

**In the Supreme Court of Nevada**

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

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

Respondents,

and

DOLLY ROWAN, AS AN INDIVIDUAL, AS SPECIAL  
ADMINISTRATOR OF THE ESTATE OF NOREEN THOMPSON;  
NAVONA COLLISON, AS AN INDIVIDUAL; RUSSELL  
THOMPSON, AS AN INDIVIDUAL; R.J. REYNOLDS TOBACCO  
COMPANY, A FOREIGN CORPORATION; LIGGETT GROUP LLC,  
A FOREIGN CORPORATION; QUICK STOP MARKET, LLC, A  
DOMESTIC LIMITED LIABILITY COMPANY; JOE'S BAR, INC., A  
DOMESTIC CORPORATION; THE POKER PALACE, A DOMESTIC  
CORPORATION; SILVER NUGGET GAMING, LLC D/B/A  
SILVER NUGGET CASINO, A DOMESTIC LIMITED LIABILITY  
COMPANY; AND JERRY'S NUGGET, A DOMESTIC  
CORPORATION,

Real Parties in Interest

Electronically Filed  
Jun 02 2022 09:43 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

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

**PHILIP MORRIS USA INC.'S PETITION FOR  
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX  
VOL. 8**

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## **INDEX TO PETITIONER'S APPENDIX - CHRONOLOGICAL**

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Plaintiff's Complaint	02/25/2020	1	1–69
Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Complaint Under NRCP 12(b)(5)	04/02/2020	1	70–81
Plaintiff's Opposition to Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Complaint Under NRCP 12(b)(5)	04/14/2020	1	82–93
Defendant Philip Morris USA Inc.'s Reply to Plaintiff's Opposition to Its Motion to Dismiss Plaintiff's Complaint Under NRCP 12(b)(5)	05/07/2020	1	94–105
Plaintiff's Notice of Serving Supplemental Authority	06/16/2020	1	106–12
Defendants' Notice of Serving Supplemental Exhibit in Support of Defendants' Motion to Dismiss	06/17/2020	1	113–22
Order Denying Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Complaint Under NRCP 12(b)(5)	08/25/2020	1	123–36
Stipulation Regarding Plaintiff's Amended Complaint	08/25/2020	1	137–44
Suggestion of Death Upon the Record	09/03/2020	1	145–47
Errata to Plaintiff's Motion for Leave to File Amended Wrongful Death	11/30/2020	2	148–280

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Complaint and Plaintiff's Motion to Substitute Parties			
Defendant Philip Morris USA Inc.'s Opposition to Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties	12/10/2020	2	281–94
Plaintiff's Reply to Defendant Philip Morris USA Inc.'s Opposition to Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties	12/30/2020	2	295–99
Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint, and Plaintiff's Motion to Substitute Parties	03/11/2021	2	300–09
Plaintiff's Amended Complaint	03/15/2021	3	310–438
Answer, Defenses, and Jury Demand of Defendant Joe's Bar, Inc. to Plaintiff's Amended Complaint	03/29/2021	3	439–60
Answer, Defenses, and Jury Demand of Defendant Jerry's Nugget to Plaintiff's Amended Complaint	03/29/2021	3	461–82
Answer, Defenses, and Jury Demand of Defendant Quick Stop Market, LLC to Plaintiff's Amended Complaint	03/29/2021	3	483–504

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Answer, Defenses, and Jury Demand of Defendant The Poker Palace to Plaintiff's Amended Complaint	03/29/2021	3	505–26
Answer, Defenses, and Jury Demand of Defendant Silver Nugget Gaming, LLC d/b/a Silver Nugget Casino to Plaintiff's Amended Complaint	03/29/2021	3	527–48
Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	03/29/2021	4	549–62
Defendants' Motion to Strike the Lawyer-Related Allegations in Plaintiff's Amended Complaint	03/29/2021	4	563–71
Plaintiff's Opposition to Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint	04/12/2021	4	572–96
Plaintiff's Opposition to Defendants' Motion to Strike the Lawyer-Related Allegations to Plaintiff's Amended Complaint	04/12/2021	4	597–610
Defendant Philip Morris USA Inc.'s Reply to Plaintiff's Opposition to Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	04/22/2021	4	611–24
Defendants' Reply in Support of Their Motion to Strike the Lawyer-Related Allegations in Plaintiff's Amended Complaint	04/27/2021	4	625–30

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Letters of Special Administration	08/31/2021	4	631–32
Order Granting Defendant Philip Morris USA Inc.’s Motion to Dismiss Plaintiff’s Amended Complaint Under NRCP 12(b)(5)	09/08/2021	4	633–41
Order Denying Defendants’ Motion to Strike the Lawyer-Related Allegations in Plaintiff’s Amended Complaint	09/12/2021	4	642–49
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)	09/23/2021	5	650–72
Answer, Defenses, and Jury Demand of Defendant R.J. Reynolds Tobacco Company to Plaintiff’s Amended Complaint	10/04/2021	5-9	673–761
Liggett Group LLC’s Answer and Affirmative Defenses to Plaintiff’s Amended Complaint	10/04/2021	10	762–806
Defendant Philip Morris USA Inc.’s Opposition to 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)	10/07/2021	11	807–20
Plaintiff’s Reply to Defendant Philip Morris USA Inc.’s Opposition to Motion to Reconsider Order Granting	10/20/2021	11	821–33

