

In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

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

Respondents,

and

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

Real Parties in Interest

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Case No. _____

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

**PHILIP MORRIS USA INC.'S PETITION FOR
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX
VOL. 24**

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

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

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

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

5 461. Answering Paragraph 461, Quick Stop denies the allegations.

6 **FOURTEENTH CLAIM FOR RELIEF**

7 **(STRICT PRODUCT LIABILITY)**

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

11 462. Answering Paragraph 462, Quick Stop realleges and incorporates by reference the
12 responses to the allegations of paragraphs 1 through 461 of the Second Amended Complaint as if
13 fully set forth herein.

14 463. Answering Paragraph 463, the allegations contain legal conclusions rather than
15 factual allegations, and therefore, require no response. To the extent a response is required, Quick
16 Stop denies the allegations.

17 464. Answering Paragraph 464, Quick Stop admits that it is in the business of selling
18 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

19 465. Answering Paragraph 465, Quick Stop admits that it is in the business of selling
20 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

21 466. Answering Paragraph 466, Quick Stop admits that it is in the business of selling
22 cigarettes. Quick Stop denies all remaining or inconsistent allegations.

23 467. Paragraph 467 contains legal conclusions rather than factual allegations, and therefore
24 requires no response. To the extent a response is required, Quick Stop denies the allegations.

25 468. Paragraph 468 contains legal conclusions rather than factual allegations, and therefore
26 requires no response. To the extent a response is required, Quick Stop denies the allegations.

27 469. Paragraph 469 contains legal conclusions rather than factual allegations, and therefore
28 requires no response. To the extent a response is required, Quick Stop denies the allegations.

470. Paragraph 470 contains legal conclusions rather than factual allegations, and therefore

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

2 471. Paragraph 471 contains legal conclusions rather than factual allegations, and therefore
3 requires no response. To the extent a response is required, Quick Stop denies the allegations.

4 472. Paragraph 472 contains legal conclusions rather than factual allegations, and therefore
5 requires no response. To the extent a response is required, Quick Stop denies the allegations.

6 473. Answering Paragraph 473, Quick Stop denies the allegations.

7 474. Answering Paragraph 474, Quick Stop denies the allegations.

8 475. Answering Paragraph 475, Quick Stop denies the allegations.

9 476. Answering Paragraph 476, Quick Stop denies the allegations.

10 Quick Stop denies that Plaintiffs are entitled to judgement against, or any relief whatsoever
11 from, Quick Stop in this action and denies any remaining allegations, including, but not limited to,
12 those contained in the unnumbered paragraph following paragraph 476 beginning "WHEREFORE."

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

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

16 **SECOND AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims are barred, in whole or in part, by any applicable statutes of limitations and
18 repose.

19 **THIRD AFFIRMATIVE DEFENSE**

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

22 **FOURTH AFFIRMATIVE DEFENSE**

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

25 **FIFTH AFFIRMATIVE DEFENSE**

26 Any injuries allegedly sustained by Plaintiffs and/or Noreen Thompson were produced, if at
27 all, by an intervening or superseding cause or causes, and any alleged act or omission of Quick Stop
28 was not the proximate or competent producing cause of Plaintiffs' and/or Noreen Thompson's

1 alleged injuries or damages. To the extent Plaintiffs' and/or Noreen Thompson's alleged injuries
2 were caused by the use of tobacco products, the proximate cause of such alleged injuries was Noreen
3 Thompson's choice to use tobacco products.

4 **SIXTH AFFIRMATIVE DEFENSE**

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

9 **SEVENTH AFFIRMATIVE DEFENSE**

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

11 **EIGHTH AFFIRMATIVE DEFENSE**

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

14 **NINTH AFFIRMATIVE DEFENSE**

15 Plaintiffs' claims are barred, in whole or in part, by settlement or accord and satisfaction of
16 their claims.

17 **TENTH AFFIRMATIVE DEFENSE**

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

20 **ELEVENTH AFFIRMATIVE DEFENSE**

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

23 **TWELFTH AFFIRMATIVE DEFENSE**

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

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 If any defects existed with respect to tobacco products sold by Quick Stop, any such alleged

1 defects were open and obvious. Accordingly, Plaintiffs cannot recover herein against
2 Quick Stop.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

