

In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

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

Respondents,

and

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

Real Parties in Interest

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Case No. _____

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

**PHILIP MORRIS USA INC.'S PETITION FOR
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX
VOL. 9**

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1 reduced in proportion to the amount of negligence attributable to Plaintiff's Decedent.

2 **NINETEENTH AFFIRMATIVE DEFENSE**

3 Plaintiff's misrepresentation, fraud, and conspiracy claims and/or allegations are barred
4 because Plaintiff has failed to plead misrepresentation, fraud, and conspiracy with particularity, as
5 required by the Nevada Rules of Civil Procedure and Nevada law, and must be dismissed for failure
6 to state a claim upon which relief may be granted.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

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

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 Plaintiff's claims are barred in whole or in part, by the First Amendment of the U.S.
12 Constitution and cognate provisions of the Nevada Constitution, because the matters alleged involve
13 statements made by Reynolds and others in the proper exercise of their rights to free speech and to
14 petition the government, and because of the application of the *Noerr-Pennington* doctrine.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, by the doctrine of absolute or quasi-judicial
17 immunity, attorney immunity, and/or the litigation privilege to the extent that they are predicated on
18 Reynolds' defense of potential litigation, actions of its attorneys, or statements to governmental
19 entities, including statements or positions taken in the defense of lawsuits against it or statements to
20 legislative bodies.

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

22 Plaintiff's fraud and misrepresentation claims cannot be sustained because Reynolds did not
23 have superior knowledge of material facts pertaining to smoking and health that were not also
24 readily available to Plaintiff's Decedent.

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 Plaintiff's product liability claims are barred because Reynolds' cigarettes are not dangerous
27 to an extent beyond that contemplated by the ordinary consumer.

28

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff had the means of knowing, by the exercise of ordinary intelligence, the truth of alleged statements concerning smoking and health.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims cannot be sustained as to Reynolds because Plaintiff cannot establish that any reliance by Plaintiff's Decedent on any alleged statements or omissions by Reynolds was justified or reasonable.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Reynolds pleads the defenses available under the applicable products liability statutes of the State of Nevada.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Reynolds states that as of the relevant times alleged in the Amended Complaint, it did not know, and in light of the then existing and reasonably available scientific and technological knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the injuries and damages complained of in the Amended Complaint; (2) the alleged danger of any such design characteristics; or (3) any scientifically and technologically feasible and economically practical alternate design. Reynolds further states that the injuries and damages complained of in the Amended Complaint were not proximately caused by the lack of any such alternate design. Any cigarettes manufactured and sold by Reynolds are, and always have been, consistent with available technological, medical, scientific and industrial state-of-the-art and comply, and have complied, with all applicable laws and governmental regulations.

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

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

FORTY-FIRST AFFIRMATIVE DEFENSE

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

FORTY-SECOND AFFIRMATIVE DEFENSE

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

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

5 **FORTY-THIRD AFFIRMATIVE DEFENSE**

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

11 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

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

FORTY-SIXTH AFFIRMATIVE DEFENSE

Any affirmative defenses pled by any other Defendant and not pled by Reynolds are incorporated herein to the extent they do not conflict with Reynolds' affirmative defenses.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

Reynolds reserves the right to assert and rely on such other defenses as may become available or apparent during the course of discovery and to amend their Answer to assert such additional defenses.

WHEREFORE, Reynolds respectfully requests and prays as follows:

1. That Plaintiffs take nothing by their Amended Complaint;
2. That this action be dismissed with prejudice as to Reynolds;
3. That Reynolds recover its costs of suit, including reasonable attorneys' fees; and
4. For such other relief as the Court deems just and proper.