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)			
Plaintiff's Supplement to Motion to Reconsider Order Granting Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	11/08/2021	11	834–46
Defendant Philip Morris USA Inc.'s Notice of Filing of Petitions for Writs of Prohibition or Mandamus Before the Nevada Supreme Court	11/09/2021	12	847–926
Plaintiff's Motion for Leave to File Second Amended Complaint	12/21/2021	12-17	927–1065
Stipulation and Order Regarding Plaintiff's Motion for Leave to File Second Amended Complaint	01/07/2022	18	1066–72
Plaintiffs' Second Amended Complaint	01/11/2022	18-23	1073–1227
Answer, Defenses, and Jury Demand of Defendant Quick Stop Market, LLC to Plaintiffs' Second Amended Complaint	01/31/2022	23-24	1228–50
Answer, Defenses, and Jury Demand of Defendant The Poker Palace to Plaintiffs' Second Amended Complaint	01/31/2022	24-25	1251–73
Answer, Defenses, and Jury Demand of Defendant Joe's Bar, Inc. to Plaintiffs' Second Amended Complaint	01/31/0222	25-26	1274–95

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Answer, Defenses, and Jury Demand of Defendant Jerry's Nugget to Plaintiffs' Second Amended Complaint	01/31/2022	26-27	1296–1318
Answer, Defenses, and Jury Demand of Defendant Silver Nugget Gaming, LLC to Plaintiffs' Second Amended Complaint	01/31/2022	27-28	1319–41
Liggett Group LLC's Answer and Affirmative Defenses to Plaintiffs' Amended Complaint	10/04/2021	28-30	1342–88
Answer, Defenses, and Jury Demand of Defendant R.J. Reynolds Tobacco Company to Plaintiffs' Second Amended Complaint	01/31/2022	30-35	1389–1484
Order Granting Plaintiffs' Motion to Reconsider Order Granting Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	04/19/2022	35	1485–91
Philip Morris USA Inc.'s Answer to Plaintiffs' Second Amended Complaint	05/03/2022	35	1492–1597
Transcript Excerpts from Depositions of Plaintiff Dolly Rowan (taken December 6, 2021); Plaintiff Russell Thompson (taken February 17, 2022); and Plaintiff Navona Collison	02/15/2022	35	1598–1616
Order Denying Defendants Philip Morris USA Inc.'s and Liggett Group LLC's Motion to Dismiss Plaintiff's	04/20/2021	35	1617–1625

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Second Amended Complaint ( <i>Tully</i> , No. A-19-802987-C)			
Order Granting Plaintiffs' Motion to Reconsider Order Granting Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(b)(5) ( <i>Camacho</i> , No. A-19-807650-C)	11/03/2021	35	1626–1632



## **INDEX TO PETITIONER'S APPENDIX - ALPHABETICAL**

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Answer, Defenses, and Jury Demand of Defendant Jerry's Nugget to Plaintiff's Amended Complaint	03/29/2021	3	461–82
Answer, Defenses, and Jury Demand of Defendant Joe's Bar, Inc. to Plaintiff's Amended Complaint	03/29/2021	3	439–60
Answer, Defenses, and Jury Demand of Defendant The Poker Palace to Plaintiff's Amended Complaint	03/29/2021	3	505–26
Answer, Defenses, and Jury Demand of Defendant Quick Stop Market, LLC to Plaintiff's Amended Complaint	03/29/2021	3	483–504
Answer, Defenses, and Jury Demand of Defendant R.J. Reynolds Tobacco Company to Plaintiff's Amended Complaint	10/04/2021	5-9	673–761
Answer, Defenses, and Jury Demand of Defendant Silver Nugget Gaming, LLC d/b/a Silver Nugget Casino to Plaintiff's Amended Complaint	03/29/2021	3	527–48
Answer, Defenses, and Jury Demand of Defendant Jerry's Nugget to Plaintiffs' Second Amended Complaint	01/31/2022	26-27	1296–1318
Answer, Defenses, and Jury Demand of Defendant Joe's Bar, Inc. to Plaintiffs' Second Amended Complaint	01/31/2022	25-26	1274–95

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Answer, Defenses, and Jury Demand of Defendant The Poker Palace to Plaintiffs' Second Amended Complaint	01/31/2022	24-25	1251–73
Answer, Defenses, and Jury Demand of Defendant Quick Stop Market, LLC to Plaintiffs' Second Amended Complaint	01/31/2022	23-24	1228–50
Answer, Defenses, and Jury Demand of Defendant R.J. Reynolds Tobacco Company to Plaintiffs' Second Amended Complaint	01/31/2022	30-35	1389–1484
Answer, Defenses, and Jury Demand of Defendant Silver Nugget Gaming, LLC to Plaintiffs' Second Amended Complaint	01/31/2022	27-28	1319–41
Defendants' Motion to Strike the Lawyer-Related Allegations in Plaintiff's Amended Complaint	03/29/2021	4	563–71
Defendants' Notice of Serving Supplemental Exhibit in Support of Defendants' Motion to Dismiss	06/17/2020	1	113–22
Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	03/29/2021	4	549–62
Defendant Philip Morris USA Inc.'s Notice of Filing of Petitions for Writs of Prohibition or Mandamus Before the Nevada Supreme Court	11/09/2021	12	847–926
Defendant Philip Morris USA Inc.'s Opposition to Plaintiff's Motion for	12/10/2020	2	281–94

