as **Exhibit 1**. This Court further held that the absence of an underlying NDTPA claim also required the dismissal of Plaintiff's claim for civil conspiracy against R.J. Reynolds. *See* **Exhibit 1**.

Plaintiff now petitions this Court to reinstate her claims 9-12 against Philip Morris for (1) violation of the NDTPA; and (2) civil conspiracy against all Defendants.

II. RECONSIDERATION STANDARD

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced **or the decision is clearly erroneous**." *Masonry and Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) [Emphasis added]. "Unless and until

an order is appealed, the district court retains jurisdiction to reconsider the matter." *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 199 (1980); *see also In re Manhattan W. Mechanic's Lien Litig.*, 131 Nev. 702, 707 n.3, 359 P.3d 125, 128 n.3 (2015) ("[The petitioner] argues that the district court erred in reconsidering the motion. [The petitioner's] argument is without merit because NRCP 54(b) permits the district court to revise a judgment that adjudicates the rights of less than all the parties until it enters judgment adjudicating the rights of all the parties.")

III. LEGAL ARGUMENT

D. THIS COURT'S PREVIOUS DISMISSAL OF PLAINTIFF'S CLAIM AGAINST PHILIP MORRIS FOR VIOLATION OF THE NDTPA WAS CLEARLY ERRONEOUS.

1. The Plain Language of the NDTPA Supports Plaintiff's Claim.

The primary goal of interpreting statutes is to effectuate the Legislature's intent. *See Cromer v. Wilson*, 126 Nev. 106, 109, 225 P.3d 788, 790 (2010). Courts must interpret clear and unambiguous statutes based on their plain meaning. *Id*. Indeed, "if a statute is unambiguous, this [C]ourt does not look beyond its plain language in interpreting it." *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007); *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657 (D. Nev. 2009).

The NDTPA is codified as NRS Chapter 598 (Deceptive Trade Practices), which defines "deceptive trade practice" as follows:

> A person engages in a "deceptive trade practice" if, in the course of his or her business or occupation, he or she:
> …

> 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***.
> …

NRS 598.0915 (emphases added).

While "transaction" is not defined by the statute, it necessarily encompasses "sales" since the Legislature used the word in a catch-all category to penalize "any other false representation." *Id.*; *see also* "transaction," BLACK'S LAW DICTIONARY, 1802 (11th ed. 2019) ("**1.** The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. **2.** Something performed or carried out; a business agreement or exchange. **3.** Any activity involving two or more persons. **4.** *Civil law.* An agreement that is intended by the parties to prevent or end a dispute and in which they make reciprocal concessions.").

Most importantly, "sale" is defined by the NDTPA to "include[] any sale, offer for sale or attempt to sell any property for any consideration." NRS 598.094.

Nowhere in the NDTPA did the Legislature ever insert a product-use requirement that a plaintiff must assert in her pleadings to have standing. To the contrary, the

definition of "sale" includes offers and attempts which need not be completed. *Id.* In short, the plain language of the statute prohibits and penalizes not only deceptive trade practices resulting in an eventual purchase or use by a plaintiff, but also those committed in an offer or attempt to transact with a plaintiff. The legislative intent on this particular issue has always been unambiguous because the definition of "sale" has stood unchanged since the enactment of the NDTPA in 1973. *Id.*

This Court erred when it read such a requirement into the NDTPA because that reading conflated claims under the statute with claims under the common law. In *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 232 P.3d 433 (2010), the Nevada Supreme Court rejected a request to read a similarly unmentioned requirement into the NDTPA. The defendant there argued that NDTPA claims must be proven by clear and convincing evidence since common law fraud claims require such a standard of proof. The Supreme Court declined and held that "[s]tatutory offenses that sound in fraud are separate and distinct from common law fraud." *Id.* at 166. Notably, the Supreme Court agreed with an Arizona court's analysis: "the purpose of the consumer protection statute was to provide consumers with a cause of action that was easier to establish than common law fraud...." *Id.* Therefore, the Supreme Court refused to add an additional burden onto the plaintiff alleging an NDTPA claim absent any legislative directive.

The same logic and principles apply to this case. Where there is no legislative directive to require product-purchase or product-use, the Court must abide by the plain language of the NDTPA, treat it distinctly from common law fraud, and not insert the Court's own requirements. *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 451, 117 P.3d 171, 174 (2005) ("[I]t is not the business of this court to fill in alleged

legislative omissions based on conjecture as to what the legislature would or should have done."). Here, Plaintiff properly notified Philip Morris by pleading that Philip Morris both offered and attempted to sell Ms. Thompson its cigarettes over several decades through aggressive marketing efforts, event sponsorships, and deceptive public relations campaigns along with other tobacco manufacturers. *See* Complaint and Jury Trial Demand, attached hereto as **Exhibit 2** at 5–19; 44–47. The pleading is sufficient; thus, this Court's dismissal of the NDTPA claim was clearly erroneous.

2. NRS 41.600 Provides Plaintiff With Standing.

While this Court can and, therefore, must resolve this issue on the plain language of the NDTPA, it relied on a separate erroneous argument by Philip Morris that must be corrected. NRS 41.600(1) grants a private right of action to victims of consumer fraud, which includes deceptive trade practices as defined in NRS 598.0915, the NDTPA provision at issue. Neither the plain language nor case law commenting on NRS 41.600 has ever required a plaintiff to allege product-purchase or product-use to gain standing to make an NDTPA claim. Quite the opposite, case law proscribes such a narrow construction.

a. The Plain Language of NRS 41.600 Incorporates the NDTPA and, Therefore, Grants Standing to Plaintiff, Despite Non-Use of Philip Morris' Products.

The statutory language is as follows:

> 1. An action may be brought by any person who is a victim of consumer fraud.
> 2. As used in this section, "consumer fraud" means:
> (a) An unlawful act as defined in NRS 119.330;
> (b) An unlawful act as defined in NRS 205.2747;
> (c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;
> (d) An act prohibited by NRS 482.351; or
> (e) ***A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive***.

> 3. If the claimant is the prevailing party, the court shall award the claimant:
> (a) Any damages that the claimant has sustained;
> (b) Any equitable relief that the court deems appropriate; and
> (c) The claimant's costs in the action and reasonable attorney's fees.
> 4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

NRS 41.600 (emphasis added).

