In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

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

Respondents,

and

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

Real Parties in Interest

Case No. _____

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

PHILIP MORRIS USA INC.'S PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX VOL. 12

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118
(702) 938-3838
lroberts@wwhgd.com
Attorney for Petitioner Philip Morris USA Inc.

INDEX TO PETITIONER'S APPENDIX - CHRONOLOGICAL

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

DOCUMENT DESCRIPTION	Date	Vol.	Page
Second Amended Complaint (*Tully*, 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) (*Camacho*, No. A-19-807650-C)	11/03/2021	35	1626–1632

INDEX TO PETITIONER'S APPENDIX - ALPHABETICAL

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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 (*Tully*, 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) (*Camacho*, 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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

NOTC
D. Lee Roberts, Jr., Esq.
lroberts@wwhgd.com
Nevada Bar No. 8877
Howard J. Russell, Esq.
hrussell@wwhgd.com
Nevada Bar No. 8879
Phillip N. Smith, Jr., Esq.
psmithjr@wwhgd.com
Nevada Bar No. 10233
Daniela LaBounty, Esq.
dlabounty@wwhgd.com
Nevada Bar No. 13169
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendant Philip Morris USA Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

PHILIP MORRIS USA INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; QUICK STOP MARKET, LLC, a domestic limited liability company; JOE'S BAR, INC., a domestic corporation; THE POKER PALACE, a domestic corporation; SILVER NUGGET GAMING, LLC d/b/a

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

DEFENDANT PHILIP MORRIS USA INC.'S NOTICE OF FILING OF PETITIONS FOR WRITS OF PROHIBITION OR MANDAMUS BEFORE THE NEVADA SUPREME COURT

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.

Defendant Philip Morris USA Inc. ("PM USA") hereby notifies the Court of Plaintiffs Sandra Camacho and Anthony Camacho's Petition for Writ of Mandamus or Prohibition filed before the Nevada Supreme Court in *Camacho v. Eighth Judicial District Court et al.*, No. 82654 (Mar. 24, 2021), and Philip Morris USA Inc. and Liggett Group LLC's Petition for Writ of Mandamus or, Alternatively, Prohibition, before the Nevada Supreme Court in *Philip Morris USA Inc. et al. v. Eighth Judicial District Court et al.*, No. 83740 (Nov. 8, 2021).

PM USA has attached both Petitions hereto.

Dated this 9th day of November, 2021.

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

/s/ D. Lee Roberts, Jr.
D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
Phillip N. Smith, Jr., Esq.
Daniela LaBounty, Esq.
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Attorney for Defendant Philip Morris USA Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 2021, a true and correct copy of the foregoing **DEFENDANT PHILIP MORRIS USA INC.'S NOTICE OF FILING OF PETITIONS FOR WRITS OF PROHIBITION OR MANDAMUS BEFORE THE NEVADA SUPREME COURT** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

Sean K. Claggett, Esq.
sclaggett@claggettlaw.com
William T. Sykes, Esq.
wsykes@claggettlaw.com
Matthew S. Granda, Esq.
mgranda@claggettlaw.com
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107
(702) 655-2346
(702) 655-3763 FAX

Kimberly L. Wald, Esq.
klw@kulaw.com
Nevada Bar No. 15830
Michael A. Hersh, Esq.
Nevada Bar No. 15746
Fan Li, Esq.
Nevada Bar No. 15771
KELLEY UUSTAL
500 North Federal Highway, Suite 200
Fort Lauderdale, FL 33301
(305) 444-7675
(305) 444-0075 FAX

Attorneys for Plaintiff

Dennis L. Kennedy, Esq.
DKennedy@baileykennedy.com
Joseph A. Liebman, Esq.
JLiebman@baileykennedy.com
BAILEY❖KENNEDY
8984 Spanish Ridge Ave.
Las Vegas, Nevada 89148
(702) 562-8820
(702) 562-8821 FAX

Valentin Leppert, Esq.
Admitted Pro Hac Vice
VLeppert@kslaw.com
Spencer Miles Diamond, Esq.
SDiamond@kslaw.com
Admitted Pro Hac Vice
KING & SPALDING
1180 Peachtree Street NE, Suite 16090
Atlanta, GA 30309
(404) 572-3578
(404) 572-5100 FAX

Ursula Marie Henninger, Esq.
Admitted Pro Hac Vice
UHenninger@kslaw.com
KING & SPALDING
300 S. Tryon Street
Charlotte, NC 28202
(704) 503-2631
(704) 503-2622 FAX

Attorneys for Defendants RJ Reynolds Tobacco Company, Quick Stop Market, LLC, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC d/b/a Silver Nugget Casino, and Jerry's Nugget

J Christopher Jorgensen, Esq.
CJorgensen@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Kelly Ann Luther
Pro Hac Vice
kluther@kasowitz.com
KASOWITZ BENSON TORRES LLP
1441 Brickwell Avenue, Suite 1420
Miami, Florida 33131
Phone: 786-587-1045

Attorneys for Defendant
Liggett Group, LLC

/s/ Kelly L. Pierce
An employee of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA CAMACHO, individually, and ANTHONY CAMACHO, individually,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE KERRY EARLEY,

Respondents,

And

PHILIP MORRIS USA, INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; and ASM NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS, a domestic corporation,

Real Parties in Interest.

Case No.

PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

Sean K. Claggett, Esq.
Nevada Bar No. 8407
Matthew S. Granda, Esq.
Nevada Bar No. 12753
Micah S. Echols, Esq.
Nevada Bar No. 8437
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Ste. 100
Las Vegas, Nevada 89107
Telephone: (702) 655-2346
Facsimile: (702) 655-3763
micah@claggettlaw.com

Kimberly L. Wald, Esq.
Florida Bar No. 112263
Admitted Pro Hac Vice
Michael A. Hersh. Esq.
Florida Bar No. 056019
Admitted Pro Hac Vice
KELLEY | UUSTAL
500 N. Federal Highway, Ste. 200
Fort Lauderdale, Florida 33301
Telephone: (954) 522-6601
Facsimile: (954) 522-6608
klw@kulaw.com
mah@kulaw.com

Attorneys for Petitioners, Sandra Camacho and Anthony Camacho

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Petitioners, Sandra Camacho and Anthony Camacho, are individuals.

2. Petitioners are represented by Claggett & Sykes Law Firm and Kelley Uustal.

Dated this 23rd day of March 2021.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols
Sean K. Claggett, Esq.
Nevada Bar No. 8407
Matthew S. Granda, Esq.
Nevada Bar No. 12753
Micah S. Echols, Esq.
Nevada Bar No. 8437
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Attorneys for Petitioners,
Sandra Camacho and Anthony Camacho

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER AUTHORITIES

I. ROUTING STATEMENT

Petitioners, Sandra Camacho ("Ms. Camacho") and Anthony Camacho ("Mr. Camacho") (collectively "Plaintiffs"), request that the Supreme Court retain this original proceeding based upon presented issues of first impression and issues of statewide importance, as outlined in NRAP 17(a)(11) and (12). This petition asks this Court to interpret and enforce certain provisions of NRS Chapter 598 (Deceptive Trade Practices). In particular, Plaintiffs alleged in their amended complaint that Defendants/Real Parties in Interest Philip Morris USA, Inc. ("Philip Morris"); R.J. Reynolds Tobacco Company ("R.J. Reynolds"); and Liggett Group, LLC ("Liggett") (collectively "Defendants") violated the Nevada Deceptive Trade Practices Act ("NDTPA"). 1 Petitioners' Appendix ("PA") 98–102. This violation of the NDTPA then formed the underlying basis for Plaintiffs' civil conspiracy claim against these same Defendants. 1 PA 95–98. The District Court ruled that Ms. Camacho "did not purchase or use any R.J. Reynolds product" and had no "legal relationship with R.J. Reynolds," such that Plaintiffs had no claim against R.J. Reynolds based upon the NDTPA. 3 PA 464–465. The District Court further held that the absence of an underlying NDTPA claim also required the dismissal of Plaintiffs' claim for civil conspiracy against R.J. Reynolds. 3 PA 465.

With regard to Plaintiffs' claims against Philip Morris and Liggett, the District Court concluded that Plaintiffs alleged a cognizable claim for violation of the NDTPA. 3 PA 381. Similarly, the District Court concluded that Plaintiffs alleged a cognizable claim for civil conspiracy against Philip Morris and Liggett. 3 PA 381.

Thus, the key issues in this original proceeding focus on the viability of Plaintiffs' claims against R.J. Reynolds for violation of the NDTPA and civil conspiracy, even without product use, based upon Plaintiffs' contentions that the NDTPA does not require product use to be actionable. Therefore, Plaintiffs ask that the Supreme Court retain this original proceeding according to NRAP 17(a)(11) and (12).

II. ISSUES PRESENTED

A. WHETHER THE DISTRICT COURT ERRED BY DISMISSING PLAINTIFFS' CLAIM AGAINST R.J. REYNOLDS FOR VIOLATION OF THE NDTPA.

B. WHETHER THE DISTRICT COURT ALSO ERRED BY DISMISSING PLAINTIFFS' CLAIM AGAINST R.J. REYNOLDS FOR CIVIL CONSPIRACY.

III. OVERVIEW OF RELIEF REQUESTED

This is an original proceeding in which Plaintiffs ask this Court to intervene and order Plaintiffs' NDTPA and civil conspiracy claims to be reinstated, due to the District Court's erroneous dismissals based upon NRCP 12(b)(5).

As alleged in Plaintiffs' amended complaint, Defendant R.J. Reynolds conspired with other tobacco manufacturers to conceal the dangers of smoking and disseminate misinformation to the American public in an attempt to sell cigarettes to consumers, including Ms. Camacho. Due to decades of pervasive marketing and a misinformation campaign denying that cigarettes cause cancer, Ms. Camacho became addicted to smoking, which ultimately caused her laryngeal cancer.

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

IV. FACTUAL AND PROCEDURAL BACKGROUND

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

1. Sandra's Laryngeal Cancer Diagnosis.

In March 2018, Sandra was diagnosed with laryngeal cancer, which was caused by smoking L&M brand cigarettes, Marlboro brand cigarettes, and Basic brand cigarettes, to which she was addicted and smoked continuously from approximately 1964 until 2017. 1 PA 57, ¶ 17. L&M cigarettes were designed, manufactured, and sold by Liggett. 1 PA 57, ¶ 18. Marlboro and Basic cigarettes were designed, manufactured, and sold by Philip Morris. 1 PA 57, ¶ 19.