28

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' and/or Noreen Thompson's comparative negligence, fault, responsibility, or want of due care, including Noreen Thompson's choice to smoke. Plaintiffs are, therefore, barred from any recovery, or any recoverable damages must be reduced in proportion to the amount of negligence attributable to Plaintiffs and/or Noreen Thompson.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs lack either standing or capacity, or both, to bring some or all of the claims alleged in the Second Amended Complaint.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages against Quick Stop cannot be sustained because an award of punitive damages in this case, combined with any prior, contemporaneous or subsequent judgments or settlements against Quick Stop that include punitive damages arising out of the same marketing, sale or use of Defendants' tobacco products, would be impermissible multiple punishment in violation of the due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the comparable provisions of the Nevada Constitution.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages under Nevada law by a jury that (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award; (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part on the basis of invidiously discriminatory characteristics, including without limitation the residence, wealth, and corporate status of Quick Stop; (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible; (5) is not properly instructed regarding Plaintiffs' burden of proof with respect to each and every element of a claim for punitive damages; and (6) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of

1 constitutionally adequate and objective standards, would violate Quick Stop's due process and equal
2 protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States
3 Constitution and applicable provisions of the Nevada Constitution, and would be improper under the
4 common law and public policy of Nevada.

5 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

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

12 **FORTIETH AFFIRMATIVE DEFENSE**

13 In the event Plaintiffs establish liability on the part of Quick Stop, which liability
14 Quick Stop specifically denies, any alleged injuries or damages were caused in whole or in part by
15 the negligence of Plaintiffs and/or Noreen Thompson, thereby barring Plaintiff's recovery in whole
16 or in part.

17 **FORTY-FIRST AFFIRMATIVE DEFENSE**

18 Plaintiffs' claim for punitive damages against Quick Stop cannot be sustained because NRS
19 42.005(2) impermissibly singles out and exempts products liability cases from the limits otherwise
20 imposed on the recovery of punitive damages, leaving their assessment to the standardless discretion
21 of the finder of fact. Further, the statute and Nevada cases decided under it do not comply with the
22 minimum standards established by the United States Supreme Court in this evolving area of the law,
23 and they improperly permit multiple awards of punitive damages for the same alleged act or acts,
24 without regard to where the injury occurred.

25 **FORTY-SECOND AFFIRMATIVE DEFENSE**

26 Plaintiffs' claim for punitive damages against Quick Stop cannot be sustained because an
27 award of punitive damages under Nevada law, without a bifurcated trial, would violate
28 Quick Stop's right to equal protection and due process under the Fifth and Fourteenth Amendments

1 to the United States Constitution and under Article 1, Section 8 of the Nevada Constitution.

2 **FORTY-THIRD AFFIRMATIVE DEFENSE**

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

5 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

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

10 WHEREFORE, having fully answered Plaintiffs' Second Amended Complaint, Quick Stop
11 prays for judgment against Plaintiffs as follows:

12 1. That Plaintiffs' claims for relief be dismissed with prejudice and that Plaintiffs take
13 nothing thereby;

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

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

17 **JURY DEMAND**

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

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28 ///

1 DATED this 31st day of January, 2022.

2 BAILEY ♦ KENNEDY

3 By: /s/ Joseph A. Liebman

4 DENNIS L. KENNEDY

5 JOSEPH A. LIEBMAN

6 KING & SPALDING

7 VALENTIN LEPPERT

8 (ADMITTED PRO HAC VICE)

9 SPENCER MILES DIAMOND

10 (ADMITTED PRO HAC VICE)

11 KING & SPALDING

12 URSULA MARIE HENNINGER

13 (ADMITTED PRO HAC VICE)

14 *Attorneys for Defendants*

15 R.J. REYNOLDS TOBACCO COMPANY,

16 QUICK STOP MARKET, LLC, JOE'S

17 BAR, INC., THE POKER PALACE,

18 SILVER NUGGET GAMING, LLC d/b/a

19 SILVER NUGGET CASINO, and

20 JERRY'S NUGGET

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 31st day of January, 2021, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT QUICK STOP MARKET, LLC TO PLAINTIFFS' SECOND AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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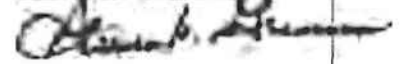
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INC., THE POKER PALACE, SILVER
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NUGGET CASINO, and JERRY'S NUGGET

DISTRICT COURT

CLARK COUNTY, NEVADA

DOLLY ROWAN, as Special Administrator of
the Estate of NOREEN THOMPSON, NAVONA
COLLISON, as an Individual, and RUSSELL
THOMPSON, as an Individual.

Plaintiff,

vs.

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

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

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; JOES BAR, INC., a domestic corporation; THE POKER PALACE, a domestic corporation; SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, a domestic limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES 1-X; and ROE BUSINESS ENTITIES XI-XX. inclusive,

Defendants.