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JURY DEMAND

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

DATED this 4th day of October, 2021.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman
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JOSEPH A. LIEBMAN

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JERRY'S NUGGET

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 4th day of October, 2021, service of the foregoing **ANSWER, DEFENSES AND JURY DEMAND OF DEFENDANT R. J. REYNOLDS TOBACCO COMPANY TO PLAINTIFF'S AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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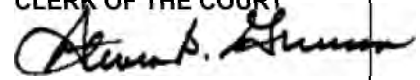
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17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

23 PHILIP MORRIS USA, INC., a foreign
24 corporation; R.J. REYNOLDS TOBACCO
25 COMPANY, a foreign corporation, individually,
26 and as successor-by-merger to LORILLARD
27 TOBACCO COMPANY and as successor-in-
28 interest to the United States tobacco business of
BROWN & WILLIAMSON TOBACCO
CORPORATION, which is the successor-by-
merger to THE AMERICAN TOBACCO
COMPANY; LIGGETT GROUP, LLC., a foreign
corporation; QUICK STOP MARKET, LLC, a
domestic limited liability company, JOE'S BAR,
INC., a domestic corporation; THE POKER
PALACE, a domestic corporation; SILVER
NUGGET GAMING, LLC d/b/a SILVER
NUGGET CASINO, a domestic limited liability
company; JERRY'S NUGGET, a domestic
corporation, and DOES I-X; and ROE BUSINESS
ENTITIES XI-XX, inclusive,

Defendants.

115693589.1

Case No. A-20-811091-C

Dept. No. V

**LIGGETT GROUP LLC's ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT**

JURY TRIAL DEMANDED

1 Defendant Liggett Group LLC (“Liggett”) hereby submits its Answer and Affirmative
2 Defenses to the Amended Complaint (“Complaint”) filed by Plaintiff Dolly Rowan, as Special
3 Administrator of the Estate of Noreen Thompson (“Plaintiff”). Liggett hereby denies each and
4 every allegation in the Complaint, except those expressly admitted below.

5 **PRELIMINARY STATEMENT**

6 Plaintiff’s Complaint improperly mixes factual averments with argumentative rhetoric so
7 as to make admissions or denials of such averments difficult or impossible. Further, many of
8 the allegations in the Complaint are overbroad, vague, or conclusory and include terms that are
9 undefined and that are susceptible to different meanings. Accordingly, by way of a general
10 response, all allegations are denied unless specifically admitted, and any factual averment
11 admitted is admitted only as to the specific facts and not as to any conclusions, characterizations,
12 implications, or speculations which are contained in the averment or in the Complaint as a
13 whole.

14 The Complaint also contains many purported quotations from numerous sources, some
15 identified, some not. Liggett, therefore, does not admit the authenticity of any documents from
16 which the alleged quotations were taken, and reserves the right to challenge the accuracy of the
17 quotations (either as quoted or in the context of material not quoted). Further, with reference to
18 all quotations, citations to documents, or any such averments which might be offered into
19 evidence, Liggett specifically reserves its right to object to the use of said averments or the
20 Complaint as a whole in evidence for any purpose.

21 In answering allegations consisting of quotations, an admission that the material quoted
22 was contained in a document or uttered by the person quoted shall not constitute an admission
23 that the substantive content of the quotation is or is not true. All such quotations appearing in
24 documents or testimony “speak for themselves” in the sense that the truth of the matters asserted
25 may only be judged in light of all relevant facts and circumstances. If Plaintiff seeks to rely on
26 such materials, Plaintiff must specifically prove the truth of such materials subject to the right of
27 Liggett to object. Accordingly, to the extent that any such quoted materials are deemed allegations
28 against Liggett, they are denied unless expressly admitted.

1 The allegations of the Complaint, including headings and sub-headings used therein, have
2 been inserted for reference purposes and should not be taken as any express or implied admission
3 of any specific allegation. To the extent they are deemed allegations, they are denied.

4 Except as expressly admitted herein, Liggett is without knowledge or information
5 sufficient to form a belief as to the truth of any of the allegations contained in the Complaint as
6 they pertain to the other defendants, and therefore, denies those allegations.

7 **JURISDICTION, VENUE, AND PARTIES**

8 1. To the extent the allegations contained in paragraph 1 purport to state legal
9 conclusions rather than factual allegations, no response is required. To the extent a response is
10 required, Liggett admits that this actions purports to seek damages in excess of \$15,000, but denies
11 Plaintiff is entitled to any relief against Liggett whatsoever. Liggett also admits that it conducts
12 business in the State of Nevada, including Clark County. Liggett is without knowledge as to the
13 remaining allegations contained in paragraph 1 and therefore denies those allegations.