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

As Plaintiffs' amended complaint explains, Defendants purposefully and intentionally designed cigarettes to be highly addictive, by among other things deliberately manipulated and/or added compounds in cigarettes such as arsenic, polonium-210, tar, methane, methanol, carbon monoxide, nitrosamines, butane, formaldehyde, tar, carcinogens, and other deadly and poisonous compounds to cigarettes. 1 PA 57, ¶ 22. Defendants then concealed the addictive and deadly nature

[1] Plaintiffs' amended complaint provides a full statement of their allegations and claims. 1 PA 52–106. This summarized version is designed to provide context for the Court to decide the legal issues presented.

of cigarettes from Plaintiffs, the government, and the American public by making knowingly false and misleading statements and by engaging in a $250 billion conspiracy. 1 PA 57, ¶ 23.

3. Historical Allegations of Defendants' Unlawful Conduct.

Lung cancer is a disease manufactured and created by the cigarette industry, including Defendants. 1 PA 60, ¶ 31. By February 2, 1953, Defendants had concrete proof that cigarette smoking increased the risk of lung cancer. 1 PA 60, ¶ 35. As a result of mounting public awareness regarding the link between cigarette smoking and lung cancer, Defendants grew fearful that their customers would stop smoking, which would in turn bankrupt their companies. 1 PA 61, ¶ 37. Thus, in order to maximize profits, Defendants intentionally banded together, forming a conspiracy which, for over half a century, fabricated and publicized a disingenuous "open debate" to create and spread doubt about whether cigarettes were or were not harmful. 1 PA 61, ¶ 38.

Executives from every cigarette company, except for Liggett, met at the Plaza Hotel on December 14, 1953 to form the conspiracy. 1 PA 61, ¶ 40. On December 28, 1953, Defendants again met at the Plaza Hotel where they knowingly and purposefully agreed to create a fake "research committee" called the Tobacco Industry Research Committee ("TIRC") (later renamed the Council for Tobacco Research ("CTR")). 1 PA 62, ¶ 42. Paul Hahn, president of American Tobacco,

was elected the temporary chairman of TIRC. *Id.* TIRC's *public* mission statement was to supposedly aid and assist with so-called "independent" research into cigarette use and health. 1 PA 62, ¶ 43. The formation and purpose of TIRC was announced on January 4, 1954, in a full-page advertisement called "A Frank Statement to Cigarette Smokers" published in 448 newspapers throughout the United States. 1 PA 62, ¶ 44.

For the next five decades, TIRC/CTR worked diligently, and quite successfully, to rebuff the public's concern about the dangers of cigarettes. Defendants, through TIRC/CTR, invented the false and misleading notion that there was an "open question" regarding cigarette smoking and health. 1 PA 63, ¶ 47. They appeared on television and radio to broadcast this message. *Id.*

In 1964, there was another dip in the consumption of cigarettes because the United States Surgeon General reported that "cigarette smoking is causally related to lung cancer in men . . . the data for women, though less extensive, points in the same direction." 1 PA 63, ¶ 51. The cigarette industry's public response, through TIRC, to the 1964 Surgeon General Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements. 1 PA 64, ¶ 52. As a result, cigarette consumption again began to rise. *Id.*

Despite Defendants' public response, internally they were fully aware of the magnitude and depth of the lies and deception they were promulgating. 1 PA 64, ¶ 53. They knew and understood that they were making fake, misleading promises that would never come to fruition. *Id.* Their own internal records reveal that they knew, even back in 1964, that cigarettes were not only hazardous, but deadly. *Id.* Defendants' sole priority was to make as much money as quickly as possible, with no concern about the safety and well-being of their customers. 1 PA 65, ¶ 56.

In 1966, the United States Government mandated that a "Caution" label be placed on packs of cigarettes stating, "Cigarette Smoking May be Hazardous to Your Health." 1 PA 65, ¶ 57. The cigarette industry responded to the "Caution" label by continuing its massive public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the public. 1 PA 65, ¶ 58. Throughout this period, Defendants also introduced "filtered" cigarettes—cigarettes falsely marketed, advertised, and promoted as "less tar" and "less nicotine." 1 PA 65, ¶ 59. However, internally, in Defendants' previously concealed, hidden documents, discussions regarding the true nature of filtered cigarettes were revealed—filters were just as harmful, dangerous, and hazardous as unfiltered cigarettes; in fact, they were more dangerous. 1 PA 65, ¶ 60.

Throughout the 1960s, 1970s, 1980s, and 1990s, the cigarette industry, including Defendants, spent $250 billion dollars in marketing efforts to promote the

sale of cigarettes. 1 PA 66, ¶ 61. The cigarette industry spent more money on marketing and advertising cigarettes in ***one day*** than the public health community spent in ***one year***. 1 PA 66, ¶ 62.

In 1985, four rotating warning labels were placed on packs of cigarettes which warned, for the first time, that smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy. 1 PA 67, ¶ 69. The cigarette industry, including Defendants, opposed these warning labels. 1 PA 67, ¶ 70. Throughout the 1980s, despite the warning labels having been placed on their cigarette packs, Defendants' representatives at the Tobacco Institute ("TI") publicly stated that whether smoking cigarettes caused cancer and whether cigarettes were addictive remained unknown and that, apparently, "more research was needed." 1 PA 67, ¶ 70.

In 1988, the United States Surgeon General reported that cigarettes and other forms of tobacco were addicting, and that nicotine is the drug in tobacco that causes addiction. In fact, in his report, the Surgeon General compared tobacco addiction to heroin and cocaine. 1 PA 68, ¶ 71. In response, the cigarette industry, including Defendants herein, issued a press release knowingly and disingenuously stating, "Claims that cigarettes are addictive is irresponsible and scare tactics." 1 PA 68, ¶ 72.

In 1994 CEOs from the seven largest cigarette companies, including Defendants, testified under oath before the United States Congress that, in each of their opinions, it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die. 1 PA 68, ¶ 74.

This sophisticated conspiracy involved hundreds of billions of dollars spent on marketing efforts, massive deception including lying under oath before Congress and other governmental entities, forming fake organizations with fake scientists and fake research, and creating a "brilliantly conceived" public relations campaign designed to create and sustain doubt and confusion regarding a—made-up—cigarette controversy. 1 PA 70, ¶ 86. This conspiracy is memorialized through Defendants' own documents, authored by their own executives and scientists, including in over 14 million previously-concealed records. 1 PA 70, ¶ 87.

4. <u>Plaintiffs' Claims Against Defendants.</u>

In their amended complaint, Plaintiffs[2] asserted the following claims against Defendants: (1) negligence—Ms. Camacho against Philip Morris and Liggett (1 PA 70–75); (2) gross negligence—Ms. Camacho against Philip Morris and Liggett (1 PA 75–78); (3) strict products liability—Ms. Camacho against Philip Morris and

[2] Mr. Camacho's claims sound in loss of consortium and are derivative of Ms. Camacho's claims. *See, e.g., Gunlock v. New Frontier Hotel*, 78 Nev. 182, 185 n.1, 370 P.2d 682, 684 n.1 (1962).

Liggett (1 PA 78–82); (4) fraudulent misrepresentation—Ms. Camacho against Philip Morris and Liggett (1 PA 83–89); (5) fraudulent concealment—Ms. Camacho against Philip Morris and Liggett (1 PA 90–94); (6) civil conspiracy— Ms. Camacho against Philip Morris, R.J. Reynolds, and Liggett (1 PA 95–98); (7) violation of Deceptive Trade Practices Act (NRS 598.0903)—Ms. Camacho against Philip Morris, R.J. Reynolds, and Liggett (1 PA 98–102); and (8) strict product liability—Ms. Camacho against ASM Nationwide Corporation d/b/a Silverado Smokes & Cigars ("ASM") and LV Singhs Inc. d/b/a Smokes & Vapors ("LV Singhs"). 1 PA 102–104.

B. THE MOTIONS TO DISMISS FILED BY (1) PHILIP MORRIS, LIGGETT, AND ASM AND (2) R.J. REYNOLDS, AND PLAINTIFFS' OPPOSITIONS.

Philip Morris, Liggett, and ASM jointly filed a motion to dismiss Plaintiffs' amended complaint according to the dismissal standard in NRCP 12(b)(5). 1 PA 107–137. Essentially, this motion to dismiss argued against the substance of Plaintiffs' claims. *Id.* Plaintiffs opposed each of the arguments advanced by Philip Morris, Liggett, and ASM. 2 PA 148–225.

R.J. Reynolds also filed a motion to dismiss under NRCP 12(b)(5), arguing that because Sandra did not actually use its product, there could be no claim based upon a "disguised" product liability claim. 1 PA 142–144. R.J. Reynolds also argued that Plaintiffs' claim for violation of the NDTPA failed, due to the lack of

causation. 1 PA 144–145. R.J. Reynolds finally argued that if Plaintiffs' claims against Philip Morris and Liggett were dismissed, Plaintiffs' civil conspiracy claim against R.J. Reynolds would also need to be dismissed, due to the absence of sufficient actors to form a conspiracy claim. 1 PA 145. In response, Plaintiffs argued that their claims do not fail for lack of product use. 2 PA 231–234. Additionally, Plaintiffs explained that their allegations regarding Defendants' massive conspiracy were based upon combined actors, including R.J. Reynolds, such that Plaintiffs' claims for violation of the NDTPA and civil conspiracy could not be dismissed. 2 PA 234–235.

The District Court heard argument on both motions to dismiss. 3 PA 312–377. At the conclusion of the hearing, the District Court did not make a decision but took the matters under advisement. 3 PA 375–376.

C. THE DISTRICT COURT'S ORDERS RESOLVING THE MOTIONS TO DISMISS.

With regard to Plaintiffs' claims against Philip Morris and Liggett, the District Court concluded that Plaintiffs alleged a cognizable claim for violation of the NDTPA. 3 PA 381. Similarly, the District Court concluded that Plaintiffs alleged a cognizable claim for civil conspiracy against Philip Morris and Liggett. 3 PA 381.

However, with respect to R.J. Reynolds, the District Court ruled that Sandra "did not purchase or use any R.J. Reynolds product" and had no "legal relationship with R.J. Reynolds," such that Plaintiffs had no claim against R.J. Reynolds based

upon the NDTPA. 3 PA 464–465. The District Court further held that the absence of an underlying NDTPA claim also required the dismissal of Plaintiffs' claim for civil conspiracy against R.J. Reynolds. 3 PA 465.