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Leave to File Amended Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties			
Defendant Philip Morris USA Inc.'s Opposition to 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)	10/07/2021	11	807–20
Defendant Philip Morris USA Inc.'s Reply to Plaintiff's Opposition to Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	04/22/2021	4	611–24
Defendants' Reply in Support of Their Motion to Strike the Lawyer-Related Allegations in Plaintiff's Amended Complaint	04/27/2021	4	625–30
Errata to Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties	11/30/2020	2	148–280
Letters of Special Administration	08/31/2021	4	631–32
Liggett Group LLC's Answer and Affirmative Defenses to Plaintiff's Amended Complaint	10/04/2021	10	762–806
Liggett Group LLC's Answer and Affirmative Defenses to Plaintiffs' Amended Complaint	10/04/2021	28-30	1342–88

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Order Denying Defendants' Motion to Strike the Lawyer-Related Allegations in Plaintiff's Amended Complaint	09/12/2021	4	642–49
Order Denying Defendants Philip Morris USA Inc.'s and Liggett Group LLC's Motion to Dismiss Plaintiff's Second Amended Complaint ( <i>Tully</i> , No. A-19-802987-C)	04/20/2021	35	1617–1625
Order Denying Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Complaint Under NRCP 12(b)(5)	08/25/2020	1	123–36
Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint, and Plaintiff's Motion to Substitute Parties	03/11/2021	2	300–09
Order Granting Plaintiffs' Motion to Reconsider Order Granting Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	04/19/2022	35	1485–91
Order Granting Plaintiffs' Motion to Reconsider Order Granting Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(b)(5) ( <i>Camacho</i> , No. A-19-807650-C)	11/03/2021	35	1626–1632
Plaintiff's Amended Complaint	03/15/2021	3	310–438
Plaintiff's Motion for Leave to File Second Amended Complaint	12/21/2021	12-17	927–1065

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
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)	09/23/2021	5	650–72
Plaintiff's Notice of Serving Supplemental Authority	06/16/2020	1	106–12
Plaintiff's Opposition to Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint	04/12/2021	4	572–96
Plaintiff's Opposition to Defendants' Motion to Strike the Lawyer-Related Allegations to Plaintiff's Amended Complaint	04/12/2021	4	597–610
Plaintiff's Reply to Defendant Philip Morris USA Inc.'s Opposition to Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties	12/30/2020	2	295–99
Plaintiff's Reply to Defendant Philip Morris USA Inc.'s Opposition to Motion to Reconsider Order Granting Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	10/20/2021	11	821–33
Plaintiffs' Second Amended Complaint	01/11/2022	18-23	1073–1227
Plaintiff's Supplement to Motion to Reconsider Order Granting Defendant Philip Morris USA Inc.'s Motion to	11/08/2021	11	834–46

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)			
Stipulation and Order Regarding Plaintiff's Motion for Leave to File Second Amended Complaint	01/07/2022	18	1066–72
Stipulation Regarding Plaintiff's Amended Complaint	08/25/2020	1	137–44
Suggestion of Death Upon the Record	09/03/2020	1	145–47
Transcript Excerpts from Depositions of Plaintiff Dolly Rowan (taken December 6, 2021); Plaintiff Russell Thompson (taken February 17, 2022); and Plaintiff Navona Collison	02/15/2022	35	1598–1616



1           369. Reynolds is without knowledge or information sufficient to form a belief as to the  
2 truth or falsity of the allegations contained in paragraph 369 concerning what Plaintiff's Decedent  
3 allegedly "heard" and, on that basis, denies those allegations. Reynolds denies the remaining  
4 allegations contained in paragraph 369.

5           370. Reynolds states that Plaintiff has failed to define, and the scientific community has  
6 been unable to achieve a consensus on, what constitutes a "safe" or "safer" cigarette. Reynolds  
7 denies the existence of, and its participation in, any alleged conspiracy and denies the remaining  
8 allegations contained in paragraph 370.

9           371. Reynolds denies the allegations contained in paragraph 371.

10          a. Reynolds denies the allegations contained in paragraph 371a. that apply to Reynolds.  
11 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
12 the remaining allegations contained in paragraph 371a. that apply to other Defendants and, on that  
13 basis, denies those allegations.

14          b. Reynolds denies the allegations contained in paragraph 371b. that apply to Reynolds.  
15 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
16 the remaining allegations contained in paragraph 371b. that apply to other Defendants and, on that  
17 basis, denies those allegations.