14 2. Liggett is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 2 and therefore denies those allegations.

16 3. Liggett is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 3 and therefore, denies those allegations.

18 4. Liggett is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 4 and therefore, denies those allegations.

20 5. Liggett is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 5 and therefore, denies those allegations.

22 6. Liggett states that it is unable to respond to the allegations contained in paragraph
23 6 because the phrase “all times relevant to this action” is not defined in the Complaint. Liggett
24 denies that it is a corporation. Liggett admits that it is a Delaware limited liability company, a
25 LLC, with its principal place of business in North Carolina and that it has been and is engaged in
26 the business of manufacturing cigarettes for distribution at the wholesale level, which may have
27 resulted in eventual retail sales of Liggett cigarettes in the State of Nevada. Liggett denies the
28 remaining allegations contained in paragraph 6.

1 7. Liggett admits that Tobacco Industry Research Committee was formed in or around
2 1954 and that it changed its name to the Council for Tobacco Research in 1964. Liggett denies the
3 remaining allegations contained in paragraph 7.

4 8. Liggett admits upon information and belief that The Tobacco Institute, Inc. was
5 formed in 1958. Liggett denies the remaining allegations contained in paragraph 8.

6 9. Liggett is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 9 and therefore, denies those allegations.

8 10. Liggett is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 10 and therefore, denies those allegations.

10 11. Liggett is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 11 and therefore, denies those allegations.

12 12. Liggett is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 12 and therefore, denies those allegations.

14 13. Liggett is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 13 and therefore, denies those allegations.

16 14. Liggett admits that it has been and is engaged in the business of manufacturing
17 cigarettes for distribution at the wholesale level, which may have resulted in eventual retail sales
18 of Liggett cigarettes in the State of Nevada. Liggett denies the remaining allegations contained in
19 paragraph 14.

20 15. Liggett is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 15 and therefore, denies those allegations.

22 16. Liggett is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 16 and therefore, denies those allegations.

24 17. Liggett denies the allegations contained in paragraph 17.

25 **FACTS COMMON TO ALL CLAIMS**

26 18. In response to paragraph 18, Liggett realleges its responses to the preceding
27
28

1 paragraphs.

2 19. Liggett is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 19 and therefore denies those allegations.

4 20. Liggett is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 20 and therefore denies those allegations.

6 21. Liggett is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 21 and therefore denies those allegations.

8 22. Liggett is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 22 and therefore denies those allegations.

10 23. Liggett admits that it has at times designed and manufactured Pyramid brand
11 cigarettes for distribution at the wholesale level. Liggett is otherwise without knowledge or
12 information sufficient to form a belief as to the truth of the allegations contained in paragraph 23
13 and therefore denies those allegations.

14 24. Liggett is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 24 and therefore denies those allegations.

16 25. Liggett is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 25 and therefore denies those allegations.

18 26. Liggett is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 26 and therefore denies those allegations.

20 27. Liggett is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 27 and therefore denies those allegations.

22 28. Liggett is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 28 and therefore denies those allegations.

24 29. Liggett denies the allegations contained in paragraph 29.

25 30. Liggett denies the allegations contained in paragraph 30, including the existence of
26 or its participation in a conspiracy.

27 31. Liggett denies the allegations contained in paragraph 31.

28 32. Liggett denies the allegations contained in paragraph 32.

1 33. Liggett denies the allegations contained in paragraph 33.

2 34. Liggett admits that, as the United States Surgeon General and respected medical
3 researchers have found, cigarette smoking causes health problems, including, lung cancer, heart
4 and vascular disease and emphysema. Liggett further admits that cigarettes contain nicotine that
5 is naturally occurring in tobacco, and that, as the United States Surgeon General, the United States
6 Food and Drug Administration and respected medical researchers have found, nicotine is addictive.
7 Regardless of its addictive nature, cigarette smokers can reach and successfully carry out a decision
8 to quit smoking. Liggett denies the remaining allegations contained in paragraph 34 including its
9 subparts.