Plaintiffs now petition this Court to reinstate their claims against R.J. Reynolds for (1) violation of the NDTPA; and (2) civil conspiracy.

V. STANDARDS OF REVIEW

In reviewing an order granting a motion to dismiss under NRCP 12(b)(5), this Court applies a de novo standard of review. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–228, 181 P.3d 670, 672 (2008). All alleged facts in the complaint are presumed as true, and this Court will draw all inferences in favor of the complainant. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* Thus, the standard for reviewing a dismissal under NRCP 12(b)(5) is "rigorous" since the Court "must" construe the pleading liberally. *See Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) (citing *Vacation Village v. Hitachi America*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)).

A writ of mandamus is available "to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d

556, 558 (2008). Where there is no plain, speedy, and adequate remedy in the ordinary course of law, extraordinary relief may be available. *Id.*

"A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the jurisdiction of the district court." *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). "A writ of prohibition is an extraordinary remedy, and therefore, the decision to entertain the petition lies within [this Court's] discretion." *Daane v. Eighth Judicial Dist. Court*, 127 Nev. 654, 655, 261 P.3d 1086, 1087 (2011).

This Court will exercise its discretion to consider writ petitions, when an important issue of law needs clarification, and this Court's review would serve considerations of public policy, sound judicial economy, and administration. *See Dayside Inc. v. First Judicial Dist. Court*, 119 Nev. 404, 407, 75 P.3d 384, 386 (2003), *overruled on other grounds by Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008). "One such instance is when a writ petition offers this court a unique opportunity to define the precise parameters of . . . a statute that this court has never interpreted." *Diaz v. Eighth Judicial Dist. Court*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000).

Issues of statutory interpretation are questions of law that this Court reviews de novo, even in the context of a writ petition. *See State v. Second Judicial Dist.*

Court (Ayden A.), 132 Nev. 352, 355, 373 P.3d 63, 65 (2016) (citing *Int'l Game Tech.*, 124 Nev. at 198, 179 P.3d at 559).

VI. LEGAL ARGUMENT

A. THE DISTRICT COURT ERRED BY DISMISSING PLAINTIFFS' CLAIM AGAINST R.J. REYNOLDS FOR VIOLATION OF THE NDTPA.

1. The Plain Language of the NDTPA Supports Plaintiffs' Claim.

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

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

> A person engages in a "deceptive trade practice" if, in the course of his or her business or occupation, he or she:
>
> …
>
> 2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for ***sale*** or lease.
>
> 3. Knowingly makes a false representation as to affiliation, connection, association with or certification by another person.
>
> …
>
> 5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for

sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith.

…

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

…

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

…

NRS 598.0915 (emphases added).

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

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

Nowhere in the NDTPA did the Legislature ever insert a product-use requirement that a plaintiff must assert in her pleadings to have standing. To the contrary, the definition of "sale" includes offers and attempts which need not be completed. *Id.* In short, the plain language of the statute prohibits and penalizes not

only deceptive trade practices resulting in an eventual purchase or use by a plaintiff, but also those committed in an offer or attempt to transact with a plaintiff. The legislative intent on this particular issue has always been unambiguous because the definition of "sale" has stood unchanged since the enactment of the NDTPA in 1973. *Id.*

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

The same logic and principles apply to this case. Where there is no legislative directive to require product-purchase or product-use, the Court must abide by the plain language of the NDTPA, treat it distinctly from common law fraud, and not

insert the Court's own requirements. *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 451, 117 P.3d 171, 174 (2005) ("[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done."). Here, Plaintiffs properly notified R.J. Reynolds by pleading that R.J. Reynolds both offered and attempted to sell Ms. Camacho its cigarettes over several decades through aggressive marketing efforts, event sponsorships, and deceptive public relations campaigns along with other tobacco manufacturers. 1 PA 5–19, 44–47. The pleading is sufficient; thus, the District Court erred by dismissing the NDTPA claim.

2. NRS 41.600 Provides Plaintiffs With Standing.

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

a. The Plain Language of NRS 41.600 Incorporates the NDTPA and, Therefore, Grants Standing to Plaintiffs, Despite Non-Use of R.J. Reynolds' Products.

The statutory language is as follows:

> 1. An action may be brought by any person who is a victim of consumer fraud.
> 2. As used in this section, "consumer fraud" means:
> (a) An unlawful act as defined in NRS 119.330;
> (b) An unlawful act as defined in NRS 205.2747;
> (c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;
> (d) An act prohibited by NRS 482.351; or
> (e) ***A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive***.
> 3. If the claimant is the prevailing party, the court shall award the claimant:
> (a) Any damages that the claimant has sustained;
> (b) Any equitable relief that the court deems appropriate; and
> (c) The claimant's costs in the action and reasonable attorney's fees.
> 4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

NRS 41.600 (emphasis added).

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

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

b. A Non-User of R.J. Reynolds' Product Can Be a Victim under NRS 41.600.

The interplay between the NDTPA and NRS 41.600 has been addressed by various courts. The case law proscribes a narrow definition of "victim," especially if the limitation would exclude plaintiffs who are harmed by deceptive trade practices. "Because the NDTPA is a remedial statutory scheme," this Court should "afford [it] liberal construction to accomplish its beneficial intent." *Poole v. Nevada Auto Dealership Investments, LLC*, 135 Nev. 280, 286–287, 449 P.3d 479, 485 (Ct. App. 2019) (citing *Welfare Div. of State Dep't of Health, Welfare & Rehab. v. Washoe Cty. Welfare Dep't*, 88 Nev. 635, 637 (1972)).

Here, the District Court dismissed Plaintiffs' NDTPA claim because:

> It is undisputed that Plaintiff Sandra Camacho did not purchase or use any R.J. Reynolds product. Plaintiffs therefore could not plead facts sufficient to show that R.J. Reynolds caused damage to the Sandra Camacho. Further, Plaintiffs did not plead sufficient facts alleging that Sandra Camacho had any legal relationship with R.J. Reynolds, which is also necessary to support an NDTPA claim.

3 PA 464. However, the existing body of case law—listed below—clearly shows

that these requirements of product use/purchase and legal relationship between Ms. Camacho and R.J. Reynolds should not have been read into the NDTPA and NRS 41.600.

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

More importantly, the courts do not restrict the phrase "directly harmed" to mean only harm occurring between a seller and a consumer. Instead, individuals without any legal relationship with the wrongdoer may bring an action under the NDTPA if they suffered from deceptive trade practices. In *S. Serv. Corp*, the court granted standing to the defendant's business competitor, who lost several contracts to the defendant because the defendant's deceptive practices allowed it to reduce costs and underbid the competitor. In *Bates v. Dollar Loan Ctr., LLC*, No. 2:13-CV-

1731-KJD-CWH, 2014 WL 3516260, at *3 (D. Nev. July 15, 2014), the court granted standing to a plaintiff who suffered invasion of privacy, due to the defendant's deceptive practices, even though the plaintiff was not the borrower from Dollar Loan Center but merely the borrower's credit reference. Indeed, the Ninth Circuit construes the NDTPA to provide standing even beyond consumers and competitors. *See Del Webb Communities*, 652 F.3d at 1153 ("There is no basis in the text of NRS 41.600 or in *Southern Service* to limit standing to a group broader than consumers but no broader than business competitors.").

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

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

Harvest Music Festival in 2017. Dismissing the NDTPA claim, the court wrote:

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

Id at 1145.

Whereas the plaintiffs in *Prescott* failed to claim that the defendant's false statement deprived them of their commercial business, Plaintiffs at bar enumerated a long list of deceptive practices by R.J. Reynolds and the other Defendants that concealed the dangers of smoking, addicted Ms. Camacho to cigarettes, and led to her laryngeal cancer. 1 PA 99–101. Causation is clearly alleged.

R.J. Reynolds' deceptive practices directly harmed Ms. Camacho, independent of its products. That is the basis for Plaintiffs' NDTPA claim. In light of *Del Webb Communities*, *S. Serve Corp.*, *Bates*, *Sears*, and *Prescott*, the District

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

B. THE DISTRICT COURT ALSO ERRED BY DISMISSING PLAINTIFFS' CLAIM AGAINST R.J. REYNOLDS FOR CIVIL CONSPIRACY.

1. Civil Conspiracy Extends Liability Beyond the Active Wrongdoer.

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

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

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

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

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

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

2. Once this Court Recognizes the Viability of Plaintiffs' Claim for Violation of the NDTPA Against R.J. Reynolds, the Court Should Also Reinstate Plaintiffs' Conspiracy Claim Against R.J. Reynolds.

In Nevada, "an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud." *Jordan v. State ex rel. Dept. of Motor*

Vehicles & Pub. Safety, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008).

The District Court correctly recognized that the NDTPA claim suffices as a predicate for the civil conspiracy claim. In *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 118, 345 P.3d 1049, 1052 (2015), this Court clarified that the "unlawful objective" component of a civil conspiracy claim is not necessarily a tort claim. And, the "state of mind" component for a civil conspiracy claim is usually inappropriate for disposition by motion. *See Collins v. Union Fed. S&L Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). As such, when the District Court concluded that the NDTPA claim against the other two Defendants to be cognizable, it also denied their motion to dismiss the civil conspiracy claim. 3 PA 381. Thus, Plaintiffs' NDTPA claim against R.J. Reynolds is valid and sufficiently pled. Therefore, this Court should reinstate Plaintiffs' NDTPA and civil conspiracy claims against R.J. Reynolds.

VII. CONCLUSION

Plaintiffs' NDTPA claim is supported by the plain language of both the NDTPA and NRS 41.600. Because the District Court erred by reading a narrower restriction into the statutes in the absence of any legislative directive and in contradiction to established caselaw, this Court should reinstate Plaintiffs' NDTPA

claim. Since Plaintiffs' NDTPA claim suffices as a predicate, this Court should also reinstate their second claim for civil conspiracy.

Dated this 23rd day of March 2021.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols
Sean K. Claggett, Esq.
Nevada Bar No. 8407
Matthew S. Granda, Esq.
Nevada Bar No. 12753
Micah S. Echols, Esq.
Nevada Bar No. 8437
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Attorneys for Petitioners,
Sandra Camacho and Anthony Camacho

DECLARATION OF MICAH S. ECHOLS, ESQ. IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

Micah S. Echols, Esq., being first duly sworn, deposes and says:

1. I am an attorney with Claggett & Sykes Law Firm and attorney of record for Petitioners, Sandra Camacho and Anthony Camacho ("Plaintiffs"), in the above-captioned case. I have personal knowledge of the matters stated in this declaration, except for those stated upon information and belief. To those matters stated upon information and belief, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will do so if called upon.