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

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

JURISDICTION, VENUE, AND PARTIES

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

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

5. Answering Paragraph 5, Poker Palace is informed and believes that Philip Morris USA, Inc. is a corporation organized in Virginia and is authorized to do business in Clark County, Nevada. Poker Palace is without knowledge or information sufficient to form a belief as to the truth

1 of the remaining allegations contained in said paragraph, and therefore denies them on that basis.

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

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

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

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

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

21 11. Answering Paragraph 11, Poker Palace is without knowledge or information
22 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore
23 denies them on that basis.

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

27 13. Answering Paragraph 13, Poker Palace admits that it is a Nevada corporation. Poker
28 Palace further admits that it sells tobacco products, including cigarettes, and is licensed with the state

1 of Nevada to do so. Poker Palace is without knowledge or information sufficient to form a belief as
2 to the truth of any remaining allegations contained in said paragraph, and therefore denies them on
3 that basis.

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

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

10 16-19. Answering Paragraphs 16-19, the allegations contain legal conclusions rather than
11 factual allegations, and therefore, require no response. To the extent a response is required, Poker
12 Palace denies the allegations.

13 **FACTS COMMON TO ALL CLAIMS**

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

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

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

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

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

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

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

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

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

29. Answering Paragraph 29, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

30. Answering Paragraph 30, Poker Palace is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them on that basis.

31-37. Paragraphs 31-37 contain no allegations against Poker Palace; to the extent this paragraph is attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

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

38-107. Paragraphs 38 through 107 contain no allegations against Poker Palace; to the extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

Conspiratorial Involvement by Defendants' Lawyers

108-116. Paragraphs 108 through 116 contain no allegations against Poker Palace; to the extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those

1 allegations are denied.

2 **FIRST CLAIM FOR RELIEF**

3 **(WRONGFUL DEATH - NEGLIGENCE)**

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

6 117. Answering Paragraph 117, Poker Palace realleges and incorporates by reference the
7 responses to the allegations of paragraphs 1 through 116 of the Second Amended Complaint as if
8 fully set forth herein.

9 118-140. Paragraphs 118 through 140 contain no allegations against Poker Palace; to the
10 extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those
11 allegations are denied.

12 **SECOND CLAIM FOR RELIEF**

13 **(NEGLIGENCE)**

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

16 141. Answering Paragraph 141, Poker Palace realleges and incorporates by reference the
17 responses to the allegations of paragraphs 1 through 140 of the Second Amended Complaint as if
18 fully set forth herein.

19 142-158. Paragraphs 142 through 158 contain no allegations against Poker Palace; to the
20 extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those
21 allegations are denied.

22 **THIRD CLAIM FOR RELIEF**

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

24 **Dolly Rowan, as Personal Representative of the Estate of Noreen Thompson, and**
25 **Dolly Rowan, Navona Collison, and Russell Thompson, as Heirs of Noreen Thompson, Against**
Defendants R.J. Reynolds and Liggett

26 159. Answering Paragraph 159, Poker Palace realleges and incorporates by reference the
27 responses to the allegations of paragraphs 1 through 158 of the Second Amended Complaint as if
28 fully set forth herein.

1 160-184. Paragraphs 160 through 184 contain no allegations against Poker Palace; to the
2 extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those
3 allegations are denied.

4 **FOURTH CLAIM FOR RELIEF**
5 **(STRICT PRODUCTS LIABILITY)**

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

8 185. Answering Paragraph 185, Poker Palace realleges and incorporates by reference the
9 responses to the allegations of paragraphs 1 through 184 of the Second Amended Complaint as if
10 fully set forth herein.

11 186-203. Paragraphs 186 through 203 contain no allegations against Poker Palace; to the
12 extent these paragraphs are attempting to implicitly allege any liability against Poker Palace, those
13 allegations are denied.

14 **FIFTH CLAIM FOR RELIEF**
15 **(WRONGFUL DEATH – FRAUDULENT MISREPRESENTATION)**

16 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and**
17 **Dolly Rowan, Navona Collison, and Russell Thompson, as Heirs of Noreen Thompson Against**
18 **Defendants R.J. Reynolds and Liggett**

19 204. Answering Paragraph 204, Poker Palace realleges and incorporates by reference the
20 responses to the allegations of paragraphs 1 through 203 of the Second Amended Complaint as if
21 fully set forth herein.

22 205–242. Paragraphs 205 through 242 contain no allegations against Poker Palace; to the
23 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those
24 allegations are denied.

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SIXTH CLAIM FOR RELIEF

(FRAUDULENT MISREPRESENTATION)

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

243. Answering Paragraph 243, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 242 of the Second Amended Complaint as if fully set forth herein.