By referring to NRS 598.0915 in subsection 2(e), NRS 41.600 relies on the legislative scheme established by the NDTPA. Being a statute under Title 3, "Remedies; Special Actions and Proceedings," NRS 41.600 does not specify plaintiffs with standing in each consumer fraud scenario, but instead relies on other statutes to define their own parameters of who may sue the wrongdoer. *See Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1152 (9th Cir. 2011) ("NRS 41.600(2) defines the kinds of actions that constitute 'consumer fraud' not by referring to a certain type of victim, but by cross-referencing other NRS sections defining deceptive trade practices and other offenses.").

As discussed, the NDTPA's plain language permits victims of deceptive trade practices to commence action as long as the defendant offered or attempted to sell a product. The two statutes do not conflict, and the legislative intent is clear: one can be a victim of deceptive trade practices even if the deception occurred during an offer or an attempt that did not end in a purchase.

b. A Non-User of Philip Morris' Product Can Be a Victim under NRS 41.600.

The interplay between the NDTPA and NRS 41.600 has been addressed by various courts. The case law proscribes a narrow definition of "victim," especially if the limitation would exclude plaintiffs who are harmed by deceptive trade practices.

"Because the NDTPA is a remedial statutory scheme," this Court should "afford [it] liberal construction to accomplish its beneficial intent." *Poole v. Nevada Auto Dealership Investments, LLC*, 135 Nev. 280, 286–287, 449 P.3d 479, 485 (Ct. App. 2019) (citing *Welfare Div. of State Dep't of Health, Welfare & Rehab. v. Washoe Cty. Welfare Dep't,* 88 Nev. 635, 637 (1972)).

Previously, this Court dismissed Plaintiff's NDTPA claim because:

> There is no dispute that Plaintiff did not use cigarettes that were manufactured, marketed, or sold by Defendant Philip Morris. Since she did not purchase or use Philip Morris' cigarettes, Plaintiff cannot make a showing of alleged duty by Philip Morris. Thus, due to lack of showing of duty, all claims against Philip Morris fail, except as to civil conspiracy claim. However, the civil conspiracy claim against Philip Morris must also fail since this is a derivative claim. Although Plaintiff alleges that Philip Morris violated the Deceptive Trade Practices Act, which constitutes the underlying unlawful objective, since that claim is dismissed, the civil conspiracy claim must also necessarily be dismissed. Thus, Philip Morris' motion to dismiss must be granted.

See **Exhibit 1** at 3. However, the existing body of case law—listed below—clearly shows that these requirements of product use/purchase and legal relationship between Ms. Thompson and Philip Morris should not have been read into the NDTPA and NRS 41.600.

In both *Sears v. Russell Rd. Food & Beverage, LLC*, 460 F.Supp.3d 1065, 1070 (D. Nev. 2020) and *S. Serv. Corp. v. Excel Bldg. Servs., Inc.*, 617 F.Supp.2d 1097, 1100 (D. Nev. 2007), the Nevada Federal District Court rejected the defendants' argument that the NDTPA only provides consumers a right of action. Citing to the Ninth Circuit opinion in *Del Webb Communities*, the district court held that "the role of an individual in a transaction is irrelevant so long they are a 'victim of consumer fraud…[T]o be a victim under this statute, the plaintiff need only have been 'directly harmed' by the defendant."

Sears at 1070. Therefore, the NDTPA does not require the plaintiff to be in any legal relationship with the defendant, as the District Court ruled in the case at bar.

More importantly, the courts do not restrict the phrase "directly harmed" to mean only harm occurring between a seller and a consumer. Instead, individuals without any legal relationship with the wrongdoer may bring an action under the NDTPA if they suffered from deceptive trade practices. In *S. Serv. Corp*, the court granted standing to the defendant's business competitor, which lost several contracts to the defendant because the defendant's deceptive practices allowed it to reduce costs and underbid the competitor. In *Bates v. Dollar Loan Ctr., LLC*, No. 2:13-CV-1731-KJD-CWH, 2014 WL 3516260, at *3 (D. Nev. July 15, 2014), the court granted standing to a plaintiff who suffered invasion of privacy due to the defendant's deceptive practices, even though the plaintiff was not the borrower from Dollar Loan Center but merely the borrower's credit reference. Indeed, the Ninth Circuit construes the NDTPA to provide standing even beyond consumers and competitors. *See Del Webb Communities*, 652 F.3d at 1153 ("There is no basis in the text of NRS 41.600 or in *Southern Service* to limit standing to a group broader than consumers but no broader than business competitors.").

This Court's previous ruling flies in the face of these decisions. If the NDTPA does not restrict standing to only consumers, how can it restrict standing to a subset of consumers (either purchasers or users)? *See* "consumer" BLACK'S LAW DICTIONARY, 395 (11th ed. 2019) ("**1.** Someone who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes. **2.** Under some consumer-protection statutes, any individual.").

The Nevada Federal District Court's analysis in *Prescott v. Slide Fire Sols., LP,* 410 F.Supp.3d 1123, 1145–1146 (D. Nev. 2019) is particularly instructive because it highlights the difference between the too-attenuated commercial injuries the plaintiff suffered there and the direct harm Ms. Thompson suffered in the case at bar. *Prescott* arose from the mass shooting that occurred during the Route 91 Harvest Music Festival in 2017. Dismissing the NDTPA claim, the court wrote:

> courts have found standing under NRS 41.600 beyond just "business competitors" of a defendant or "consumers" of a defendant's goods or services….
>
> Here, Plaintiff allege that Slide Fire… caused them commercial injury by: (1) creating the "false and misleading impression that the bump stock device could be used by members of the public for a lawful, safe purpose"; and (2) "displaying the 'ATF approved' legend on its homepage ... [thereby] knowingly creat[ing] the false and misleading impression that the ATF letter was an official approval of the legality of the bump stock." … These allegations do not, however, reveal a direct harm of commercial injury by Slide Fire's actions. According to the Amended Complaint, it was not the false statement about the lawfulness of a bump stock device or ATF's approval that "deprived Plaintiff of their commercial business"; it was the "emotional trauma they experienced as a result of defendants' sale of the bump stock device *and* its subsequent use by the shooter." …Thus, while NRS 598.0915(5) is not limited to only consumers or competitors of a defendant, Plaintiff's alleged commercial injuries here are too attenuated to establish standing for this claim.

Id at 1145.