2. I certify and affirm that this petition for writ of mandamus or prohibition is filed in good faith, and that Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law that they could pursue in absence of the extraordinary relief requested.

Dated this 23rd day of March 2021.

/s/ Micah S. Echols
Micah S. Echols, Esq.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 5,954 words; or

☐ does not exceed _____ pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 23rd day of March 2021.

CLAGGETT & SYKES LAW FIRM

By /s/ Micah S. Echols
Sean K. Claggett, Esq.
Nevada Bar No. 8407
Matthew S. Granda, Esq.
Nevada Bar No. 12753
Micah S. Echols, Esq.
Nevada Bar No. 8437
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Attorneys for Petitioners,
Sandra Camacho and Anthony Camacho

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** and **PETITIONERS' APPENDIX (Volumes 1–3)** were filed electronically with the Supreme Court of Nevada on the 23rd day of March 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

D. Lee Roberts, Jr., Esq.
Phillip N. Smith, Jr., Esq.
Daniela LaBounty, Esq.
WEINBERG,WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Attorneys for Real Parties in Interest Philip Morris USA, Inc. and ASM Nationwide Corporation

Jennifer Kenyon, Esq.
Admitted Pro Hac Vice
Brian A. Jackson, Esq.
Admitted Pro Hac Vice
Bruce R. Tepikian, Esq.
Admitted Pro Hac Vice
SHOOK, HARDY & BACON L.L.P.
2555 Grand Boulevard
Kansas City, MO 64108
(816) 474-6550
Attorneys for Real Party in Interest Philip Morris USA, Inc.

Dennis L. Kennedy, Esq.
Joseph A. Liebman, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Ave.
Las Vegas, Nevada 89148
(702) 562-8820
(702) 562-8821 FAX
Attorneys for Real Party in Interest RJ Reynolds Tobacco Company

Daniel F. Polsenberg, Esq.
J Christopher Jorgensen, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
Attorneys for Real Party in Interest Liggett Group, LLC

Kelly Anne Luther, Esq.
Admitted Pro Hac Vice
KASOWITZ BENSON TORRES LLP
1441 Brickell Avenue, Suite 1420
Miami, FL 33131
(786) 587-1045
Attorneys for Real Party in Interest Liggett Group, LLC

I further certify that the foregoing documents were mailed via U.S. Mail to the following:

Honorable Kerry Earley, District Court Judge
Eighth Judicial District Court, Department 4
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondents

/s/ Anna Gresl
Anna Gresl, an employee of
Claggett & Sykes Law Firm

Case No. _____

In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation, and LIGGETT GROUP LLC, a foreign corporation,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; and the HONORABLE JESSICA PETERSON,

Respondents,

and

YVONNE CLARK, individually, and as Personal Representative of the Estate of CLEVELAND CLARK, individually, R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, and LAKHVIR HIRA D/B/A JOHN'S SMOKE SHOP, SURJIT SINGH A/K/A RICKY SINGH, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF HARJINDER S. HIRA D/B/A JOHN SMOKE SHOP AND GIFT SHOP, AND M J SMOKE SHOP +, LLC, A DOMESTIC LIMITED LIABILITY CORPORATION, D/B/A SMOKE SHOP +,

Real Parties in Interest.

Electronically Filed
Nov 08 2021 04:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
Case No. A-19-802987-C

PHILIP MORRIS USA INC. AND LIGGETT GROUP LLC'S PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION

D. Lee Roberts, Jr., Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Fax: (702) 938-3864

Attorney for Petitioner Philip Morris USA Inc.

Daniel F. Polsenberg
J Christopher Jorgensen
Abraham G. Smith
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Ste. 600
Las Vegas, Nevada 89169

Attorneys for Petitioner Liggett Group, LLC

Docket 83740 Document 2021-32112

PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION

Real Party in Interest Yvonne Clark ("Plaintiff") filed this case against Philip Morris USA Inc. ("PM USA") and Liggett Group LLC ("Liggett") (collectively, "Petitioners"), R.J. Reynolds Tobacco Company ("Reynolds"), and three retailer defendants[1] seeking damages for Decedent Cleveland Clark's ("Decedent") lung cancer and death. 3 Petitioner's Appendix ("PA") 418-538. Plaintiff has not alleged that Decedent purchased or smoked any cigarettes manufactured by PM USA or Liggett. *See id.* Nonetheless, Plaintiff asserted claims against PM USA and Liggett on the basis of alleged violations of the Nevada Deceptive Trade Practices Act ("NDTPA"). *Id.* at 520-529. Plaintiff also pleads a cause of action for civil conspiracy against PM USA and Liggett, but acknowledges that her conspiracy claim against PM USA and Liggett is derivative of her NDTPA claims. *Id.* at 512-520.

The district court denied a motion to dismiss filed by PM USA and Liggett, concluding that the use of a product is not necessary for a claim

[1] Plaintiff filed suit against the following retailer defendants, who are real parties in interest to this Petition: Lakhvir Hira d/b/a John's Smoke Shop and Surjit Singh a/k/a Ricky Singh, Individually and as Executor of the Estate of Harjinder S. Hira d/b/a John Smoke Shop & Gift Shop, and M J Smoke Shop +, LLC. 3 PA 421-422.

under the NDTPA. 4 PA 672-683. The district court held that "any person" is permitted to bring an action pursuant to the NDTPA, and that the Complaint stated a cause of action under the NDTPA despite the lack of a transaction involving Petitioners or use of Petitioners' product by the Decedent. *Id.* at 677-678 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 3, 4). The district court also concluded that Plaintiff's allegations sufficiently supported her civil conspiracy claims derivative of her NDTPA claims. *Id.* (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 4–6).

The district court recognized, however, that judges within Nevada's Eighth Judicial District Court have reached different conclusions regarding whether the NDTPA requires product use to state cognizable claims, and, subsequently, whether such claims support civil conspiracy claims when devoid of any product use. *Id.* at 676 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 2 n.1). In fact, an original proceeding is currently before this Court (Case No. 82654) involving similar facts where the district court first dismissed NDTPA claims and subsequently reconsidered after the case was assigned to a new judge. 3 PA 412-414; 4 PA 718-724. With seven

tobacco and health cases currently pending in district courts,[2] and the district courts in conflict, guidance is needed on this issue.

NRAP 26.1 DISCLOSURE

Counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed in order that the judges of this Court may evaluate possible disqualification or recusal.

1. The parent company of Philip Morris USA Inc. is Altria Group, Inc.

2. Altria Group, Inc. is the only publicly held corporation that owns 10% or more of Philip Morris USA Inc.'s stock.

3. Philip Morris USA Inc. has no publicly traded subsidiaries or affiliates (except as described in paragraph 2, *supra*).

4. Philip Morris USA Inc. has been represented in this

---

[2] *Timothy A. Geist v. Philip Morris USA Inc.*, et al., Case No. A-19-807653-C; *Paul L. Speed v. Philip Morris USA Inc.*, et al., Case No. A-20-819040-C; *Sandra Camacho, individually, and Anthony Camacho, individually, v. Philip Morris USA Inc., et al.*, Case No. A-19-807650-C; *Martin Tully, individually, and Debra Tully, individually, v. Philip Morris USA Inc.*, et al., Case No. A-19-807657-C; *Tamara Jill Kelly, individually, and William White, individually v. Philip Morris USA Inc.*, Case No. A-20-820112-C; *Dolly Rowan v. Philip Morris USA Inc., et al.*, Case No. A-20-811091-C.

litigation by D. Lee Roberts, Jr. and Howard J. Russell of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Jennifer Kenyon and Bruce Tepikian of Shook, Hardy & Bacon, L.L.P., admitted pro hac vice.

5. Liggett's sole member is VGR Holding LLC. VGR Holding LLC's sole member is Vector Group Ltd. Vector Group Ltd.'s stock is publicly traded on the New York Stock Exchange.

6. Liggett has been represented in this litigation by J. Christopher Jorgenson and Daniel Polsenberg of Lewis Roca Rotherger Christie LLP, and Kelly Anne Luther and Maria H. Ruiz of Kasowitz Benson Torres LLP, admitted pro hac vice.

DATED this 8th day of November, 2021.

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

By: */s/ D. Lee Roberts, Jr.*
D. LEE ROBERTS, JR., ESQ.
(NEVADA BAR NUMBER 8877)
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Attorney for Petitioner Philip Morris USA Inc.

DANIEL F. POLSENBERG (SBN 2376)
J CHRISTOPHER JORGENSEN (SBN 5382)
ABRAHAM G. SMITH (SBN 13250)
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Petitioner Liggett Group, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases ..... **Page(s)**

Statutes

I. ROUTING STATEMENT

Petitioners respectfully request this Court to retain this case pursuant to NRAP 17(a)(11)–(12), as this case presents both "a principal issue [involving] a question of first impression" and "a question of statewide public importance" regarding the Nevada Deceptive Trade Practices Act ("NDTPA"). Petitioners further advise the Court that a Petition addressing the same legal issues was retained by the Nevada Supreme Court in *Camacho v. Eighth Judicial District Court*, Case No. 82654.

II. ISSUES PRESENTED

1. Did the district court err in finding that Plaintiff below stated a cause of action against PM USA and Liggett under NRS 41.600 and the Nevada Deceptive Trade Practices Act ("NDTPA") even though the Complaint does not allege that the Decedent Cleveland Clark ever purchased or used a PM USA or Liggett product?
2. Did the district court err in finding that Plaintiff below stated civil conspiracy claims against PM USA and Liggett, even though Plaintiff conceded the civil conspiracy claims are derivative of her NDTPA claims against PM USA and Liggett?

III. OVERVIEW OF RELIEF REQUESTED

Plaintiff and Real Party in Interest Yvonne Clark ("Plaintiff") filed this products liability action alleging that Decedent Cleveland Clark contracted lung cancer and died after decades of smoking cigarettes manufactured and sold by Reynolds. Although Decedent *never* purchased or used a product manufactured by PM USA or Liggett, Plaintiff nonetheless named both PM USA and Liggett as defendants under the theory they had violated the NDTPA through their advertisements and other statements about their products.