18          c. Reynolds denies the allegations contained in paragraph 371c, including  
19 subparagraphs 371c.i. through 371c.ii. that apply to Reynolds. Reynolds is without knowledge or  
20 information sufficient to form a belief as to the existence, authenticity, content, or context of the  
21 remaining unidentified "White Papers" referenced in paragraph 371c.ii. and, accordingly, denies the  
22 allegations relating thereto. Reynolds is without knowledge or information sufficient to form a  
23 belief as to the truth or falsity of the remaining allegations contained in paragraph 371c. that apply to  
24 other Defendants and, on that basis, denies those allegations.

25          d. Reynolds denies the allegations contained in paragraph 371d. that apply to Reynolds.  
26 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
27 the remaining allegations contained in paragraph 371d. that apply to other Defendants and, on that  
28 basis, denies those allegations.



1           i.       Reynolds admits that an article written by Stanley Frank entitled “To Smoke  
2 or Not to Smoke, That is the Still the Question” appeared in various magazines. Reynolds  
3 states that this article speaks for itself, but denies that it is fairly or accurately characterized  
4 in paragraph 371d.i. Reynolds states that the allegations contained in paragraph 371d.i.  
5 purport to selectively quote, improperly characterize, and/or reference portions of the district  
6 court’s opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion  
7 speaks for itself but denies that it is fairly, accurately, or appropriately characterized in  
8 paragraph 371d.i. Except as expressly admitted, Reynolds denies the allegations in paragraph  
9 371d.i.

10           ii.       Reynolds admits that Joseph Cullman, then-chairman of Philip Morris,  
11 appeared on “Face the Nation” on January 3, 1971. Reynolds states that this broadcast and  
12 the complete statement of Joseph Cullman speaks for itself. Reynolds lacks knowledge or  
13 information sufficient to form a belief of the truth of the remaining allegations contained in  
14 paragraph 371d.ii. and, on that basis, denies those allegations.

15           e.       Reynolds denies the existence of, or its participating in, any alleged conspiracy and  
16 denies the remaining allegations contained in paragraph 371e. that apply to Reynolds. Reynolds is  
17 without knowledge or information sufficient to form a belief as to the truth or falsity of the  
18 remaining allegations contained in paragraph 371e. that apply to other Defendants and, on that basis,  
19 denies those allegations.

20           i.       Reynolds denies the existence of, or its participating in, any alleged  
21 conspiracy. Reynolds is without knowledge or information sufficient to form a belief as to  
22 the existence, authenticity, content, or context of the unidentified statement referenced in  
23 paragraph 371e.i. and, accordingly, denies the allegations relating thereto.

24           ii.       Reynolds denies the existence of, or its participating in, any alleged  
25 conspiracy. Reynolds is informed and believes that selected excerpts from a document  
26 prepared in or around 1972 by Fred Panzer are quoted accurately, although out of context, in  
27 paragraph 371e.ii. Reynolds states that the complete and precise content of the referenced  
28 document can be ascertained from the document itself, but denies that it is fairly or

1 accurately characterized in paragraph 371e.ii. Reynolds denies the remaining allegations  
2 contained in paragraph 371e.ii.

3           iii. Reynolds states that the allegation contained in paragraph 371e.iii., including  
4 its subparagraphs, purports to selectively quote a Brown & Williamson Tobacco Company  
5 document. Reynolds states that the complete text and/or content of the document may be  
6 ascertained from the document itself but, denies that it is fairly or accurately characterized.  
7 Reynolds denies the remaining allegations contained in paragraph 371e.iii.

8           iv. Reynolds admits upon information and belief that Anne Browder was  
9 employed by the Tobacco Institute and on occasion appeared on television programs.  
10 Reynolds states that the complete and precise content of Ms. Browder's statement can be  
11 ascertained from the statement itself, but denies that it is fairly or accurately characterized in  
12 paragraph 371e.iv. Reynolds denies the remaining allegations contained in paragraph  
13 371e.iv.

14           v. Reynolds states that the allegations contained in paragraph 371e.v. purport to  
15 selectively quote, improperly characterize, and/or reference portions of the district court's  
16 opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks  
17 for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph  
18 371e.v. Reynolds also states that the document in the third sentence of paragraph 371e.v. is  
19 protected from disclosure by the attorney-client privilege, the work product doctrine, and/or  
20 the joint defense or the joint interest privilege, and that it is therefore improper for Plaintiff to  
21 have referred to this documents in the Amended Complaint. Reynolds denies the remaining  
22 allegations of paragraph 371e.v. to the extent they are directed to Reynolds. To the extent  
23 the allegations of paragraph 371e.v. are directed toward other Defendants, Reynolds is  
24 without knowledge or information sufficient to form a belief as to truth of those remaining  
25 allegations contained in paragraph 371e.v. and, on that basis, denies those allegations.

26           f. Reynolds denies the allegations contained in paragraph 371f. that apply to Reynolds.  
27 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
28 the remaining allegations contained in paragraph 371f. that apply to other Defendants and, on that

1 basis, denies those allegations.

2 g. Reynolds denies the allegations contained in paragraph 371g. that apply to Reynolds.  
3 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
4 the remaining allegations contained in paragraph 371g. that apply to other Defendants and, on that  
5 basis, denies those allegations.