10 35. Liggett denies the allegations contained in paragraph 35.

11 **Historical Allegations of Defendants Unlawful Conduct**

12 **Giving Rise to the Lawsuit**

13 36. Liggett admits that cigarette smoking causes lung cancer. Liggett denies the
14 remaining allegations contained in paragraph 36.

15 37. Liggett is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 37 and therefore denies those allegations.

17 38. Liggett denies the allegations contained in paragraph 38.

18 39. Liggett is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 39 and therefore denies those allegations.

20 40. Liggett is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 40 and therefore denies those allegations.

22 41. Liggett is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 41 and therefore denies those allegations.

24 42. To the extent the allegations contained in paragraph 42 are deemed to be directed
25 to Liggett, they are denied. Liggett is otherwise without knowledge or information sufficient to
26 form a belief as to the truth of the allegations contained in paragraph 42 and therefore denies those
27 allegations.

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1 43. To the extent Plaintiff purports to characterize certain information appearing in
2 LIFE Magazine and Reader's Digest on December 21, 1953, any such information speaks for itself.
3 Liggett further admits that the mainstream media, including the publications referenced in
4 paragraph 43 reported on Drs. Wynder and Graham's findings. Liggett denies the allegations
5 contained in paragraph 43 to the extent that Plaintiff mischaracterizes the content of these
6 documents. Liggett is otherwise without knowledge or information sufficient to form a belief as
7 to the truth of the remaining allegations contained in paragraph 43 and therefore denies those
8 allegations.

9 44. Liggett denies the allegations contained in paragraph 44.

10 45. Liggett denies the allegations contained in paragraph 45, including the existence of
11 or its participation in a conspiracy.

12 46. Liggett admits that Paul M. Hahn sent telegrams in December 1953. Liggett denies
13 the remaining allegations contained in paragraph 46, including that Plaintiff fairly or accurately
14 characterizes that telegram. Liggett denies the remaining allegations contained in paragraph 46,
15 including the existence of or its participation in a conspiracy.

16 47. Liggett admits that it did not attend a meeting at the Plaza Hotel on December 14,
17 1953. Liggett denies the allegations contained in paragraph 47 to the extent that Plaintiff
18 mischaracterizes the content of any documents purportedly describing that meeting. Liggett is
19 otherwise without knowledge or information sufficient to form a belief as to the truth of the
20 allegations contained in paragraph 47 and therefore denies those allegations.

21 48. Liggett denies the allegations contained in paragraph 48 to the extent that Plaintiff
22 mischaracterizes the document referenced in paragraph 48. Liggett is otherwise without
23 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
24 paragraph 48 and therefore denies those allegations.

25 49. Liggett denies the allegations contained in paragraph 49 to the extent that Plaintiff
26 mischaracterizes the documents referenced in paragraph 49. Liggett is otherwise without
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
28 paragraph 49 and therefore denies those allegations.

1 50. Liggett is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 50 and therefore denies those allegations.

3 51. Liggett admits that “A Frank Statement to Cigarette Smokers” was published in
4 newspapers in the United States. Liggett is otherwise without knowledge or information sufficient
5 to form a belief as to the truth of the allegations contained in paragraph 51 and therefore denies
6 those allegations

7 52. Liggett denies the allegations contained in paragraph 52 to the extent that Plaintiff
8 mischaracterizes the documents referenced in paragraph 52. Liggett further states that the sponsors
9 of the Frank Statement are identified in that document and that document speaks for itself. Liggett
10 is otherwise without knowledge or information sufficient to form a belief as to the truth of the
11 allegations contained in paragraph 52 and therefore denies those allegations.

12 53. Liggett denies the allegations contained in paragraph 53.

13 54. Liggett denies the allegations contained in paragraph 54 to the extent that Plaintiff
14 mischaracterizes the Frank Statement. Liggett denies the allegations contained in paragraph 54 as
15 they relate to Liggett. Liggett is otherwise without knowledge or information sufficient to form a
16 belief as to the truth of the allegations contained in paragraph 54 and therefore denies those
17 allegations.