But, as this Court persuasively recognized in *Fairway Chevrolet*

Company v. Kelley, 134 Nev. 935, 429 P.3d 663, No. 72444, 2018 WL 5906906 (Nov. 9, 2018) (unpublished),[3] the Nevada Legislature limited private actions under the NDTPA to "victim[s] of consumer fraud" who were directly harmed by the defendant's NDTPA violation. Just like the plaintiff in *Fairway*, Plaintiff here cannot show the required direct harm to Decedent from PM USA and Liggett's alleged NDTPA violations because PM USA and Liggett's allegedly deceptive statements never caused him to purchase or use their products. Indeed, there is not a single Nevada appellate court that has allowed a claim under the NDTPA to go forward where product use or a purchase or other transaction is lacking.

In other words, simply seeing allegedly deceptive statements—without acting on them by buying or using PM USA or Liggett's products—does not make Decedent a "victim" of PM USA or Liggett's alleged consumer fraud. Nor does it provide standing to state claims against them for personal injuries that Plaintiff alleges were caused by smoking cigarettes manufactured by Reynolds. Plaintiff cannot show a

[3] *See* NRAP 36(c)(3) ("A party may cite for its persuasive value, if any, an unpublished disposition issued by the Supreme Court on or after January 1, 2016").

direct injury from any action taken by PM USA or Liggett. As evidenced by its use of the term "victim," the Nevada Legislature sought to limit NDTPA consumer fraud suits to individuals who actually suffered direct harm from a deceptive practice. It did not intend to authorize lawsuits by everyone (or as the order entered by the district court states – "all persons") who views a purportedly deceptive statement from a manufacturer, regardless of whether the individual ever purchased the product that was the subject of the alleged deceptive statement. That interpretation far exceeds "any sensible definition" of "victim." *Fairway*, 2018 WL 5906906, at *1.

Indeed, product liability actions, like this one, fundamentally require product use. Regardless of how Plaintiff labels her claims, the only injury she alleges is that Decedent contracted lung cancer and died from smoking cigarettes manufactured by Reynolds. Nothing in the Nevada Legislature's use of the word "victim" evinces an intent to allow NDTPA claims against manufacturers such as PM USA or Liggett that did not design, manufacture or sell the product that caused the alleged harm. That would turn well-settled products liability law on its head and open a floodgate of private lawsuits by mere bystanders.

The district court therefore erred by declining to define the term "victim" consistent with its plain meaning, with longstanding products liability law, and with the concepts recognized by this Court in *Fairway*. Accordingly, the Court should grant PM USA's request for a writ of prohibition or mandamus.

IV. STATEMENT OF FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Plaintiff's Allegations

Plaintiff filed this case against Reynolds, PM USA, Liggett and three retailer defendants seeking damages for Decedent's lung cancer and death. 3 PA 418-538.[4] Plaintiff asserts that Decedent's cancer was caused by smoking KOOL brand cigarettes, which he allegedly smoked continuously from approximately 1964 until 2017 and to which he allegedly was addicted. *Id.* at 423. During the period when Decedent allegedly smoked them, KOOL cigarettes were designed, manufactured, and sold by Reynolds. *Id.* Plaintiff does not allege that Decedent

[4] This case was originally filed as a personal injury action. 1 PA 1-57. Following Decedent's death on July 19, 2020, the Court entered an order granting in part and denying in part Plaintiff's Motion for Leave to File Wrongful Death Complaint and Plaintiff's Motion to Substitute Parties on January 15, 2021. 3 PA 415-417. Plaintiff filed her Second Amended Complaint (asserting claims for wrongful death, among other causes of action) on January 19, 2021. 3 PA 418-538.

purchased or smoked *any* cigarettes manufactured by PM USA or Liggett. *See id.*

Plaintiff nonetheless brings claims against PM USA and Liggett solely on the following bases: (1) violation of the NDTPA and (2) civil conspiracy.[5] 3 PA 512-529. Plaintiff asserts claims of negligence, strict liability, fraudulent misrepresentation, and fraudulent concealment (as well as NDTPA and civil conspiracy claims) against Reynolds, which manufactured the only brand of tobacco products that Plaintiff contends Decedent used: KOOL. *Id.* at 418-538.

B. Parties' Motions and Arguments

Most recently, PM USA and Liggett moved to dismiss Plaintiff's Second Amended Complaint. 3 PA 588-598. First, PM USA and Liggett argued that Plaintiff's claims, despite their label as NDTPA and civil conspiracy claims, actually are product liability claims that cannot survive without an allegation of product use. *Id.* at 592-593. This is because a plaintiff may only recover against the manufacturer of the product that caused the alleged injury. *See Allison v. Merck & Co.,* 878 P. 2d 948, 952 (1994); *Holcomb v. Ga. Pac., LLC*, 289 P. 3d 188, 193 (Nev.

[5] As noted above, Plaintiff asserts these claims in both the wrongful death context and as the administrator of Decedent's estate. 3 PA 418-538.

2012). The product use principle applies to **every cause of action in a product liability lawsuit** irrespective of "whether Plaintiff characterizes her claims as misrepresentation/fraud or claims arising in product liability." *Moretti v. Wyeth, Inc.*, No. 2:08-cv-00396-JCM-(GWF), 2009 WL 749532, at *4 (D. Nev. Mar. 20, 2009).

Second, PM USA and Liggett argued that Plaintiff's claims for violation of the NDTPA fail because she cannot show that Decedent was a "victim" who was directly harmed by PM USA and Liggett's alleged NDTPA violations, as required by NRS 41.600, as he never purchased or used PM USA or Liggett's cigarettes. 3 PA 593-595. Plaintiff cannot establish a transaction, and therefore, cannot establish any legal relationship between Decedent and PM USA or Liggett giving rise to a duty. *Id.* Similarly, without product use, Plaintiff cannot establish the causation element of her deceptive trade practices claims. *Id.*

Thirdly, PM USA and Liggett argued in the alternative that because Decedent started smoking in 1964, Decedent's decision to start smoking could not have been based on violations of the NDTPA, which did not exist at the time. 4 PA 653-654. For the same reason, Decedent's decision to continue smoking prior to 1973 could not have

been based on violations of the NDTPA. *Id.*

Finally, PM USA and Liggett asserted that Plaintiff's derivative civil conspiracy claims against them fail because their predicate claims, arising under the NDTPA, fail. 3 PA 595-96.

In response, Plaintiff argued: (1) product use is not a requirement for an NDTPA claim; (2) Petitioners and Reynolds engaged in deceptive trade practices through mass-marketing campaigns; and (3) Plaintiff's civil conspiracy claims survive with her underlying NDTPA claims. 4 PA 599-614. Plaintiff never argued that her NDTPA claims should proceed because PM USA or Liggett attempted a sale of their cigarettes to Decedent. *See id.*

C. District Courts' Differing Rulings and Reasoning

After hearing oral argument on March 9, 2021, the district court denied PM USA and Liggett's motion to dismiss on April 20, 2021. The district court concluded that "any person" is permitted to bring an action pursuant to the NDTPA (rejecting the "victim" requirement), and that Plaintiff had sufficiently pleaded NDTPA violations and fraud claims to support her derivative civil conspiracy claims. 4 PA 677-678 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 4). In

particular, the district court determined that alleged "deceptive trade practices that all of the Defendants engaged in," such as alleged "false representations as to the characteristics, alterations, and ingredients in cigarettes," were sufficient allegations to form the basis of NDTPA claims against PM USA and Liggett. *Id.* (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 4). Because the district court also concluded that "Plaintiff . . . alleged with particularity that [Decedent] detrimentally relied on the claims of the Defendants to both begin and continue smoking," the court found that Plaintiff's allegations also sufficiently supported her civil conspiracy claims against PM USA and Liggett. *Id.* at 678-680 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 4–6).

The district court recognized, however, that judges within the Eighth Judicial District Court have reached different conclusions regarding whether the NDTPA requires product use for cognizable claims, and, subsequently, whether such NDTPA claims can support civil conspiracy claims. 4 PA 676 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 2 n.1). The district court noted that in *Tully v. Philip Morris USA Inc. et al.*, No. A807657, Judge Jacqueline Bluth

determined that product "use was unnecessary to prevail" on an NDTPA claim. 4 PA 676. Likewise, the district court noted that in *Camacho v. Philip Morris USA Inc. et al.*, No. A807650, Judge Kerry Earley "granted a motion to dismiss based on the same argument." 4 PA 676 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 2 n.1). Petitioners acknowledge that Judge Nadia Krall recently granted a motion to reconsider filed by the plaintiffs in the *Camacho* case, 4 PA 718-724, and that the case is "currently the subject of an appeal [i.e., writ] with" this Court, as the district court in this case recognized. 4 PA 676 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 2 n.1).

Notably, since the district court issued its April 20, 2021 Order in this case, Judge Veronica Barisich granted an analogous motion to dismiss filed by PM USA, dismissing a substantially similar complaint in a separate smoking-and-health case where use of a PM USA product was not alleged. 4 PA 714-717 (Order Granting Def.'s Mot. to Dismiss Pl.'s Am. Compl. Under NRCP 12(b)(5), *Rowan v. Philip Morris USA Inc.*, No. A-20-811091-C (Sept. 8, 2021)). In the *Rowan* Order, Judge

Barisich explained that:

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

Id.[6]

Petitioners' writ application in this case follows.

V. LEGAL STANDARD

When assessing the merits of a writ petition, this Court reviews de novo a district court's statutory construction. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 123 Nev. 468, 475, 168 P.3d 731, 737 (2007); *Carson-Tahoe Hosp. v. Bldg. & Constr. Trades Council of N. Nev.*, 122 Nev. 218, 220, 128 P.3d 1065, 1066 (2006). When "the words of the statute have a definite and ordinary meaning, this [C]ourt

[6] Of note, the plaintiff in *Rowan* has also filed a motion to reconsider, and the parties' briefing on that motion is currently in progress.

will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended." *Carson-Tahoe Hosp.*, 122 Nev. at 220, 128 P.3d at 1066–67 (quoting *State v. Quinn*, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001)). No part of a statute should be rendered meaningless or interpreted in a manner that leads to "absurd or unreasonable results." *Id.* (quoting *Harris Assocs. v. Clark Cnty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003)).

"A writ of mandamus is available to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (en banc). To demonstrate the necessity of a writ, the movant must show that the district court's interpretation or application of the law was clearly erroneous such that it was "founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." *State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011) (en banc) (citations omitted).