6 372. Reynolds denies the allegations contained in paragraph 372 that apply to Reynolds.  
7 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
8 the remaining allegations contained in paragraph 372 that apply to other Defendants and, on that  
9 basis, denies those allegations.

10 373. Reynolds states the allegations in paragraph 373 are not directed toward Reynolds  
11 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
12 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
13 truth of the allegations contained in paragraph 373 and, accordingly, denies the same.

14 374. Reynolds states the allegations in paragraph 374 are not directed toward Reynolds  
15 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
16 deemed required, Reynolds denies the existence of, or its participating in, any alleged conspiracy  
17 and denies the remaining allegations contained in paragraph 374.

18 375. Reynolds states the allegations in paragraph 375 are not directed toward Reynolds  
19 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
20 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
21 truth or falsity of the allegations contained in paragraph 375 concerning what the Plaintiff's  
22 Decedent, "was exposed to" and, on that basis, denies those allegations. Reynolds is without  
23 knowledge or information sufficient to form a belief as to the truth of the remaining allegations  
24 contained in paragraph 375 and, accordingly, denies the same.

25 376. Reynolds states the allegations in paragraph 376 are not directed toward Reynolds  
26 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
27 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
28 truth or falsity of the allegations contained in paragraph 376 concerning the Plaintiff's Decedent's

1 smoking history and, on that basis, denies those allegations. Reynolds is without knowledge or  
2 information sufficient to form a belief as to the truth of the remaining allegations contained in  
3 paragraph 376 and, accordingly, denies the same.

4 377. Paragraph 377 does not require an answer because it asserts incorrect legal  
5 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
6 Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
7 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
8 remaining allegations contained in paragraph 377.

9 378. Paragraph 378 does not require an answer because it asserts incorrect legal  
10 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
11 Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
12 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
13 remaining allegations contained in paragraph 378.

14 379. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint  
15 and denies the remaining allegations of paragraph 379.

16 380. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint.  
17 Reynolds also denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
18 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
19 remaining allegations contained in paragraph 380.

20 381. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint.  
21 Reynolds also denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
22 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
23 remaining allegations contained in paragraph 381.

24 382. Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that  
25 Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and  
26 denies the remaining allegations contained in paragraph 382.

27  
28

**ELEVENTH CLAIM FOR RELIEF**

**(WRONGFUL DEATH – NEVADA DECEPTIVE TRADE PRACTICE 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. Reynolds incorporates by this reference its responses to the allegations repeated and re-alleged by Plaintiff in this paragraph as if fully restated herein.

384. Reynolds admits that Plaintiff purports to assert various claims for relief in the Amended Complaint. Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 384.

385. Reynolds is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 385 and, on that basis, denies those allegations.

386. Reynolds admits that Plaintiff purports to bring a claim pursuant to NRS 41.085(4). Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 386 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 386 and, on that basis, denies those allegations.

387. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 387 and, on that basis, denies those allegations.

388. Reynolds admits that Plaintiff purports to bring a claim pursuant to NRS 41.085(5). Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 388 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 388 and, on that basis, denies those allegations.

389. Reynolds admits that N.R.S. T. 52, Ch. 589, Deceptive Trade Practices has been in

1 effect since 1973. Reynolds denies the remaining allegations contained in paragraph 389.

2 390. Paragraph 390 does not require an answer because it asserts legal conclusions, rather  
3 than stating factual allegations. To the extent that any answer is required, Reynolds denies the  
4 allegations contained in paragraph 390.

5 391. Paragraph 391 does not require an answer because it asserts legal conclusions, rather  
6 than stating factual allegations. To the extent that any answer is required, Reynolds admits Plaintiff  
7 purports to bring a claim pursuant to NRS 41.600. Reynolds denies the remaining allegations  
8 contained in paragraph 391.

9 392. Reynolds admits Plaintiff purports to quote portions of NRS 598.0915. Reynolds  
10 states that the statute speaks for itself and denies the remaining allegations contained in paragraph  
11 392.

12 393. Reynolds denies making false and misleading statements and/or representations, and  
13 denies the remaining allegations contained in paragraph 393, including each of its subparagraphs.

14 394. Reynolds denies the allegations contained in paragraph 394.

15 a. Reynolds denies the allegations contained in paragraph 394a. that apply to Reynolds.  
16 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
17 the remaining allegations contained in paragraph 394a. that apply to other Defendants and, on that  
18 basis, denies those allegations.

19 b. Reynolds denies the allegations contained in paragraph 394b. that apply to Reynolds.  
20 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
21 the remaining allegations contained in paragraph 394b. that apply to other Defendants and, on that  
22 basis, denies those allegations.

23 c. Reynolds denies the allegations contained in paragraph 394c, including  
24 subparagraphs 394c.i. through 394c.ii. that apply to Reynolds. Reynolds is without knowledge or  
25 information sufficient to form a belief as to the existence, authenticity, content, or context of the  
26 remaining unidentified “White Papers” referenced in paragraph 394c.ii. and, accordingly, denies the  
27 allegations relating thereto. Reynolds is without knowledge or information sufficient to form a  
28 belief as to the truth or falsity of the remaining allegations contained in paragraph 394c. that apply to

1 other Defendants and, on that basis, denies those allegations.