Whereas the plaintiffs in *Prescott* failed to claim that the defendant's false statement deprived them of their commercial business, Plaintiff at bar enumerated a long list of deceptive practices by Philip Morris and the other Defendants that concealed the dangers of smoking, addicted Ms. Thompson to cigarettes, and led to her cancer. *See* **Exhibit 2** at 99–101. Causation is clearly alleged.

Philip Morris' deceptive practices directly harmed Ms. Thompson, independent of its products. That is the basis for Plaintiff's NDTPA claim. In light of *Del Webb*

Communities, *S. Serve Corp.*, *Bates*, *Sears*, and *Prescott*, this Court erred by reading restrictions into the NDTPA and NRS 41.600 where there is no legislative directive to do so and only broad construction is proper. *See S. Nev. Homebuilders Ass'n*, 121 Nev. at 451, 117 P.3d at 174 ("[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.").

E. THIS COURT ALSO ERRED BY DISMISSING PLAINTIFF'S CLAIM AGAINST PHILIP MORRIS FOR CIVIL CONSPIRACY.

1. Civil Conspiracy Extends Liability Beyond the Active Wrongdoer.

"A civil conspiracy claim operates to extend, beyond the active wrongdoer, liability in tort to actors who have merely assisted, encouraged or planned the wrongdoer's acts." *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003) (citing 16 AM.JUR. 2D, *Conspiracy*, § 57 (1998)).

This tort creates a cause of action against "a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts.'" *Consol. Generator-Nevada v. Cummins Engine Co.*, 114 Nev. 1304, 1311 (1998) (citation omitted). The essence of civil conspiracy is damages which result from the tort underlying the conspiracy, not the legal relationship between the tortfeasor and the victim. *See* 16 AM.JUR. 2D, *Conspiracy*, § 57 (1998); *Flowers*, 266 F. Supp. 2d at 1249.

As the Supreme Court of California noted and the Ninth Circuit agreed:

> In such an action the major significance of the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, ***irrespective of whether or not he was a direct actor and regardless of the degree of his activity***.

Doctors' Co. v. Superior Court, 49 Cal. 3d 39, 40 (1989) (emphasis added); *see also Harrell v. 20th Century Ins. Co.*, 89-56261, 1991 WL 83396 (9th Cir. 1991) (unpublished).

Plaintiff's civil conspiracy claim against Philip Morris seeks to redress the exact type of malfeasance for which this tort is designed. While Ms. Thompson has never bought or used Philip Morris' cigarettes, she was harmed by its conspiratorial conduct with the other Defendants. Under this claim, Plaintiff does not sue Philip Morris for any product liability, but for its efforts with the other tobacco manufacturers to sustain a misinformation campaign over half of a century. In this case, Philip Morris is not liable for selling Ms. Thompson cigarettes, but for conspiring to misrepresent the state of scientific knowledge and to conceal what Defendants all knew to be the harm of smoking.

2. Once this Court Recognizes the Viability of Plaintiff's Claims for Violation of the NDTPA Against Philip Morris, the Court Should Also Reinstate Plaintiff's Conspiracy Claims Against Philip Morris.

In Nevada, "an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud." *Jordan v. State ex rel. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008).

This Court correctly recognized that the NDTPA claim suffices as a predicate for the civil conspiracy claim. In *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 118, 345 P.3d 1049, 1052 (2015), the Supreme Court clarified that the "unlawful objective" component of a civil conspiracy claim is not necessarily a tort claim. And, the "state of mind" component for a civil conspiracy claim is usually inappropriate for disposition by

motion. *See Collins v. Union Fed. S&L Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). As such, when this Court concluded that the NDTPA claim against the other two Defendants to be cognizable, it also denied their motion to dismiss the civil conspiracy claim. *See* **Exhibit 1** at 3. Since Plaintiff's NDTPA claim against Philip Morris is valid and sufficiently pled, this Court should reinstate Plaintiff's NDTPA and civil conspiracy claims against Philip Morris.

F. THIS COURT'S PREVIOUS DISMISSAL IS NOW AN OUTLIER AMONG CLARK COUNTY DISTRICT COURTS' DECISIONS ON THIS ISSUE.

On July 8, 2020, Judge Jacqueline Bluth denied a Motion to Dismiss the NDTPA and civil conspiracy claims against R.J. Reynolds in *Martin Tully v. Philip Morris USA Inc., et. al.,* Case No. A-19-807657-C after considering the same issues presented here. *See* **Exhibit 6.**

On March 23, 2021, Judge Bita Yeager denied R.J. Reynold's Motion to Dismiss the NDTPA and civil conspiracy claims against it in *Paul Speed v. Philip Morris USA Inc., et al.,* Case No: A-20-819040-C after considering the same issues presented here. *See* **Exhibit 7.**

On April 20, 2021, Judge Jessica Peterson denied a Motion to Dismiss the NDTPA and civil conspiracy claims against Liggett and Philip Morris in *Cleveland Clark v. Philip Morris USA Inc.,* et al. Case No: A-19-802987-C after considering the same issues presented here. *See* **Exhibit 8.**

Finally, on the morning of September 23, 2021, Judge Nadia Krall heard oral arguments on this issue presented in an almost identical Motion to Reconsider, and reversed Judge Kerry Earley's previous erroneous dismissal of NDTPA and civil

conspiracy claims against R.J. Reynolds in *Sandra Camacho v. Philip Morris USA Inc., et al.,* Case No: A-19-807650-C. (Order pending).

This Court's previous ruling now stands in stark contrast with these sister courts' decisions.[2]

CONCLUSION

Plaintiff's NDTPA claim is supported by the plain language of both the NDTPA and NRS 41.600. Because this Court clearly erred by reading a narrower restriction into the statutes in the absence of any legislative directive and in contradiction to established caselaw, this Court should reconsider its previous ruling and reinstate Plaintiff's NDTPA claim. Since Plaintiff's NDTPA claim suffices as a predicate, this Court should also reinstate her second claim for civil conspiracy.

DATED this 23rd day of September 2021.