This Court is afforded "broad discretion" to determine whether a writ should issue. *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737. The

Court has used the discretion afforded "to consider issuing a writ of mandamus . . . if an important issue of law needs clarification, and public policy will be served by this [C]ourt's invocation of its original jurisdiction." *Dayside Inc. v. First Jud. Dist. Ct.*, 119 Nev. 404, 407, 75 P.3d 384, 386 (2003), *overruled on other grounds*, *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008); *see also Bus. Comput. Rentals v. State Treasurer*, 114 Nev. 63, 67, 953 P.2d 13, 15–16 (1998). Engaging in novel statutory interpretation issues is one context in which this Court has granted writ petitions. *Diaz v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (citing *Ashokan v. State, Dep't of Ins.*, 109 Nev. 662, 667, 856 P.2d 244, 247 (1993)).

VI. ARGUMENT

A. THE DISTRICT COURT SHOULD HAVE DISMISSED PLAINTIFF'S NDTPA CLAIMS AGAINST PM USA AND LIGGETT.

The Court should determine that the circumstances of this case, and the statutory interpretation issues implicated, warrant the issuance of a writ of mandamus or prohibition. The district court here acted contrary to plain statutory language in concluding that Plaintiff stated a cognizable claim under NRS 41.600 against product

manufacturers whose products Decedent never used or purchased. Indeed, no Nevada appellate court has ever allowed such a claim to go forward; in fact, as noted above, this Court rejected a similar claim in *Fairway*. *Fairway Chevrolet Co. v. Kelley*, 134 Nev. 935, 429 P.3d 663, No. 72444, 2018 WL 5906906 (Nov. 9, 2018) (unpublished).

The Nevada Legislature explicitly limited private civil actions under the NDTPA to "victim[s]" of consumer fraud, NRS 41.600(1); in the product liability context, this language can only include those who were directly harmed by a product. Since Decedent never used or purchased a PM USA or Liggett product, Plaintiff does not and cannot plead facts to establish that Decedent was a victim of PM USA or Liggett's alleged fraud, or that he had a legal relationship with PM USA or Liggett which formed a duty and on which Plaintiff can now premise any civil liability.

1. Plaintiff's Claims Against PM USA and Liggett Fail to State a Cause of Action Under NRS 41.600.

While the NDTPA provides wide reach for ***government*** action against deceptive trade practices, the Nevada Legislature expressly limited ***private*** actions for NDTPA violations to "victim[s]" of consumer fraud. NRS 41.600(1). Although this Court has yet to define this term

in a published opinion, federal courts consistently have held that a plaintiff must show she was "directly harmed" by deceptive trade practices to state a claim as a "victim" under NRS 41.600(1). *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1153 (9th Cir. 2011) (quoting *S. Serv. Corp. v. Excel Bldg. Servs., Inc.*, 617 F. Supp. 2d 1097, 1100 (D. Nev. 2007)). More specifically, a plaintiff must plead and ultimately prove "that (1) an act of consumer fraud by the defendant (2) caused (3) damage to the plaintiff." *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D. Nev. 2009); *Sattari v. Wash. Mut.*, 475 F. App'x 648, 648 (9th Cir. 2011) (same).

Plaintiff has not, and cannot, allege that Decedent was a "victim" of consumer fraud by PM USA or Liggett because he was directly harmed by PM USA or Liggett's actions since Decedent never used or purchased a PM USA or Liggett product. Any alleged deceptive statements PM USA or Liggett supposedly made therefore cannot support causation since they did ***not*** convince Decedent to purchase and use a PM USA or Liggett product, much less directly cause his alleged lung cancer and death. To the contrary, Plaintiff only asserts that Decedent's lung cancer and death "was caused by smoking Kool brand

cigarettes." 3 PA 423. Kool cigarettes have never been manufactured or sold by PM USA or Liggett. Based on the clear statutory language discussed above, the district court should have concluded that Plaintiff's claims against PM USA and Liggett fail to state a cause of action for deceptive practices under NRS 41.600(1).

This Court's recent decision in *Fairway*, though unpublished, is instructive and persuasive. In *Fairway*, the plaintiff saw a television commercial in which a car dealership falsely guaranteed financing. Br. of Plaintiff at 1–3, *Fairway*, 134 Nev. 935 (No. 80160), 2017 WL 5069301, at *1. Although the plaintiff never purchased a car from the dealership, he nonetheless brought a civil action under the NDTPA. *Id.* This Court reversed the lower court's denial of the defendants' summary judgment motion, holding that the plaintiff did not qualify as a "victim" under NRS 41.600. *Fairway*, 2018 WL 5906906, at *1.

The Court explained that "the definition of 'victim' connotes some sort of harm being inflicted on the 'victim.'" *Id.* (quoting Black's Law Dictionary (10th ed. 2014) (defining "victim" as "[a] person harmed by a crime, tort, or other wrong"); Merriam-Webster's Collegiate Dictionary 1394 (11th ed. 2007) (defining "victim" as "one that is injured,

destroyed, or sacrificed under any of various conditions" and "one that is tricked or duped")). Put differently, "any sensible definition" of the term requires a showing that the claimant "suffer[ed] harm at the hands of [the defendant]." *Id.* And, given that the *Fairway* plaintiff never purchased a car from the dealership, this Court concluded that he did not "suffer any harm at the hands" of the dealership and thus was "not a 'victim' authorized to bring a consumer fraud action under NRS 41.600." *Id.*

This case is analogous. At best, Plaintiff alleges that PM USA and Liggett made fraudulent statements—which the district court determined were sufficient allegations to support NDTPA claims. However, as with the plaintiff in *Fairway*, those statements never led Decedent to buy and use a PM USA or Liggett product. Thus, Decedent did not experience "direct harm" from any statements that Plaintiff alleges PM USA or Liggett made.[7] Nonetheless, the district court improperly relied on these allegations to conclude that Plaintiff stated

[7] If anything, Plaintiff's theory is even more attenuated than the one this Court rejected in *Fairway* because Plaintiff does not even allege that Decedent saw a PM USA or Liggett advertisement. Plaintiff instead groups PM USA and Liggett with the other tobacco manufacturer Defendant in this case, Reynolds, and asserts that "Defendants" made various deceptive statements. 3 PA 418-538.

actionable NDTPA claims against PM USA and Liggett. Applying this Court's reasoning in *Fairway*, the Court should grant Petitioners' request for a writ of prohibition or mandamus to correct this error.

2. The District Court's Interpretation of NRS 41.600 Contradicts the Nevada Legislature's Express Language and Statutory Intent as well as Established Case Law.

The district court's ruling would allow any private citizen to sue a product manufacturer for money damages over any perceived "deceptive trade practice," regardless of whether the person purchased the product or the product injured him in any way. Plaintiff has identified no basis to support such an anomalous and atextual reading of the term "victim" in NRS 41.600.

Indeed, Plaintiff's proposed statutory reading would undo the Nevada Legislature's carefully crafted balance between public and private enforcement of consumer fraud. The NDTPA itself grants only the government enforcement authority—including criminal prosecutions (NRS 598.0963) and civil penalties up to $5,000 for each violation (NRS 598.0999). Two years after enacting the NDTPA, the Nevada Legislature created a limited private right of action for individuals who were "victim[s]" of consumer fraud with respect to a subset of deceptive trade

practices listed in NRS 598.091–598.092. NRS 41.600(2)(e). As this Court recognized in *Fairway* (and as federal courts have held when applying Nevada law), the Nevada Legislature's use of the term "victim" expresses a clear intent to limit private lawsuits only to those who suffer "harm at the hands" of the defendant. *Fairway*, 2018 WL 5906906, at *1.

Plaintiff's position also contradicts well-established law in products liability cases like this one. In Nevada, it is axiomatic that "[a]mong manufacturers of products, liability rests only with the manufacturer of the product that actually caused the alleged injury because that manufacturer profited from sales of the product and controlled its safety." *Moretti v. Wyeth, Inc.*, No. 2:08-CV-00396-JCMGWF, 2009 WL 749532, at *3–4 (D. Nev. Mar. 20, 2009) (citing *Allison v. Merck & Co.*, 110 Nev. 762, 767–68, 878 P.2d 948, 952 (1994)) (dismissing plaintiff's four fraud-based claims in part because "[p]laintiff did not purchase or ingest a Wyeth or Schwarz product and, therefore, she did not have a relationship with either defendant"); *Baymiller v. Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302, 1309–11 (D. Nev. 2012) (granting summary judgment in defendant's favor on plaintiff's fraud and negligent misrepresentation claims because

plaintiff "did not purchase or ingest a Glaxo product" and therefore "did not have a relationship with Glaxo [who] did not owe [plaintiff] any duty to warn"). Nevada law requires the existence of a duty—*i.e.*, some form of a relationship between a plaintiff and defendant—to succeed on a fraud-based claim. *See Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485–87, 970 P.2d 98, 110–11 (1998), *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001) (reversing judgment against defendant on fraudulent misrepresentation claim "because it was not directly involved in the transaction from which [the] lawsuit arose, or any other transaction with the Mahlums"). Plaintiff cannot circumvent this bedrock principle by using the NDTPA to seek damages from PM USA and Liggett for personal injuries caused by another manufacturer's product.

This Court has consistently held that a claim must be analyzed "according to its substance, rather than its label." *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 809, 312 P.3d 491, 489 (2013) (en banc); *accord Nev. Power Co. v. Eighth Jud. Dist. Ct.*, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004) (en banc) (per curiam). Although labeled as NDTPA claims, Plaintiff's allegations are rooted in product liability—the

only injury asserted is that Decedent contracted lung cancer and died as a result of using products manufactured by Reynolds, as discussed above. The nature of Plaintiff's claims does not change simply because Plaintiff has asserted fraud with respect to the product at issue. In both *Moretti* and *Baymiller*, the plaintiffs styled their claims as sounding in fraud, and both courts dismissed those fraud claims under Nevada law for lack of product use. *See Moretti*, 2009 WL 749532, at *4 (plaintiff's claims for misrepresentation and fraud failed because they were merely "an effort to recover for injuries caused by a product without meeting the requirements the law imposes in products liability actions"); *Baymiller*, 894 F. Supp. 2d at 1305 (dismissing plaintiffs' fraud claims because plaintiffs neither purchased nor used defendant's product).