18 55. Liggett is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 55 and therefore denies those allegations.

20 56. Liggett denies the allegations contained in paragraph 56 as they relate to Liggett.
21 Liggett is otherwise without knowledge or information sufficient to form a belief as to the truth of
22 the allegations contained in paragraph 56 and therefore denies those allegations.

23 57. Liggett denies the allegations contained in paragraph 57.

24 58. Liggett denies the allegations contained in paragraph 58.

25 59. Liggett denies the allegations contained in paragraph 59.

26 60. Liggett denies the allegations contained in paragraph 60.

27 61. Liggett denies the allegations contained in paragraph 61 to the extent that Plaintiff
28 mischaracterizes the documents referenced in paragraph 61. Liggett denies the allegations

1 contained in paragraph 61 as they relate to Liggett. Liggett is otherwise without knowledge or
2 information sufficient to form a belief as to the truth of the allegations contained in paragraph 61
3 and therefore denies those allegations.

4 62. Liggett admits that there was a dip in consumption of cigarettes following the
5 issuance of the 1964 Surgeon General's Report. To the extent Plaintiff purports to characterize
6 certain information appearing in the United States Surgeon General report issued in 1964, any such
7 information speaks for itself. Liggett otherwise denies the allegations contained in paragraph 62.

8 63. Liggett admits that it cooperated with the United States Surgeon General. Liggett
9 denies the remaining allegations contained in paragraph 63.

10 64. Liggett denies the allegations contained in paragraph 64, including to the extent that
11 Plaintiff mischaracterizes the documents referenced in paragraph 64.

12 65. Liggett denies the allegations contained in paragraph 65, including to the extent that
13 Plaintiff mischaracterizes the documents referenced in paragraph 65.

14 66. Liggett denies the allegations contained in paragraph 66.

15 67. Liggett denies the allegations contained in paragraph 67.

16 68. To the extent Plaintiff purports to characterize "labels" mandated by the United
17 States Congress in 1966, any such warnings speak for themselves. Liggett otherwise denies the
18 allegations contained in paragraph 68.

19 69. Liggett denies the allegations contained in paragraph 69.

20 70. Liggett denies the allegations contained in paragraph 70 to the extent that Plaintiff
21 mischaracterizes the document referenced in paragraph 70. Liggett is otherwise without
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
23 paragraph 70 and therefore denies those allegations.

24 71. Liggett admits that it has at various times introduced filtered cigarette brands.
25 Liggett denies the remaining allegations contained in paragraph 71.

26 72. Liggett denies the allegations contained in paragraph 72, including to the extent
27 Plaintiff mischaracterizes the documents referenced in paragraph 72.

28 73. Liggett denies the allegations contained in paragraph 73.

1 74. Liggett denies the allegations contained in paragraph 74 to the extent that Plaintiff
2 mischaracterizes the statements referenced in paragraph 74. Liggett denies the allegations
3 contained in paragraph 74 as they relate to Liggett. Liggett is otherwise without knowledge or
4 information sufficient to form a belief as to the truth of the allegations contained in paragraph 74
5 and therefore denies those allegations.

6 75. Liggett is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 75 and therefore denies those allegations.

8 76. Liggett admits that it has at times marketed its products to adult smokers and has
9 advertised and/or promoted its products by legally permissible means. Liggett is otherwise without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
11 paragraph 76 and therefore denies those allegations.

12 77. Liggett is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 77 and therefore denies those allegations.

14 78. Liggett denies the allegations contained in paragraph 78.

15 79. Liggett denies the allegations contained in paragraph 79.

16 80. Liggett admits that it has at times marketed its products to adult smokers and has
17 advertised and/or promoted its products by legally permissible means. Liggett is otherwise without
18 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
19 paragraph 80 and therefore denies those allegations.

20 81. Liggett admits that it has at times marketed its products to adult smokers and has
21 advertised and/or promoted its products by legally permissible means. Liggett is otherwise without
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
23 paragraph 81 and therefore denies those allegations.