2 d. Reynolds denies the allegations contained in paragraph 394d. that apply to Reynolds.  
3 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
4 the remaining allegations contained in paragraph 394d. that apply to other Defendants and, on that  
5 basis, denies those allegations.

6 i. Reynolds admits that an article written by Stanley Frank entitled “To Smoke  
7 or Not to Smoke, That is the Still the Question” appeared in various magazines. Reynolds  
8 states that this article speaks for itself, but denies that it is fairly or accurately characterized  
9 in paragraph 394d.i. Reynolds states that the allegations contained in paragraph 394d.i.  
10 purport to selectively quote, improperly characterize, and/or reference portions of the district  
11 court’s opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion  
12 speaks for itself but denies that it is fairly, accurately, or appropriately characterized in  
13 paragraph 394d.i. Except as expressly admitted, Reynolds denies the allegations in paragraph  
14 394d.i.

15 ii. Reynolds admits that Joseph Cullman, then-chairman of Philip Morris,  
16 appeared on “Face the Nation” on January 3, 1971. Reynolds states that this broadcast and  
17 the complete statement of Joseph Cullman speaks for itself. Reynolds lacks knowledge or  
18 information sufficient to form a belief of the truth of the remaining allegations contained in  
19 paragraph 394d.ii. and, on that basis, denies those allegations.

20 e. Reynolds denies the existence of, or its participating in, any alleged conspiracy and  
21 denies the remaining allegations contained in paragraph 394e. that apply to Reynolds. Reynolds is  
22 without knowledge or information sufficient to form a belief as to the truth or falsity of the  
23 remaining allegations contained in paragraph 394e. that apply to other Defendants and, on that basis,  
24 denies those allegations.

25 i. Reynolds denies the existence of, or its participating in, any alleged  
26 conspiracy. Reynolds is without knowledge or information sufficient to form a belief as to  
27 the existence, authenticity, content, or context of the unidentified statement referenced in  
28 paragraph 394e.i. and, accordingly, denies the allegations relating thereto.

1           ii. Reynolds denies the existence of, or its participating in, any alleged  
2 conspiracy. Reynolds is informed and believes that selected excerpts from a document  
3 prepared in or around 1972 by Fred Panzer are quoted accurately, although out of context, in  
4 paragraph 394e.ii. Reynolds states that the complete and precise content of the referenced  
5 document can be ascertained from the document itself, but denies that it is fairly or  
6 accurately characterized in paragraph 394e.ii. Reynolds denies the remaining allegations  
7 contained in paragraph 394e.ii.

8           iii. Reynolds states that the allegation contained in paragraph 394e.iii., including  
9 its subparagraphs, purports to selectively quote a Brown & Williamson Tobacco Company  
10 document. Reynolds states that the complete text and/or content of the document may be  
11 ascertained from the document itself but, denies that it is fairly or accurately characterized.  
12 Reynolds denies the remaining allegations contained in paragraph 394e.iii.

13           iv. Reynolds admits upon information and belief that Anne Browder was  
14 employed by the Tobacco Institute and on occasion appeared on television programs.  
15 Reynolds states that the complete and precise content of Ms. Browder's statement can be  
16 ascertained from the statement itself, but denies that it is fairly or accurately characterized in  
17 paragraph 394e.iv. Reynolds denies the remaining allegations contained in paragraph  
18 394e.iv.

19           v. Reynolds states that the allegations contained in paragraph 394e.v. purport to  
20 selectively quote, improperly characterize, and/or reference portions of the district court's  
21 opinion in United States v. Philip Morris USA, Inc. Reynolds states that the opinion speaks  
22 for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph  
23 394e.v. Reynolds also states that the document in the third sentence of paragraph 394e.v. is  
24 protected from disclosure by the attorney-client privilege, the work product doctrine, and/or  
25 the joint defense or the joint interest privilege, and that it is therefore improper for Plaintiff to  
26 have referred to this documents in the Amended Complaint. Reynolds denies the remaining  
27 allegations of paragraph 394e.v. to the extent they are directed to Reynolds. To the extent  
28 the allegations of paragraph 394e.v. are directed toward other Defendants, Reynolds is



without knowledge or information sufficient to form a belief as to truth of those remaining allegations contained in paragraph 394e.v. and, on that basis, denies those allegations.

f. Reynolds denies the allegations contained in paragraph 394f. 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 394f. that apply to other Defendants and, on that basis, denies those allegations.

g. Reynolds denies the allegations contained in paragraph 394g. 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 394g. that apply to other Defendants and, on that basis, denies those allegations.

395. Reynolds states the allegations in paragraph 395 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 allegations contained in paragraph 395 concerning another Defendant and, on that basis, denies those allegations.

396. Reynolds states the allegations in paragraph 396 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 allegations contained in paragraph 396 concerning another Defendant and, on that basis, denies those allegations.

397. Reynolds states the allegations in paragraph 397 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 allegations contained in paragraph 397 concerning another Defendant and, on that basis, denies those allegations.

398. Reynolds states the allegations in paragraph 398 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

1 truth or falsity of the allegations contained in paragraph 398 concerning another Defendant and, on  
2 that basis, denies those allegations.