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[2] The only other decision inconsistent with the above sister courts' rulings is Judge Mark Denton's order on December 30, 2020, which granted Liggett's motion to dismiss the plaintiff's NDTPA claim but denied Liggett's motion to dismiss the civil conspiracy claim. *See Tamara Jill Kelly et al. v. Philip Morris USA Inc.,* et al., Case No: A-20-820112-C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of September 2021 I caused to be served a true and correct copy of the **PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING DEFENDANT PHILIP MORRIS USA INC.'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT UNDER NRCP 12(B)(5)** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

VIA E-SERVICE ONLY: Dennis L. Kennedy, Esq. Joseph A. Liebman, Esq. BAILEY KENNEDY 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302 *Attorneys for R.J. Reynolds Tobacco Company, Quick Stop Market, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC D/B/A Silver Nugget Casino, and Jerry's Nugget*	**VIA E-SERVICE ONLY:** D. Lee Roberts, Jr., Esq. Phillip N. Smith, Jr., Esq. Daniela LaBounty, Esq. WEINBERG WHEELER HUDGINS GUNN & DIAL 6385 South Rainbow Boulevard, Suite 400, Las Vegas, Nevada 89118 *Attorneys for Philip Morris USA, Inc. and ASM Nationwide Corporation*
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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 R. J. REYNOLDS TOBACCO COMPANY TO PLAINTIFF'S AMENDED COMPLAINT** **JURY DEMAND**

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.

BAILEY ❖ KENNEDY
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ANSWER, DEFENSES AND JURY DEMAND OF DEFENDANT R. J. REYNOLDS TOBACCO COMPANY TO PLAINTIFF'S AMENDED COMPLAINT

Defendant R. J. Reynolds Tobacco Company, individually, as successor-by-merger to Lorillard Tobacco Company, and as successor-in-interest to the U.S. tobacco business of Brown & Williamson Tobacco Corporation (n/k/a Brown & Williamson Holdings, Inc.), which is successor-by-merger to The American Tobacco Company ("Reynolds"), files this Answer, Defenses and Jury Demand to Plaintiff's Amended Complaint (the "Amended Complaint"):

PRELIMINARY STATEMENT

The Amended Complaint in this case improperly mixes factual allegations with argumentative rhetoric so as to make admissions or denials of such allegations difficult or impossible. Further, much of the pleading consists of a selective recitation of historical facts and/or rumors, which are both irrelevant and inflammatory in tone and content. The Amended Complaint also contains a selective recitation of statistics, scientific premises and conclusions, technical discussions and medical conclusions, few of which are identified as to source or supported by relevant data. Reynolds cannot reasonably identify the sources of such allegations so as to respond meaningfully. Finally, many of the allegations contained in the Amended Complaint are overly broad, vague, or conclusory. Accordingly, by way of a general response, all allegations are denied unless specifically admitted, and any factual allegation admitted is admitted only as to the specific

facts and not to any conclusions, characterizations, implications, or speculations which are in the allegation or in the Amended Complaint as a whole.

In addition, the Amended Complaint refers to Reynolds and other Defendants on a collective basis, failing to plead with particularity allegations against Reynolds. Such ambiguous pleading is insufficient to apprise Reynolds in any meaningful sense of the allegations against it. Moreover, throughout the Amended Complaint, Plaintiff alleges various misrepresentations by Reynolds and also refers to Reynolds and others as conspirators. Reynolds denies making any misrepresentations. Reynolds states that Brown & Williamson Tobacco Corporation (hereinafter, "Brown & Williamson") acquired The American Tobacco Company (hereinafter, "American Tobacco") on December 22, 1994 and that American Tobacco was merged into Brown & Williamson on February 28, 1995 and denies the existence of, and its participation in, any alleged conspiracy. Reynolds further generally denies that it acts or has acted in concert with any other cigarette manufacturers, tobacco companies, or trade associations, except as expressly admitted. Reynolds nevertheless has attempted to respond to Plaintiff's allegations to the extent possible under these circumstances. To the extent that any specific allegations are made, or intended to be made, against Reynolds that are not specifically admitted below, they are denied.

The Amended Complaint also contains purported quotations from various sources. Reynolds does not admit the authenticity of any documents from which the quotations were taken, and reserves the right to challenge the accuracy of the quotations (either as quoted or in the context of material not quoted). Further, several quotations originate in documents protected by attorney-client privilege, the work product doctrine, the joint defense privilege, and/or the common interest privilege. Reynolds states that it is improper for Plaintiff to have referred to and quoted from such documents in the Amended Complaint and reserves its right to assert such privilege, move to strike such references and demand return of any such documents that Plaintiff may have in his possession, custody, or control.

In answering allegations consisting of quotations, an admission that the material quoted was contained in a document or uttered by the person quoted shall not constitute an admission that the substantive content of the quotation is or is not true. All such quotations appearing in documents or

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testimony "speak for themselves" in the sense that the truth of the matters asserted may only be judged in light of all relevant facts and circumstances obtaining at the time the statement was made. If Plaintiff seeks to rely on such materials, Plaintiff must specifically prove the truth of such materials subject to the right of Reynolds to object. Accordingly, to the extent that any such quoted materials are deemed allegations against Reynolds, they are denied.

The Amended Complaint also purports to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd in part, vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009),1 Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized and denies Plaintiff's innuendo and implication regarding the content or meaning of the opinion. The United States litigation was a separate action unrelated to this case which involved different facts, alleged injuries, legal claims, and theories from those alleged by Plaintiff in this action. Accordingly, Reynolds denies that the opinion in *United States v. Philip Morris USA, Inc.* has any legal significance whatsoever relative to Plaintiff's claims or ability to seek relief or recover damages from Reynolds in this matter.

The foregoing comments and objections are incorporated, to the extent appropriate, into each heading and numbered paragraph of this Answer. Except as expressly admitted, Reynolds denies the allegations contained in the headings, numbered paragraphs, and unnumbered paragraphs of the Amended Complaint, including any factual allegations that are implied or intended to be implied by the headings of the Amended Complaint.

ANSWER

1. Paragraph 1 does not require an answer because it asserts legal conclusions, rather than stating factual allegations. To the extent that any answer is required, Reynolds admits that this action purports to seek damages in excess of $15,000.00. Reynolds also admits that it conducts business in the State of Nevada, including in Clark County. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained

[1] Hereinafter, "*United States v. Philip Morris USA, Inc.*"

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in paragraph 1 concerning venue and, on that basis, denies those allegations.

2. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2 and, on that basis, denies those allegations.

3. Reynolds is informed and believes that Philip Morris USA Inc. ("Philip Morris") is a Virginia corporation that conducts business in the State of Nevada, including Clark County. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 3 and, on that basis, denies those allegations.