In sum, private lawsuits against manufacturers that did not design, manufacture, or sell the product that allegedly harmed the claimant would undermine the Nevada Legislature's carefully crafted statutory scheme and flout well-settled principles of products liability law. Such an interpretation of the NDTPA's language cannot fall within "any sensible definition" of "victim," and this Court should again reject this effort to circumvent the Nevada Legislature's limitation of private

NDTPA suits to "victim[s]" of the defendant's deceptive practices. *Fairway*, 2018 WL 5906906, at *1.

3. Alternatively, Plaintiff's NDTPA Claims Alleging that Decedent Started Smoking and Continued Smoking In Reliance on Alleged Fraudulent Statement Prior to 1973 Should be Dismissed.

Plaintiff claims that Decedent starting smoking in 1964 (3 PA 423), and that if Decedent had known the true health hazards and addictive nature of cigarettes, he would not have started smoking (*id.* at 474). It is therefore impossible for Decedent's decision to start smoking in 1964 to be based on violations of the NDTPA -- which did not exist until 1973. *See* 1973 Statutes of Nevada, Page 1483 (CHAPTER 729, AB 301).

Plaintiff also alleges that "as a direct and proximate result of" fraudulent statements violating the NDTPA, Decedent continued to smoke cigarettes which caused or contributed to his developing lung cancer. (3 PA 474). Further, if Decedent "had known the true health hazards and addictive nature of cigarettes, he would not have … continued to smoke for over 50 years." *Id.* Decedent's decision to continue smoking *prior to 1973* could not have been based on violations of the NDTPA.

B. THE DISTRICT COURT SHOULD HAVE CONCLUDED THAT PLAINTIFF'S DERIVATIVE CONSPIRACY CLAIMS FAIL WITH HER PREDICATE NDTPA CLAIMS.

Plaintiff's civil conspiracy claims against PM USA and Liggett are entirely dependent on her NDTPA claims against them. The district court recognized that Plaintiff's "allegations in support of the civil conspiracy claim are premised on both violations of the NDTPA and the separate allegations of fraud." 4 PA 678 (Order Denying Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 4). Indeed, in Plaintiff's Opposition to PM USA and Liggett's Motion to Dismiss Plaintiff's Second Amended Complaint, Plaintiff conceded that "[t]he conspiracy counts in [Plaintiff's] action are supported by the underlying count of violation of deceptive trade practices" and the "underlying fraud count of consumer fraud." 4 PA 612 (Pl.'s Opp. to Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. at 13–14).

Because Plaintiff's predicate NDTPA claims against PM USA and Liggett fail, so too do her derivative conspiracy claims against them. *See Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 74–75, 110 P.3d 30, 51 (2005) (en banc) (per curiam) (underlying cause of action for fraud is a necessary predicate to a cause

of action for conspiracy to defraud), *overruled on other grounds*, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *see also Sommers v. Cuddy*, No. 2:08-cv-78-RCJ-RJJ, 2012 WL 359339, at *5 (D. Nev. Feb. 2, 2012) (applying Nevada law and recognizing that a cause of action for civil conspiracy to defraud requires a viable underlying cause of action for fraud); *Goodwin v. Exec. Tr. Servs., LLC*, 680 F. Supp. 2d 1244, 1253–54 (D. Nev. 2010) (same).

VII. CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' request for a writ of prohibition or mandamus.

DATED this 8th day of November, 2021.

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

By: */s/ D. Lee Roberts, Jr.*

D. LEE ROBERTS, JR., ESQ.
(NEVADA BAR NUMBER 8877)
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Attorney for Petitioner Philip Morris USA Inc.

DANIEL F. POLSENBERG (SBN 2376)
J CHRISTOPHER JORGENSEN (SBN 5382)
ABRAHAM G. SMITH (SBN 13250)
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Petitioner Liggett Group, LLC

VERIFICATION

Under penalty of perjury, I declare that I am counsel for the petitioner in the foregoing petition and know the contents thereof; that the pleading is true of my own knowledge, except as to those matters stated on information and belief; and that as to such matters I believe them to be true. I, rather than petitioner, make this verification because the relevant facts are procedural and thus within my knowledge as petitioner's attorney. This verification is made pursuant to NRS 15.010 and NRAP 21(a)(5).

Dated this 8th day of November, 2021.

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

By: */s/ D. Lee Roberts, Jr.*

D. LEE ROBERTS, JR., ESQ.
(NEVADA BAR NUMBER 8877)
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Attorney for Petitioner Philip Morris USA Inc.

DANIEL F. POLSENBERG (SBN 2376)
J CHRISTOPHER JORGENSEN (SBN 5382)
ABRAHAM G. SMITH (SBN 13250)
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Petitioner Liggett Group, LLC

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2016 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 5,292 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 8th day of November, 2021.

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

By: */s/ D. Lee Roberts, Jr.*

D. LEE ROBERTS, JR., ESQ.
(NEVADA BAR NUMBER 8877)
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Attorney for Petitioner Philip Morris USA Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of November, 2021, I submitted the foregoing **PHILIP MORRIS USA INC. AND LIGGETT GROUP LLC'S PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION** for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Sean K. Claggett, Esq.
sclaggett@claggettlaw.com
William T. Sykes, Esq.
wsykes@claggettlaw.com
Matthew S. Granda, Esq.
mgranda@claggettlaw.com
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107
(702) 655-2346
(702) 655-3763 FAX

Attorneys for Real Parties in Interest Yvonne Clark

Dennis L. Kennedy, Esq.
DKennedy@baileykennedy.com
Joseph A. Liebman, Esq.
JLiebman@baileykennedy.com
BAILEY KENNEDY
8984 Spanish Ridge Ave.
Las Vegas, Nevada 89148
(702) 562-8820
(702) 562-8821 FAX

Attorneys for Real Parties in Interest R.J. Reynolds Tobacco Company, MJ Smoke Shop + LLC, Lakhvir Hira d/b/a John's Smoke Shop, and Surjit Singh a/k/a Ricky Singh, Individually and as Executor of the Estate of Harjinder S. Hira d/b/a John's Smoke Shop & Gift Shop

J Christopher Jorgensen, Esq.
CJorgensen@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, Nevada 89169
(702) 949-8200
Attorneys for Petitioner Liggett Group, LLC

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Jessica K. Peterson
District Court Judge – Dept. 8
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kelly L. Pierce
An employee of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

MOT

Sean K. Claggett, Esq.
Nevada Bar No. 008407
William T. Sykes, Esq.
Nevada Bar No. 009916
Matthew S. Granda, Esq.
Nevada Bar No. 012753
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Ste. 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
(702) 655-3763 – Facsimile
sclaggett@claggettlaw.com
wsykes@claggettlaw.com
mgranda@claggettlaw.com

Kimberly L. Wald, Esq.
Nevada Bar. No. 15830
Michael A. Hersh, Esq.
Nevada Bar No. 15746
Fan Li, Esq.
Nevada Bar No. 15771
KELLEY | UUSTAL
500 North Federal Highway, Suite 200
Fort Lauderdale, FL 33301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

CASE NO. A-20-811091-C

DEPT. NO. V

PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Hearing Requested

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.

Plaintiff, DOLLY ROWAN, by and through her counsel of record, CLAGGETT & SYKES LAW FIRM and KELLEY | UUSTAL, seeks to amend her Complaint to add her siblings and heirs to Noreen Thompson as named Plaintiffs in the Complaint. These amendments are warranted because heirs, RUSSELL THOMPSON and NAVONA THOMPSON COLLISON are the two other surviving children of Noreen Thompson. This motion is based upon the Memorandum of Points and Authorities attached hereto, the pleadings and papers on file herein, and any arguments of counsel the Court may entertain.

INTRODUCTION

Ms. Rowan's mother, Noreen Thompson, filed this lawsuit on February 25, 2020. She subsequently passed away on June 19, 2020. Mrs. Thompson is survived by her children, Dolly Rowan, Russell Thompson, and Navona Collison. Dolly Rowan was appointed Special Administrator of Mrs. Thompson's estate. After Mrs. Thompson's

death, Ms. Rowan sought to amend the complaint to convert it from a personal injury action to a wrongful death action. The court granted Plaintiff's motion on February 26, 2021.

Pursuant to NRCP 15, Plaintiff, Dolly Rowan, seeks to amend her complaint to add her siblings and heirs as named Plaintiffs. A copy of the proposed Second Amended Complaint is attached hereto as **Exhibit "1."** The motion to amend the pleadings and add the parties has not yet passed, nor has the statute of limitations for the wrongful death claims. There will be no prejudice to Defendants and amendment is therefore justified under NRCP 15.

LEGAL ARGUMENT

A. AMENDMENT IS WARRANTED UNDER NRCP 15

NRCP 15(a)(2) provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." The Nevada Supreme Court has held that "in the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant – the leave sought should be freely given." *Stephens v. S. Nev. Music. Co.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973). "Thus, NRCP 15(a) contemplates the liberal amendment of pleadings, which in colloquial terms means that most such motions ought to be granted unless strong reason exists not to do so, such as prejudice to the opponent or lack of good faith by the moving party." *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Ct. App. 2015) (citing *Stephens*, 89 Nev. at 105, 507 P.2d at 139.

Here, Plaintiff seeks to amend the complaint in order to name the remaining heirs of Noreen Thompson as plaintiffs. The proposed heirs are Noreen Thompson's other two surviving children, Russell Thompson and Navona Thompson Collison. Both have valid claims to be made and are proper parties.

The motion to amend and add parties in this case is June 25, 2022. *Sched. Order, June 29, 2021*. The statute of limitations for the wrongful death claims is June 19, 2022. Plaintiff is moving well within the motion to amend deadline and the statute of limitations and there will be no prejudice to Defendants by this amendment. Pursuant to NRCP 15's liberal standard, amendment is both proper and justified in this instance.

B. AMENDMENT IS NECESSARY UNDER NRCP 19

Denial of the amendment could result in prejudice to Defendants, as the proposed plaintiffs could still file a separate lawsuit at any time until June 19, 2022. The proposed plaintiffs are necessary parties under NRCP 19, and must be joined where feasible. NRCP 19(a). NRCP 19 requires joinder of parties where a "person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." NRCP 19(a)(1)(B(ii). Here, the proposed plaintiffs undoubtedly have interests in this action as they are heirs of the decedent. Precluding them from joining the action would potentially subject Defendants to a second lawsuit involving the same claims and set of facts, thus resulting in double or multiple obligations.

Amendment is therefore necessary to allow the proposed plaintiffs to join this action, avoid prejudice to Defendants, and conserve judicial resources.