24 82. Liggett denies the allegations contained in paragraph 82, including the existence of
25 or its participation in an alleged conspiracy and to the extent Plaintiff mischaracterizes the
26 documents referenced in paragraph 82.

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1 83. To the extent Plaintiff purports to characterize “labels” mandated by the United
2 States Congress in 1985, any such warnings speak for themselves. Liggett otherwise denies the
3 allegations contained in paragraph 83.

4 84. Liggett denies the allegations contained in paragraph 84.

5 85. Liggett admits that the Surgeon General issued a report on smoking and health in
6 1988. Liggett states that the report speaks for itself and denies Plaintiff’s mischaracterization of
7 the report. Liggett denies the remaining allegations contained in paragraph 85.

8 86. Liggett denies the allegations contained in paragraph 86.

9 87. Liggett denies the allegations contained in paragraph 87.

10 88. Liggett admits that its CEO testified before a Congressional subcommittee in April
11 1994. The testimony referenced in paragraph 88 speaks for itself. Liggett denies Plaintiff’s
12 characterization of the referenced testimony. Liggett denies the remaining allegations in paragraph
13 88.

14 89. Liggett denies the allegations contained in paragraph 89 to the extent that Plaintiff
15 mischaracterizes the referenced testimony. The testimony referenced in paragraph 89 speaks for
16 itself. Liggett denies the remaining allegations in paragraph 89.

17 90. Liggett denies the allegations contained in paragraph 90.

18 91. Liggett denies the allegations contained in paragraph 91, including the existence of
19 or its participation in a conspiracy.

20 92. Liggett admits that in 1997, in addition to the warnings mandated by the United
21 States Congress, it voluntarily placed a warning label on its cigarette packs, cartons and point of
22 sale materials that “Smoking is Addictive.” That voluntary warning remains on Liggett’s products
23 to this day. Liggett further states that on or about January 12, 1999, Philip Morris USA, Inc.
24 (“Philip Morris USA”) entered into an agreement whereby, Philip Morris USA purchased the
25 L&M, Chesterfield, and Lark cigarette trademarks, trade names, trade dress, service marks,
26 registration, and registration applications in the United States. Liggett states on information and
27 belief that after Philip Morris USA purchased the L&M, Chesterfield, and Lark cigarette
28 trademarks, trade names, trade dress, service marks, registration, and registration applications from

1 Liggett, the phrase "Smoking is Addictive" was not placed on the packages of the cigarettes Philip
2 Morris USA sold to its direct customers under those trademarks. Liggett is otherwise without
3 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
4 contained in paragraph 92 and therefore denies those allegations.

5 93. Liggett denies the allegations contained in paragraph 93.

6 94. Liggett states that in accordance with the Family Smoking Prevention and Tobacco
7 Control Act, it has not used descriptors such as "light," "low," "mild" on its cigarettes since in or
8 about July 2010. Liggett otherwise denies the allegations contained in paragraph 94.

9 95. Liggett denies the allegations contained in paragraph 95.

10 96. Liggett denies the allegations contained in paragraph 96.

11 97. Liggett admits that cigarettes contain nicotine that is naturally occurring in tobacco
12 and that, as the United States Surgeon General, the United States Food and Drug Administration
13 and respected medical researcher have found, nicotine is addictive. Regardless of its addictive
14 nature, cigarette smokers can reach and successfully carry out a decision to quit smoking. Liggett
15 otherwise denies the allegations contained in paragraph 97.

16 98. Liggett denies the allegations contained in paragraph 98.

17 99. Liggett denies the allegations contained in paragraph 99.

18 100. Liggett denies the allegations contained in paragraph 100, including the existence
19 of or its participation in a conspiracy.

20 101. Liggett denies the allegations contained in paragraph 101, including the existence
21 of or its participation in a conspiracy.

22 102. Liggett denies the allegations contained in paragraph 102, including the existence
23 of or its participation in a conspiracy.

24 103. Liggett denies the allegations contained in paragraph 103.