4. Reynolds admits that it is a North Carolina corporation with its principal place of business in Winston-Salem, North Carolina. Reynolds also admits that it is a foreign corporation that is licensed to do business and is doing business in the State of Nevada, including in Clark County. Reynolds denies the remaining allegations contained in paragraph 4.

5. Reynolds admits that it is (a) successor-by-merger to Lorillard Tobacco Company and (b) the successor-in-interest to the U.S. tobacco business of Brown & Williamson Tobacco Corporation (n/k/a Brown & Williamson Holdings, Inc.), which is the successor-by-merger to The American Tobacco Company. Except as admitted, Reynolds denies the allegations of paragraph 5.

6. Reynolds is informed and believes that Liggett Group LLC ("Liggett"), is a Delaware limited liability company with its principal place of business in North Carolina that conducts business in the State of Nevada, including Clark County. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 6 and, on that basis, denies those allegations.

7. Reynolds admits that the Tobacco Industry Research Committee ("TIRC"), later renamed The Council for Tobacco Research-USA, Inc. ("CTR") was formed in 1954. Reynolds states that CTR was dissolved in accordance with the laws of the State of New York on or about November 6, 1998. Reynolds also admits that CTR was an entity which funded scientific research conducted by scientists affiliated with universities and research institutions throughout the United States. Reynolds denies the remaining allegations contained in paragraph 7.

8. Reynolds admits that The Tobacco Institute, Inc. ("TI") was formed in 1958. Reynolds states that TI was dissolved in accordance with the laws of the State of New York on or

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about September 15, 2000. Reynolds also states that TI, like trade associations in other industries, engaged in certain lobbying and public relations activities, including activities protected by the First Amendment to the United States Constitution, on behalf of its members. Reynolds denies the remaining allegations contained in paragraph 8.

9. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 9 and, on that basis, denies those allegations.

10. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10 and, on that basis, denies those allegations.

11. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 and, on that basis, denies those allegations.

12. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 and, on that basis, denies those allegations.

13. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 13 and, on that basis, denies those allegations.

14. Reynolds admits that it sells for resale, to adult smokers, cigarettes that were distributed and sold throughout the United States, including the State of Nevada. Reynolds lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 concerning what the Plaintiff's Decedent was allegedly "exposed to" and is without knowledge or information sufficient to form a belief as to the truth of the allegations directed toward other defendants and, on that basis, denies those allegations. Reynolds denies the remaining allegations contained in paragraph 14.

15. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 15 and, on that basis, denies those allegations.

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16. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 16 and, on that basis, denies those allegations.

17. Reynolds denies the allegations contained in paragraph 17.

FACTS COMMON TO ALL CLAIMS

18. Reynolds incorporates by this reference its responses to the allegations repeated and re-alleged by Plaintiff in this paragraph as if fully restated herein.

19. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19 and, on that basis, denies those allegations.

20. Reynolds admits that Pall Mall brand cigarettes were manufactured, marketed, and sold for resale to adult tobacco consumers by The American Tobacco Company beginning in 1907 until 1995. Beginning in 1995 through July 30, 2004, Pall Mall brand cigarettes were manufactured, marketed, and sold for resale to adult tobacco consumers by Brown & Williamson Tobacco Corporation. Since July 30, 2004, Pall Mall brand cigarettes have been manufactured, marketed, and sold for resale to adult tobacco consumers by Reynolds. Reynolds denies the remaining allegations contained in paragraph 20.

21. Reynolds admits that Viceroy brand cigarettes were manufactured, marketed, and sold for resale to adult tobacco consumers by Brown &Williamson Tobacco Corporation beginning in 1988 through July 30, 2004. Since July 30, 2004 through May 1, 2008, Viceroy brand cigarettes were manufactured, marketed, and sold for resale to adult tobacco consumers by Reynolds. Reynolds denies the remaining allegations contained in paragraph 21.

22. Reynolds admits that since July 1, 1913, Camel brand cigarettes have been manufactured, marketed, and sold for resale to adult tobacco consumers by Reynolds. Reynolds denies the remaining allegations contained in paragraph 22.

23. Reynolds admits, upon information and belief that Liggett manufacture, markets, and sells Pyramid brand cigarettes. Reynolds denies the remaining allegations contained in paragraph 23.

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24. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 24 concerning the products that Plaintiff's Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies those allegations. Reynolds denies the remaining allegations contained in paragraph 24.

25. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 25 concerning the products that Plaintiff's Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies those allegations. Reynolds denies the remaining allegations contained in paragraph 25.

26. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 26 concerning the products that Plaintiff's Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies those allegations. Reynolds denies the remaining allegations contained in paragraph 26.

27. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 27 concerning the products that Plaintiff's Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies those allegations. Reynolds denies the remaining allegations contained in paragraph 27.

28. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 28 concerning the products that Plaintiff's Decedent, smoked and/or her alleged medical conditions and, on that basis, denies those allegations. Reynolds denies the remaining allegations contained in paragraph 28.

29. Reynolds denies the allegations contained in paragraph 29.

30. Reynolds denies the existence of, and its participation in, any alleged conspiracy, denies that it concealed and/or made false and misleading statements as alleged in the Amended Complaint and denies the remaining allegations contained in paragraph 30.

31. Reynolds denies the allegations contained in paragraph 31.

32. Reynolds denies the allegations contained in paragraph 32.

33. Reynolds denies the allegations contained in paragraph 33.

34. Reynolds admits that cigarette smoking significantly increases the risk of developing

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lung cancer and other serious diseases and that cigarette smoking causes lung cancer and other serious diseases and the duration, frequency and amount of cigarettes smoked significantly affects the risk of serious diseases. Reynolds also admits that nicotine in tobacco products is addictive. Reynolds further admits that many smokers find it difficult to quit, but Reynolds denies that smokers are unable to quit. Reynolds states that the allegations contained in paragraph 34 a. – g. purport to selectively quote and/or reference portions of the verdict in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006). Reynolds denies that the Engle verdict can be applied to Plaintiff's lawsuit or to any other individual smoking and health lawsuit. Reynolds states that Plaintiff has failed to define, and the scientific community has been unable to achieve a consensus on, what constitutes a "safe" or "safer" cigarette as stated in subparagraph n. Reynolds states that the document purportedly quoted in subparagraph t. of paragraph 34 is protected from disclosure by the attorney-client privilege, the work product doctrine and/or the joint defense or the joint interest privilege, and that it is therefore improper for Plaintiff to have referred to and quoted this document in the Amended Complaint. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the remaining unidentified "Concealed Document(s)" referenced in paragraph 34 and, accordingly, denies the allegations relating thereto. Reynolds denies the remaining allegations contained in paragraph 34, including each of its subparagraphs.