CONCLUSION

Therefore, based on the foregoing, Plaintiff respectfully requests this Court Grant her Motion for Leave to File Second Amended Complaint.

Dated this 21st day of December 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett
Sean K. Claggett, Esq.
Nevada Bar No. 008407
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December 2021 I caused to be served a true and correct copy of the **PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED WRONGFUL DEATH COMPLAINT** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

VIA E-SERVICE ONLY: Dennis L. Kennedy, Esq. Joseph A. Liebman, Esq. BAILEY KENNEDY 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302 *Attorneys for R.J. Reynolds Tobacco Company, Quick Stop Market, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC D/B/A Silver Nugget Casino, and Jerry's Nugget*	**VIA E-SERVICE ONLY:** D. Lee Roberts, Jr., Esq. Phillip N. Smith, Jr., Esq. Daniela LaBounty, Esq. WEINBERG WHEELER HUDGINS GUNN & DIAL 6385 South Rainbow Boulevard, Ste 400 Las Vegas, Nevada 89118 *Attorneys for Philip Morris USA, Inc. and ASM Nationwide Corporation*
VIA E-SERVICE ONLY: Daniel F. Polsenberg, Esq. J. Christopher Jorgensen, Esq. LEWIS ROCA ROTHGERBER CHRISTIE 3993 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169 Email: dpolsenberg@lrrc.com cjorgensen@lrrc.com *Attorneys for Liggett Group, LLC*	**VIA E-SERVICE ONLY:** Kelly Anne Luther, Esq. KASOWITZ BENSON TORRES LLP 1441 Brickwell Avenue, Suite 1420 Miami, FL 33131 Email: kluther@kasowitz.com *Attorneys for Defendant Liggett Group, LLC*
VIA E-SERVICE ONLY: Valentin Leppert Esq. KING & SPALDING 1180 Peachtree Street Atlanta, GA 30309-3521 *Attorneys for R.J. Reynolds Tobacco Company, Quick Stop Market, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC D/B/A Silver Nugget Casino, and Jerry's Nugget*	**VIA E-SERVICE ONLY:** Ursula Marie Henninger, Esq. KING & SPALDING 300 S. Tryon Street Charlotte, North Carolina 28202 *Attorneys for R.J. Reynolds Tobacco Company, Quick Stop Market, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC D/B/A Silver Nugget Casino, and Jerry's Nugget*
VIA E-SERVICE ONLY: Spencer M. Diamond Esq. KING & SPALDING LLP 1180 Peachtree Street, N.E. Atlanta, GA 30309 *Attorneys for R.J. Reynolds Tobacco Company, Quick Stop Market, Joe's Bar, Inc., The Poker Palace, Silver Nugget Gaming, LLC D/B/A Silver Nugget Casino, and Jerry's Nugget*	**VIA E-SERVICE ONLY:** Katherine Heinz, Esq. SHOOK, HARDY AND BACON, LLP 2555 Grand Boulevard Kansas City, MO 64108 Email: lheinz@shb.com *Attorneys for Philip Morris USA, Inc.*

/s/: Moises Garcia
An Employee of CLAGGETT & SYKES LAW FIRM

EXHIBIT 1

ACOM
Sean K. Claggett, Esq.
Nevada Bar No. 008407
Matthew S. Granda, Esq.
Nevada Bar No. 012753
Micah S. Echols, Esq.
Nevada Bar No. 008437
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
(702) 655-3763 – Facsimile
sclaggett@claggettlaw.com
mgranda@claggettlaw.com
micah@claggettlaw.com

Kimberly L. Wald, Esq.
Nevada Bar. No. 15830
Michael A. Hersh, Esq.
Nevada Bar No. 15746
Fan Li, Esq.
Nevada Bar No. 15771
KELLEY | UUSTAL
500 North Federal Highway, Suite 200
Fort Lauderdale, FL 33301

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as an Individual, as Special Administrator of the Estate of NOREEN THOMPSON, NAVONA COLLISON, as an Individual, and RUSSELL THOMPSON, as an Individual, Plaintiffs, v. PHILIP MORRIS USA, INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN &	CASE NO. A-20-811091-C DEPT. NO. V **SECOND AMENDED COMPLAINT** **JURY TRIAL DEMAND**

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.

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

JURISDICTION, VENUE, AND PARTIES

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

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

3. Plaintiff, NAVONA COLLISON, is the surviving child of NOREEN THOMPSON (hereinafter "NAVONA"). Navona was at all times relevant to this litigation a resident of Clark County, Nevada. NAVONA is an heir to NOREEN's Estate.

4. Plaintiff, RUSSELL THOMPSON, is the surviving child of NOREEN THOMPSON (hereinafter "RUSSELL"). Russell was at all times relevant to this litigation a resident of Clark County, Nevada. RUSSELL is an heir to NOREEN's Estate.

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

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

7. R.J. REYNOLDS TOBACCO COMPANY is also the successor-by-merger to LORILLARD TOBACCO COMPANY (hereinafter "LORILLARD"), and is the successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION (n/k/a Brown & Williamson Holdings, Inc.) (hereinafter "BROWN & WILLIAMSON"), which is the successor-by-merger to the AMERICAN TOBACCO COMPANY (hereinafter "AMERICAN").

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

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

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

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

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

13. Plaintiff is informed and believes, and thereon alleges that Defendant, THE POKER PALACE, was and is a domestic corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Nevada. THE POKER PALACE owns and operates a casino that sells tobacco and cigarette products located at 2757 Las Vegas Blvd N. N. Las Vegas, NV 89030. THE POKER PALACE is a retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Decedent, NOREEN THOMPSON.

14. Plaintiff is informed and believes, and thereon alleges that Defendant, SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO (hereafter "SILVER NUGGET") was and is a domestic limited liability company authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Nevada. SILVER NUGGET owns and operates a casino that sells tobacco and cigarette products located at 650 S. Main Street, Las Vegas, NV 89191. SILVER NUGGET is a retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Decedent, NOREEN THOMPSON.

15. Plaintiff is informed and believes, and thereon alleges that Defendant, JERRY'S NUGGET, was and is a domestic corporation authorized to do business within this jurisdiction of Clark

County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Nevada. JERRY'S NUGGET owns and operates a casino that sells tobacco and cigarette products located at 7251 Amigo Street, Suite 210, Las Vegs NV 89119. JERRY'S NUGGET is a retailer of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to the public, including Decedent, NOREEN THOMPSON.

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

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

18. Plaintiff does not know the true names of Defendants Roe Business Entities XI through XX and sues said Defendants by fictitious names. Upon information and belief, each of the Defendants designated herein as Roe Business Entities XI through XX are predecessors-in-interest, successors-in-interest, and/or agencies otherwise in a joint venture with, and/or serving as an alter ego of, any and/or all Defendants named herein; and/or are entities responsible for the supervision of the individually named Defendants at the time of the events and circumstances alleged herein; and/or are entities employed by and/or otherwise directing the individual Defendants in the scope and course of their responsibilities at the time of the events and circumstances alleged herein; and/or are entities

otherwise contributing in any way to the acts complained of and the damages alleged to have been suffered by the Plaintiff herein. Upon information and belief, each of the Defendants designated as a Roe Business Entity is in some manner negligently, vicariously, and/or statutorily responsible for the events alleged in this Complaint and actually, proximately, and/or legally caused damages to Plaintiff. Plaintiff will seek leave of the Court to amend this Complaint to substitute the true and correct names for these fictitious names upon learning that information.

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

FACTS COMMON TO ALL CLAIMS

20. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

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

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

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

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

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

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

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

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

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

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

31. At all times material, Defendants purposefully and intentionally designed cigarettes to be highly addictive. Defendants added ingredients such as ammonia and diammonium-phosphate to "free-base" nicotine and manipulated levels of nicotine and pH in smoke to make cigarettes more addictive, better tasting, and easier to inhale. Defendants also deliberately manipulated and/or added compounds in cigarettes such as arsenic, polonium-210, tar, methane, methanol, carbon monoxide,

nitrosamines, butane, formaldehyde, tar, carcinogens, and other deadly and poisonous compounds to cigarettes.

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

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

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

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

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

a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as COPD, which includes emphysema and chronic bronchitis, laryngeal cancer, and lung cancer, including squamous cell carcinoma, small cell carcinoma, adenocarcinoma, and large cell carcinoma;

b. Nicotine in cigarettes is addictive;

c. Defendants placed cigarettes on the market that were defective and unreasonably dangerous;

d. Defendants concealed or omitted material information not otherwise known or available, knowing that the material was false and misleading, or failed to disclose a material fact concerning the health effects or addictive nature of smoking cigarettes, or both;

e. Defendants entered into an agreement to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment;

f. Defendants sold or supplied cigarettes that were defective;

g. Defendants were negligent;

h. Children and teenagers are more likely to become addicted to cigarettes if they begin smoking at an early age;

i. Continued and frequent use of cigarettes highly increases one's chances of becoming, and remaining, addicted;

j. Continued and frequent use of cigarettes highly increases one's chances of developing serious illness and death;

k. It is extremely difficult to quit smoking;

l. "Many, but not most, people who would like to stop smoking are able to do so" (Concealed Document, 1982);

m. "Defendants cannot defend continued smoking as "free choice" if the person is addicted" (Concealed Document 1980), but nevertheless did continue to defend smoking as a matter of "free choice";

n. It is possible to develop safer cigarettes free of nicotine, carcinogens, and other deadly and poisonous compounds;

o. "The thing [Defendants] sell most is nicotine" (Concealed Document 1980);

p. Filtered, low tar, low nicotine, and "light" cigarettes are more dangerous than "regular" cigarettes;

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

r. "Without the nicotine, the cigarette market would collapse, and [Defendants] would all lose their jobs and their consulting fees" (Concealed Document 1977);

s. "Carcinogens are found in practically every class of compounds in smoke" (Concealed Document 1961);

t. "Cigarettes have certain unattractive side effects . . . they cause lung cancer" (Concealed Document 1963).

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

Historical Allegations of Defendants Unlawful Conduct Giving Rise to the Lawsuit

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

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

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

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

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

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

44. In addition to scientists, Defendants themselves began to conduct similar research. By February 2, 1953, Defendants had concrete proof that cigarette smoking increased the risk of lung cancer. A previously secret and concealed document authored by Defendant R.J. Reynolds, states:

"Studies of clinical data tend to confirm the relationship between heavy smoking and prolonged smoking and incidence of cancer of the lung."

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

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

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

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