25 104. Liggett denies the allegations contained in paragraph 104.

26 105. Liggett denies the allegations contained in paragraph 105.

Conspiratorial Involvement by Defendants' Lawyers

106. Liggett denies the allegations contained in paragraph 106, including the existence of or its participation in a conspiracy.

107. Liggett denies the allegations contained in paragraph 107, including the existence of or its participation in a conspiracy.

108. Liggett denies the allegations contained in paragraph 108 Liggett denies the allegations contained in paragraph 108, including the existence of or its participation in a conspiracy.

109. Liggett denies the allegations contained in paragraph 109 as they relate to Liggett. Liggett is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 and therefore denies those allegations.

110. Liggett denies the allegations contained in paragraph 110 Liggett denies the allegations contained in paragraph 110, including the existence of or its participation in a conspiracy.

111. Liggett denies the allegations contained in paragraph 111 and its subparts (a) through (n).

112. Liggett denies the allegations contained in paragraph 112.

113. Liggett is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph and therefore denies those allegations.

114. Liggett is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114 and its subparts (a) through (d) and therefore denies those allegations.

FIRST CLAIM FOR RELIEF

(WRONGFUL DEATH - NEGLIGENCE)

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

115. In response to the allegations contained in paragraphs 115, Liggett realleges its responses to paragraphs 1 through 114.

1 116. To the extent the allegations contained in paragraph 116 state legal conclusions
2 rather than factual allegations, no response is required. To the extent a response is deemed
3 required, Liggett denies the allegations contained in paragraph 116.

4 117. Liggett is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 117 and therefore denies those allegations.

6 118. Liggett admits that Plaintiff brings this action pursuant to NRS 41.085(4), but
7 denies that he is entitled to maintain such an action against Liggett and denies that he is entitled to
8 any relief as against Liggett whatsoever.

9 119. Liggett is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 119 and therefore denies those allegations.

11 120. Liggett admits that Plaintiff brings this action pursuant to 41.085(5), but denies that
12 he is entitled to maintain such an action against Liggett and denies that he is entitled to any relief
13 as against Liggett whatsoever.

14 121. Liggett denies the allegations contained in paragraph 121.

15 122. Liggett denies the allegations contained in paragraph 122.

16 123. Liggett denies the allegations contained in paragraph 123.

17 124. Liggett denies the allegations contained in paragraph 124 and its subparts (a)
18 through (s).

19 125. Liggett denies the allegations contained in paragraph 125 and its subparts (a)
20 through (e).

21 126. Liggett denies the allegations contained in paragraph 126.

22 127. Liggett denies the allegations contained in paragraph 127.

23 128. Liggett denies the allegations contained in paragraph 128.

24 129. Liggett denies the allegations contained in paragraph 129.

25 130. Liggett denies the allegations contained in paragraph 130, including that Plaintiff is
26 entitled to any relief against Liggett whatsoever.

27 131. Liggett denies the allegations contained in paragraph 131, including that Plaintiff is
28 entitled to any relief against Liggett whatsoever.

1 132. Liggett denies the allegations contained in paragraph 132, including that Plaintiff is
2 entitled to any relief against Liggett whatsoever.

3 133. Liggett denies the allegations contained in paragraph 133.

4 134. Liggett denies the allegations contained in paragraph 134, including that Plaintiff is
5 entitled to any relief against Liggett whatsoever.

6 135. Liggett denies the allegations contained in paragraph 135, including that Plaintiff is
7 entitled to any relief against Liggett whatsoever.

8 136. Liggett denies the allegations contained in paragraph 136, including that Plaintiff is
9 entitled to any relief against Liggett whatsoever.

10 **SECOND CLAIM FOR RELIEF**

11 **(NEGLIGENCE)**

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

13 **Defendants R.J. Reynolds and Liggett**

14 137. In response to the allegations contained in paragraph 137, Liggett realleges its
15 responses to paragraphs 1 through 114 and 115-136.

16 138. Liggett admits that Plaintiff brings this action pursuant to NRS 41.100, but denies
17 that he is entitled to maintain such an action against Liggett and denies that he is entitled to any
18 relief as against Liggett whatsoever.