35. Reynolds denies the allegations contained in paragraph 35.

36. Reynolds admits that cigarette smoking is a leading cause of preventable deaths in the United States and that cigarette smoking causes lung cancer. Except as expressly admitted, Reynolds denies the allegations contained in paragraph 36.

37. Reynolds admits that various estimates based upon a large number of assumptions about the purported number of smoking-related deaths and illnesses have been published over many years. Reynolds states that that the complete and precise content of these estimates can be ascertained from the estimates themselves, but denies that they are fairly or accurately characterized in paragraph 37. Except as otherwise expressly admitted elsewhere herein, Reynolds denies the remaining allegations contained in paragraph 37.

38. Reynolds denies the allegations contained in paragraph 38.

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39. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the unidentified estimates referenced in paragraph 39 and, accordingly, denies the allegations relating thereto.

40. Reynolds admits that the reported incidence of lung cancer increased in the first half of the 20th century and that cigarette smoking was one of the hypothesized causes. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the unidentified estimates referenced in paragraph 40 and, accordingly, denies the allegations relating thereto.

41. Reynolds is without knowledge or information sufficient to form a belief as to the unidentified scientists referenced in paragraph 41. Reynolds admits there was widespread awareness of possible health effects of tobacco use and that some scientists conducted research related to this issue. Except as expressly admitted, Reynolds denies the remaining allegations contained in paragraph 41.

42. Reynolds admits that a select excerpt from a 1953 document prepared by Dr. Claude Teague, a former Reynolds employee, is quoted in paragraph 42. Reynolds states that the complete and precise content of this document can be ascertained from the document itself but denies that it is fairly or accurately characterized in this paragraph. Reynolds denies the remaining allegations contained in paragraph 42.

43. Reynolds admits that Dr. Ernst L. Wynder and his colleagues published the results of a mouse painting study in 1953 which was summarized in Life, Reader's Digest, and other publicly available materials. Reynolds states that the referenced studies speak for themselves, but denies that they are fairly or accurately characterized in paragraph 43. Reynolds denies the remaining allegations contained in paragraph 43.

44. Reynolds denies the allegations contained in paragraph 44.

45. Reynolds denies the existence of, and its participation in, any alleged conspiracy and denies the remaining allegations contained in paragraph 45.

46. Reynolds admits that, in December 1953, Paul Hahn, then-President of The American Tobacco Company ("American"), sent a telegram to other tobacco executives. Reynolds denies that

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the document referenced in paragraph 46 is fairly or accurately characterized in the Amended Complaint and states that the complete and precise content of the telegram can be ascertained from the document itself. Reynolds denies the remaining allegations contained in paragraph 46.

47. Reynolds denies that executives of Reynolds, or any other employee of Reynolds, were present at the meeting referenced in paragraph 47. Reynolds is informed and believes that the heads of Brown & Williamson and several other tobacco companies met at the Plaza Hotel in New York City on December 15, 1953 and that representatives of Hill & Knowlton, Inc. ("Hill & Knowlton") also were present. Reynolds denies the remaining allegations contained in paragraph 47 that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 47 that apply to other Defendants and, on that basis denies those allegations.

48. Reynolds is informed and believes that the selected excerpt from a memorandum prepared by Hill & Knowlton is quoted accurately, although out of context, in paragraph 48. Reynolds states that the complete and precise content of the memorandum can be ascertained from the memorandum itself, but denies that it is fairly or accurately characterized in paragraph 48. Reynolds denies the remaining allegations contained in paragraph 48.

49. Reynolds is informed and believes that the selected excerpt from a memorandum prepared by Hill & Knowlton is quoted accurately, although out of context, in paragraph 49. Reynolds states that the complete and precise content of the memorandum can be ascertained from the memorandum itself, but denies that it is fairly or accurately characterized in paragraph 49. Reynolds denies the remaining allegations contained in paragraph 49.

50. Reynolds denies that the allegations of paragraph 50 fairly or accurately characterize either the function or policy of TIRC/CTR and denies the remaining allegations contained in paragraph 50.

51. Reynolds admits that on January 4, 1954, a statement entitled "A Frank Statement to Cigarette Smokers" (the "Frank Statement") was published in a number of newspapers nationwide. Reynolds denies that the Frank Statement is fairly or accurately characterized in paragraph 51, and states that the complete and precise content of the Frank Statement can be ascertained from the

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Frank Statement itself. Reynolds denies the remaining allegations contained in paragraph 51.

52. Reynolds admits the sponsors of the Frank Statement are accurately summarized in paragraph 52. Except as expressly admitted, Reynolds denies the allegations contained in paragraph 52.

53. Reynolds denies that the Frank Statement is fairly or accurately characterized in paragraph 53, and states that the complete and precise content of the Frank Statement can be ascertained from the Frank Statement itself. Reynolds denies the remaining allegations contained in paragraph 53.

54. Reynolds states that the Frank Statement speaks for itself and denies the remaining allegations contained in paragraph 54.

55. Reynolds denies the allegations contained in paragraph 55.

56. Reynolds denies that the Frank Statement is fairly or accurately characterized in paragraph 56, and states that the complete and precise content of the Frank Statement can be ascertained from the Frank Statement itself. Reynolds states that the allegations contained in paragraph 56 purport to selectively quote, characterize, and/or reference certain unidentified statements. Reynolds is without knowledge or information sufficient to form a belief as to these unidentified statements and further states that the complete language and/or content of the alleged statements can be ascertained from the alleged statements themselves. Reynolds denies the remaining allegations contained in paragraph 56.

57. Reynolds denies that the allegations of paragraph 57 fairly or accurately characterize either the function or policy of TIRC/CTR and denies the remaining allegations contained in paragraph 57.

58. Reynolds admits that TIRC/CTR was an entity which funded scientific research conducted by scientists affiliated with universities and research institutions throughout the United States. Reynolds denies that the allegations of paragraph 58 fairly or accurately characterize either the function or policy of TIRC/CTR and denies the remaining allegations contained in paragraph 58.