3 399. Paragraph 399 does not require an answer because it asserts incorrect legal  
4 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
5 Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
6 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
7 remaining allegations contained in paragraph 399.

8 400. Paragraph 400 does not require an answer because it asserts incorrect legal  
9 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
10 Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
11 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
12 remaining allegations contained in paragraph 400.

13 401. Paragraph 401 does not require an answer because it asserts incorrect legal  
14 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
15 Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
16 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
17 remaining allegations contained in paragraph 401.

18 402. Paragraph 402 does not require an answer because it asserts incorrect legal  
19 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
20 Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
21 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
22 remaining allegations contained in paragraph 402.

23 403. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint  
24 and denies the remaining allegations of paragraph 403.

25 404. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint.  
26 Reynolds also denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is  
27 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
28 remaining allegations contained in paragraph 404.



1 states that the statute speaks for itself and denies the remaining allegations contained in paragraph  
2 412.

3 413. Reynolds denies making false and misleading statements and/or representations, and  
4 denies the remaining allegations contained in paragraph 413, including each of its subparagraphs.

5 414. Reynolds denies the allegations contained in paragraph 414.

6 a. Reynolds denies the allegations contained in paragraph 414a. that apply to Reynolds.  
7 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
8 the remaining allegations contained in paragraph 414a. that apply to other Defendants and, on that  
9 basis, denies those allegations.

10 b. Reynolds denies the allegations contained in paragraph 414b. that apply to Reynolds.  
11 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
12 the remaining allegations contained in paragraph 414b. that apply to other Defendants and, on that  
13 basis, denies those allegations.

14 c. Reynolds denies the allegations contained in paragraph 414c, including  
15 subparagraphs 414c.i. through 414c.ii. that apply to Reynolds. Reynolds is without knowledge or  
16 information sufficient to form a belief as to the existence, authenticity, content, or context of the  
17 remaining unidentified “White Papers” referenced in paragraph 414c.ii. and, accordingly, denies the  
18 allegations relating thereto. Reynolds is without knowledge or information sufficient to form a  
19 belief as to the truth or falsity of the remaining allegations contained in paragraph 414c. that apply to  
20 other Defendants and, on that basis, denies those allegations.

21 d. Reynolds denies the allegations contained in paragraph 414d. that apply to Reynolds.  
22 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of  
23 the remaining allegations contained in paragraph 414d. that apply to other Defendants and, on that  
24 basis, denies those allegations.

25 i. Reynolds admits that an article written by Stanley Frank entitled “To Smoke  
26 or Not to Smoke, That is the Still the Question” appeared in various magazines. Reynolds  
27 states that this article speaks for itself, but denies that it is fairly or accurately characterized  
28 in paragraph 414d.i. Reynolds states that the allegations contained in paragraph 414d.i.

1 purport to selectively quote, improperly characterize, and/or reference portions of the district  
2 court's opinion in United States v. Philip Morris USA, Inc. Reynolds states that the opinion  
3 speaks for itself but denies that it is fairly, accurately, or appropriately characterized in  
4 paragraph 414d.i. Except as expressly admitted, Reynolds denies the allegations in paragraph  
5 414d.i.

6 ii. Reynolds admits that Joseph Cullman, then-chairman of Philip Morris,  
7 appeared on "Face the Nation" on January 3, 1971. Reynolds states that this broadcast and  
8 the complete statement of Joseph Cullman speaks for itself. Reynolds lacks knowledge or  
9 information sufficient to form a belief of the truth of the remaining allegations contained in  
10 paragraph 414d.ii. and, on that basis, denies those allegations.

11 e. Reynolds denies the existence of, or its participating in, any alleged conspiracy and  
12 denies the remaining allegations contained in paragraph 414e. that apply to Reynolds. Reynolds is  
13 without knowledge or information sufficient to form a belief as to the truth or falsity of the  
14 remaining allegations contained in paragraph 414e. that apply to other Defendants and, on that basis,  
15 denies those allegations.

16 i. Reynolds denies the existence of, or its participating in, any alleged  
17 conspiracy. Reynolds is without knowledge or information sufficient to form a belief as to  
18 the existence, authenticity, content, or context of the unidentified statement referenced in  
19 paragraph 414e.i. and, accordingly, denies the allegations relating thereto.

20 ii. Reynolds denies the existence of, or its participating in, any alleged  
21 conspiracy. Reynolds is informed and believes that selected excerpts from a document  
22 prepared in or around 1972 by Fred Panzer are quoted accurately, although out of context, in  
23 paragraph 414e.ii. Reynolds states that the complete and precise content of the referenced  
24 document can be ascertained from the document itself, but denies that it is fairly or  
25 accurately characterized in paragraph 414e.ii. Reynolds denies the remaining allegations  
26 contained in paragraph 414e.ii.