19 139. Liggett denies the allegations contained in paragraph 139.

20 140. Liggett is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 140 and therefore denies those allegations.

22 141. Liggett denies the allegations contained in paragraph 141.

23 142. Liggett denies the allegations contained in paragraph 142, including subparts (a)
24 through (s).

25 143. Liggett denies the allegations contained in paragraph 143, including subparts (a)
26 through (e).

27 144. Liggett denies the allegations contained in paragraph 144.

28 145. Liggett denies the allegations contained in paragraph 145.

1 146. Liggett denies the allegations contained in paragraph 146.

2 147. Liggett denies the allegations contained in paragraph 147.

3 148. Liggett denies the allegations contained in paragraph 148.

4 149. Liggett denies the allegations in paragraph 149, including that Plaintiff is entitled
5 to any relief against Liggett whatsoever.

6 150. Liggett denies the allegations in paragraph 150, including that Plaintiff is entitled
7 to any relief against Liggett whatsoever.

8 151. Liggett denies the allegations in paragraph 151.

9 152. Liggett denies the allegations contained in paragraph 152, including that Plaintiff is
10 entitled to any relief against Liggett whatsoever.

11 153. Liggett denies the allegations contained in paragraph 153, including that Plaintiff is
12 entitled to any relief against Liggett whatsoever.

13 154. Liggett denies the allegations contained in paragraph 154, including that Plaintiff is
14 entitled to any relief against Liggett whatsoever.

15 **THIRD CLAIM FOR RELIEF**

16 **(WRONGFUL DEATH- STRICT LIABILITY)**

17 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and**

18 **Dolly Rowan as Heir of Noreen Thompson Against Defendants R.J. Reynolds and Liggett**

19 155. In response to the allegations contained in paragraph 155, Liggett realleges its
20 responses to paragraphs 1 through 114.

21 156. To the extent the allegations contained in paragraph 156 state legal conclusions
22 rather than factual allegations, no response is required. To the extent a response is deemed
23 required, Liggett denies the allegations contained in paragraph 156.

24 157. Liggett is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 157 and therefore denies those allegations.

26 158. Liggett admits that Plaintiff brings this action pursuant to NRS 41.085(4), but
27 denies that he is entitled to maintain such an action against Liggett and denies that he is entitled to
28 any relief as against Liggett whatsoever.

1 159. Liggett is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 159 and therefore denies those allegations.

3 160. Liggett admits that Plaintiff brings this action pursuant to 41.085(5), but denies that
4 he is entitled to maintain such an action against Liggett and denies that he is entitled to any relief
5 as against Liggett whatsoever.

6 161. Liggett admits that it has been and is engaged in the business of manufacturing
7 cigarettes for distribution at the wholesale level and that it has at various times marketed those
8 products. Liggett denies the remaining allegations contained in paragraph 161.

9 162. Liggett is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 162 and therefore denies those allegations.

11 163. Liggett is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 163 and therefore denies those allegations.

13 164. Liggett denies the allegations contained in paragraph 164.

14 165. Liggett denies the allegations contained in paragraph 165.

15 166. Liggett denies the allegations contained in paragraph 166.

16 167. Liggett denies the allegations contained in paragraph 167.

17 168. Liggett denies the allegations contained in paragraph 168, including subparts (a)
18 through (s).

19 169. Liggett denies the allegations contained in paragraph 169.

20 170. Liggett denies the allegations contained in paragraph 170.

21 171. Liggett denies the allegations contained in paragraph 171.

22 172. Liggett denies the allegations contained in paragraph 172, including that Plaintiff is
23 entitled to any relief against Liggett whatsoever.

24 173. Liggett denies the allegations contained in paragraph 173, including that Plaintiff is
25 entitled to any relief against Liggett whatsoever.

26 174. Liggett denies the allegations contained in paragraph 174, including that Plaintiff is
27 entitled to any relief against Liggett whatsoever.

28 175. Liggett denies the allegations contained in paragraph 175.