59. Reynolds denies that the allegations of paragraph 59 fairly or accurately characterize either the function or policy of TIRC/CTR and denies the remaining allegations contained in

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paragraph 59.

60. Reynolds states that reports pertaining to cigarette consumption are publicly available and such reports speak for themselves. Reynolds denies that the allegations of paragraph 60 fairly or accurately characterize either the function or policy of TIRC/CTR and denies the remaining allegations contained in paragraph 60.

61. Reynolds states that the Tobacco Institute was a trade association not unlike the thousands of other trade associations in the United States, and its purpose was to represent its members in First Amendment activities, including presenting the position of its members in public and legislative contexts. Reynolds states that the selected expert from a Tobacco Industry publication is quoted accurately, although out of context in paragraph 61. Reynolds states that the complete and precise content of the publication can be ascertained from the publication itself, but denies that it is fairly or accurately characterized in paragraph 61. Reynolds denies the remaining allegations contained in paragraph 61.

62. Reynolds states that reports pertaining to cigarette consumption are publicly available and such reports speak for themselves. Reynolds admits that, in 1964, the Surgeon General issued a report purporting to link cigarette smoking and lung cancer. Reynolds denies the remaining allegations contained in paragraph 62.

63. Reynolds states that reports pertaining to cigarette consumption are publicly available and such reports speak for themselves. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the unidentified statements in paragraph 63 and, accordingly, denies the allegations relating thereto. Reynolds denies the remaining allegations contained in paragraph 63.

64. Reynolds states that the first document purportedly quoted in paragraph 64 is protected from disclosure by the attorney-client privilege, the work product doctrine and/or the joint defense or the joint interest privilege, and that it is therefore improper for Plaintiff to have referred to and quoted this document in the Amended Complaint. Reynolds denies knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to the second document purportedly quoted in paragraph 64 and accordingly denies the allegations pertaining to the same.

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Reynolds admits that an excerpt from a document prepared by a then-Reynolds' employee, Dr. Alan Rodgman, is partially accurate, although out of context, in the third document referenced in paragraph 64. Reynolds states that the complete and precise content of the referenced document can be ascertained from the document itself. Reynolds denies the remaining allegations contained in paragraph 64.

65. Reynolds admits that the first document referenced in paragraph 65 appears to quote accurately, although out of context, an excerpt from a document prepared by Dr. Claude Teague, a former Reynolds employee; however, Reynolds states that this document was not requested by anyone at Reynolds and was not addressed to any other employee at Reynolds. Reynolds denies that this document reflects Reynolds' policies or positions, and further denies that this document was written in the ordinary course of Reynolds' business or was within the ordinary duties and responsibilities of the author. Reynolds states that the fourth and fifth documents allegedly quoted in paragraph 65 are protected from disclosure by the attorney-client privilege, the work product doctrine and/or the joint defense or the joint interest privilege, and that it is therefore improper for Plaintiff to have referred to and quoted these document excerpts in the Amended Complaint. Reynolds admits that the sixth document in paragraph 65 contains a selected excerpt from a document prepared in or around 1978 by an employee of Brown & Williamson Tobacco Corporation which is quoted accurately, although out of context. Reynolds denies knowledge or information sufficient to form a belief of the truth of the allegations pertaining to the remaining documents allegedly quoted in paragraph 65 and accordingly denies the allegations relating to the same. Reynolds denies the remaining allegations contained in paragraph 65.

66. Reynolds denies the allegations contained in paragraph 66.

67. Reynolds denies the allegations contained in paragraph 67.

68. Reynolds admits that in 1966 Congress issued a mandate that all packages of cigarettes have a warning label that read: "CAUTION: Cigarette Smoking May Be Hazardous To Your Health." Reynolds denies the remaining allegations contained in paragraph 68.

69. Reynolds denies the allegations contained in paragraph 69.

70. Reynolds admits that paragraph 70 accurately quotes a portion of a press release

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issued by the Tobacco Institute in 1966. Reynolds states that the complete language and/or context of the press release can be ascertained from the press release itself. Reynolds denies the remaining allegations contained in paragraph 70.

71. Reynolds admits that it and, upon information and belief, other cigarette manufacturers at various times have introduced filtered cigarette brands for sale to adult cigarette smokers. Reynolds denies the remaining allegations contained in paragraph 71.

72. Reynolds admits that it and, upon information and belief, other cigarette manufacturers at various times have introduced filtered cigarette brands for sale to adult cigarette smokers. Reynolds denies the remaining allegations contained in paragraph 72.

73. Reynolds states that paragraph 73 inaccurately reflects Reynolds' statements on smoking and health. Reynolds states that the complete language and/or content of the alleged statements can be ascertained from the alleged statements themselves and denies the alleged statements are fairly or accurately characterized in paragraph 73. Reynolds denies the remaining allegations contained in paragraph 73.

74. Reynolds admits that it is aware of a 1988 press release containing the language quoted in the second sentence of paragraph 74, the full and precise content and context of which may be ascertained from the press release itself. Reynolds denies the quoted statement is fairly or accurately characterized. Reynolds denies the remaining allegations contained in paragraph 74.

75. After reasonable inquiry, Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 75 and, on that basis, denies those allegations.

76. After reasonable inquiry, Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 76 and, on that basis, denies those allegations.

77. Reynolds admits upon information and belief that at one or more times persons from many professions smoked cigarettes. Reynolds denies the remaining allegations contained in paragraph 77.

78. Reynolds admits that the first two documents referenced in paragraph 78 purports to

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quote selected excerpts from Reynolds documents from the 1920's but denies that the documents are quoted in context. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the second two documents referenced in paragraph 78. Reynolds denies the remaining allegations contained in paragraph 78.

79. Reynolds denies the allegations contained in paragraph 79.

80. Reynolds lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 and, on that basis, denies those allegations.

81. Reynolds lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 and, on that basis, denies those allegations.

82. Reynolds denies the existence of, and its participation in, any alleged conspiracy. Reynolds is informed and believes that selected excerpts from a document prepared in or around 1972 by Fred Panzer are quoted accurately, although out of context, in paragraph 82. Reynolds states that the complete and precise content of the referenced document can be ascertained from the document itself but denies that it is fairly or accurately characterized in paragraph 82. Reynolds denies the remaining allegations contained in paragraph 82.