244-274. Paragraphs 244 through 274 contain no allegations against Poker Palace; to the extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

SEVENTH CLAIM FOR RELIEF

(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)

**Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and
Dolly Rowan, Navona Collison, and Russell Thompson, as Heirs of Noreen Thompson Against
Defendants R.J. Reynolds and Liggett**

275. Answering Paragraph 275, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 274 of the Second Amended Complaint as if fully set forth herein.

276-313. Paragraphs 276 through 313 contain no allegations against Poker Palace; to the extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those allegations are denied.

EIGHTH CLAIM FOR RELIEF

(FRAUDULENT CONCEALMENT)

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

314. Answering Paragraph 314, Poker Palace realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 313 of the Second Amended Complaint as if fully set forth herein.

315-347. Paragraphs 315 through 347 contain no allegations against Poker Palace; to the

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

3 **NINTH CLAIM FOR RELIEF**

4 **(WRONGFUL DEATH – CIVIL CONSPIRACY)**

5 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan,**
6 **Navona Collison, and Russell Thompson, as Heirs of Noreen Thompson Against Defendants R.J.**
Reynolds, Liggett and Philip Morris

7 348. Answering Paragraph 348, Poker Palace realleges and incorporates by reference the
8 responses to the allegations of paragraphs 1 through 347 of the Second Amended Complaint as if
9 fully set forth herein.

10 349-374. Paragraphs 349 through 374 contain no allegations against Poker Palace; to the
11 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those
12 allegations are denied.

13 **TENTH CLAIM FOR RELIEF**

14 **(CIVIL CONSPIRACY)**

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

17 375. Answering Paragraph 375, Poker Palace realleges and incorporates by reference the
18 responses to the allegations of paragraphs 1 through 374 of the Second Amended Complaint as if
19 fully set forth herein.

20 376-394. Paragraphs 376 through 394 contain no allegations against Poker Palace; to the
21 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those
22 allegations are denied.

23 **ELEVENTH CLAIM FOR RELIEF**

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

25 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan,**
26 **Navona Collison, and Russell Thompson, as Heirs of Noreen Thompson Against Defendants**
R.J. Reynolds, Liggett and Philip Morris

27 395. Answering Paragraph 395, Poker Palace realleges and incorporates by reference the
28 responses to the allegations of paragraphs 1 through 394 of the Second Amended Complaint as if

1 fully set forth herein.

2 396-420. Paragraphs 396 through 420 contain no allegations against Poker Palace; to the
3 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those
4 allegations are denied.

5 **TWELFTH CLAIM FOR RELIEF**

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

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

9 421. Answering Paragraph 421, Poker Palace realleges and incorporates by reference the
10 responses to the allegations of paragraphs 1 through 420 of the Second Amended Complaint as if
11 fully set forth herein.

12 422-439. Paragraphs 422 through 439 contain no allegations against Poker Palace; to the
13 extent those paragraphs are attempting to implicitly allege any liability against Poker Palace, those
14 allegations are denied.

15 **THIRTEENTH CLAIM FOR RELIEF**

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

17 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan,**
18 **Navona Collison, and Russell Thompson, as Heirs of Noreen Thompson Against Defendants,**
19 **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

20 440. Answering Paragraph 440, Poker Palace realleges and incorporates by reference the
21 responses to the allegations of paragraphs 1 through 439 of the Second Amended Complaint as if
22 fully set forth herein.

23 441. Answering Paragraph 441, the allegations contain legal conclusions rather than
24 factual allegations, and therefore, require no response. To the extent a response is required, Poker
25 Palace denies the allegations.

26 442-444. Answering Paragraphs 442-444, Poker Palace is without knowledge or
27 information sufficient to form a belief as to the truth of the allegations contained in said paragraph,
28 and therefore denies them on that basis.

1 445. Answering Paragraph 445, the allegations contain legal conclusions rather than
2 factual allegations, and therefore, require no response. To the extent a response is required, Poker
3 Palace denies the allegations.

4 446. Answering Paragraph 446, Poker Palace is without knowledge or information
5 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore
6 denies them on that basis.

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

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

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

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

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

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

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

22 454. Paragraph 454 contains legal conclusions rather than factual allegations, and therefore
23 requires no response. To the extent a response is required, Poker Palace denies the allegations.

24 455. Paragraph 455 contains legal conclusions rather than factual allegations, and therefore
25 requires no response. To the extent a response is required, Poker Palace denies the allegations.

26 456. Paragraph 456 contains legal conclusions rather than factual allegations, and therefore
27 requires no response. To the extent a response is required, Poker Palace denies the allegations.

28 457. Paragraph 457 contains legal conclusions rather than factual allegations, and therefore