27 iii. Reynolds states that the allegation contained in paragraph 414e.iii., including  
28 its subparagraphs, purports to selectively quote a Brown & Williamson Tobacco Company

document. Reynolds states that the complete text and/or content of the document may be ascertained from the document itself but, denies that it is fairly or accurately characterized. Reynolds denies the remaining allegations contained in paragraph 414e.iii.

iv. Reynolds admits upon information and belief that Anne Browder was employed by the Tobacco Institute and on occasion appeared on television programs. Reynolds states that the complete and precise content of Ms. Browder's statement can be ascertained from the statement itself, but denies that it is fairly or accurately characterized in paragraph 414e.iv. Reynolds denies the remaining allegations contained in paragraph 414e.iv.

v. Reynolds states that the allegations contained in paragraph 414e.v. 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 414e.v. Reynolds also states that the document in the third sentence of paragraph 414e.v. 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 this documents in the Amended Complaint. Reynolds denies the remaining allegations of paragraph 414e.v. to the extent they are directed to Reynolds. To the extent the allegations of paragraph 414e.v. are directed toward other Defendants, Reynolds is without knowledge or information sufficient to form a belief as to truth of those remaining allegations contained in paragraph 414e.v. and, on that basis, denies those allegations.

f. Reynolds denies the allegations contained in paragraph 414f. 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 414f. that apply to other Defendants and, on that basis, denies those allegations.

g. Reynolds denies the allegations contained in paragraph 414g. 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 414g. that apply to other Defendants and, on that

1 basis, denies those allegations.

2       415. Reynolds states the allegations in paragraph 415 are not directed toward Reynolds  
3 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
4 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
5 truth or falsity of the allegations contained in paragraph 415 concerning another Defendant and, on  
6 that basis, denies those allegations.

7       416. Reynolds states the allegations in paragraph 416 are not directed toward Reynolds  
8 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
9 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
10 truth or falsity of the allegations contained in paragraph 416 concerning another Defendant and, on  
11 that basis, denies those allegations.

12       417. Reynolds states the allegations in paragraph 417 are not directed toward Reynolds  
13 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
14 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
15 truth or falsity of the allegations contained in paragraph 417 concerning another Defendant and, on  
16 that basis, denies those allegations.

17       418. Reynolds states the allegations in paragraph 418 are not directed toward Reynolds  
18 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
19 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
20 truth or falsity of the allegations contained in paragraph 418 concerning another Defendant and, on  
21 that basis, denies those allegations.

22       419. Reynolds states the allegations in paragraph 419 are not directed toward Reynolds  
23 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
24 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
25 truth or falsity of the allegations contained in paragraph 419 concerning another Defendant and, on  
26 that basis, denies those allegations.

27       420. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint.  
28 Reynolds also denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is

entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 420.

421. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint. Reynolds also denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 421.

422. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint and denies the remaining allegations of paragraph 422.

423. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint. Reynolds also denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 423.

424. Reynolds denies that it engaged in the conduct alleged in the Amended Complaint. Reynolds also denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 424.

425. Reynolds denies that Plaintiff has any cause of action against Reynolds, denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 425.

### **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**

426-445. Plaintiff’s Thirteenth Claim, paragraphs 426-445, are not directed to Reynolds and do not seek relief from Reynolds; accordingly, no answer by Reynolds is required. To the extent a response is required, Reynolds denies the allegations of paragraph numbers 426-445.



**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**

446-460. Plaintiff's Fourteenth Claim, paragraphs 446-460, are not directed to Reynolds and do not seek relief from Reynolds; accordingly, no answer by Reynolds is required. To the extent a response is required, Reynolds denies the allegations of paragraph numbers 446-460.

Reynolds denies that Plaintiff is entitled to judgment against, or any relief whatsoever from, Reynolds in this action and denies the remaining allegations 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; specifically, Plaintiff admits that the Plaintiff's Decedent did not smoke any product manufactured by Reynolds.

**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 were produced, if at all, by an intervening or superseding cause or causes, and any alleged act or omission of Reynolds was not the proximate or competent producing cause of Plaintiff's Decedent's alleged injuries or damages. To the extent

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

3 **SIXTH AFFIRMATIVE DEFENSE**

4 If Plaintiff's Decedent was injured or damaged, such alleged injuries or damages were caused  
5 solely or proximately by the acts, wrongs, or omissions of Plaintiff's Decedent, by preexisting  
6 conditions, or by forces and/or things over which Reynolds had no control and for which Reynolds is  
7 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 Decedent's consent.

12 **NINTH AFFIRMATIVE DEFENSE**

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

15 **TENTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, because Plaintiff and/or Plaintiff's Decedent  
17 failed to mitigate any injuries and damages they may have allegedly suffered.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

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

21 **TWELFTH AFFIRMATIVE DEFENSE**

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

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 If any defects existed with respect to Reynolds' tobacco products, any such alleged defects  
27 were open and obvious. Accordingly, Plaintiff cannot recover herein against Reynolds.

28

**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**

Reynolds is entitled to set-off, should any damages be awarded against it, in the amount of damages or settlement amounts recovered by Plaintiff with respect to the same alleged injuries. Reynolds is also entitled to have any damages that may be awarded to Plaintiff reduced by the value of any benefit or payment to Plaintiff 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 Decedent's comparative negligence, fault, responsibility, or want of due care, including Plaintiff's Decedent's choice to smoke. Plaintiff is, therefore, barred from any recovery, or any recoverable damages must be