83. Reynolds admits that at all times since January 1, 1966, it has complied with the federal Cigarette Labeling and Advertising Act; Reynolds further admits that all packs of cigarettes manufactured by it for sale or distribution in the United States since January 1, 1966 (and all advertising for such cigarettes since approximately 1972) have borne the warning(s) set forth in that Act, to wit: Reynolds admits that beginning October 12, 1985 a system of four rotating labels has been utilized. These warnings are:

Surgeon General's Warning: Smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.

Surgeon General's Warning: Quitting smoking now greatly reduces serious risks to your health.

Surgeon General's Warning: Smoking by pregnant women may result in fetal injury, premature birth, and low birth weight.

Surgeon General's Warning: Cigarette smoke contains carbon monoxide.

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Except as expressly admitted, Reynolds denies the allegations contained in paragraph 83.

84. Reynolds denies the allegations contained in paragraph 84.

85. Reynolds admits that the Surgeon General issued a report on smoking and health in 1988. Reynolds states the full and precise content of which may be ascertained from the report itself, but denies that it is fairly or accurately characterized in paragraph 85. Reynolds denies the remaining allegations contained in paragraph 85.

86. Reynolds denies the allegations contained in paragraph 86.

87. Reynolds denies the allegations contained in paragraph 87.

88. Reynolds admits that Mr. James W. Johnston, then-Chairman and Chief Executive Officer of Reynolds, and senior officials of other companies testified before a congressional subcommittee in April 1994. Reynolds states that the complete and precise content of the referenced testimony can be ascertained from the testimony itself, but denies that it is fairly or accurately characterized in paragraph 88. Reynolds denies the remaining allegations contained in paragraph 88 that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 88 that apply to other Defendants and, on that basis, denies those allegations.

89. Reynolds admits that representatives of various tobacco manufacturers have stated their belief in or prior to 1994 that nicotine in cigarettes is not addictive under any objective, scientifically verifiable pharmacological criteria used to define that term. Reynolds states the remaining allegations in paragraph 89 are not directed toward Reynolds and, accordingly, no answer from Reynolds is required. To the extent that an answer may be deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 89 that apply to other Defendants and, on that basis, denies those allegations.

90. Reynolds denies the allegations contained in paragraph 90.

91. Reynolds denies the existence of, and its participation in, any alleged conspiracy and denies the remaining allegations contained in paragraph 91.

92. After reasonable inquiry, Reynolds is without knowledge or information sufficient to

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form a belief as to the truth of the allegations directed toward other defendants and, on that basis, denies those allegations. Reynolds denies the remaining allegations contained in paragraph 92.

93. Reynolds denies the allegations contained in paragraph 93.

94. Reynolds states that in accordance with the Family Smoking Prevention and Tobacco Control Act, Reynolds has not used descriptors such as "light," "low," "mild" on its cigarettes since in or about July 2010. Reynolds further admits that every pack of cigarettes it has sold since 1966 has contained one or more warnings required by the U.S. Congress and that since July 1, 1969 those warnings have been adequate as a matter of law to apprise the public of any relationship between smoking and health. Reynolds denies the remaining allegations contained in paragraph 94 that are directed to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth of the allegations directed toward other defendants and, on that basis, denies those allegations.

95. Reynolds denies the allegations contained in paragraph 95.

96. Reynolds denies the allegations contained in paragraph 96.

97. Reynolds denies the allegations contained in paragraph 97.

98. Reynolds denies the allegations contained in paragraph 98.

99. Reynolds denies that its advertising and marketing is or was directed to youth or minors and denies the remaining allegations contained in paragraph 99.

100. Reynolds denies the existence of, and its participation in, any alleged conspiracy and denies the remaining allegations contained in paragraph 100.

101. Reynolds denies the existence of, and its participation in, any alleged conspiracy and denies the remaining allegations contained in paragraph 101.

102. Reynolds denies the existence of, and its participation in, any alleged conspiracy and denies the remaining allegations contained in paragraph 102.

103. Reynolds states that paragraph 103 inaccurately reflects Reynolds' statements on smoking and health. Reynolds states that the complete language and/or content of the alleged statements can be ascertained from the alleged statements themselves and denies they are fairly or accurately characterized. Reynolds denies the remaining allegations contained in paragraph 103 to

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the extent that the allegations are directed to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 to the extent that they are directed to other Defendants and, accordingly, denies the same.

104. Reynolds denies the allegations contained in paragraph 104.

105. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the unidentified statements in paragraph 105 and, accordingly, denies the allegations relating thereto.

106. Reynolds states that the allegations contained in paragraph 106 purport to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph 106. Reynolds denies the allegations contained in paragraph 106.

107. Reynolds states that the allegations contained in paragraph 107 purport to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph 107. Reynolds denies the allegations contained in paragraph 107.

108. Reynolds states that the allegations contained in paragraph 108 purport to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph 108. Reynolds denies the allegations contained in paragraph 108.

109. Reynolds admits that Plaintiff purports to characterize certain law firms in paragraph 109. Reynolds denies the remaining allegations contained in paragraph 109.

110. [2] Reynolds states that the allegations contained in paragraph 110 purport to

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[2] The allegations herein are not directed to Defendants' current counsel and/or their representation as part of their lawful defense in this case.

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selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph 110. Reynolds denies the allegations contained in paragraph 110.

111. Reynolds states that the allegations contained in paragraph 111, including subparagraphs a. through n., purport to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraphs 111, including subparagraphs a. through n. Reynolds also states that documents CC229, SHB118, CC139, CC141, and CC119 referenced in paragraph 111, including subparagraphs a. through n., are protected from disclosure by the attorney-client privilege, the work product doctrine, and/or the joint defense or the joint interest privilege, and that it is therefore improper for Plaintiff to have referred to and quoted these documents in the Amended Complaint. Reynolds denies the remaining allegations of paragraph 111, including subparagraphs a. through n., to the extent they are directed to Reynolds. To the extent the allegations of paragraph 111, including subparagraphs a. through n., are directed toward other Defendants, Reynolds is without knowledge or information sufficient to form a belief as to truth of those allegations and, on that basis, denies those allegations.

112. Reynolds states that the allegations contained in paragraph 112 purport to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph 112. Reynolds denies the remaining allegations contained in paragraph 112.

113. Reynolds states that the allegations contained in paragraph 113 purport to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it

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Reynolds denies the allegations referenced in Plaintiff's footnote No. 1.

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