

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

**PHILIP MORRIS USA INC.'S PETITION FOR  
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX  
VOL. 25**

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1 requires no response. To the extent a response is required, Poker Palace denies the allegations.

2 458. Answering Paragraph 458, Poker Palace denies the allegations.

3 459. Answering Paragraph 459, Poker Palace denies the allegations.

4 460. Answering Paragraph 460, Poker Palace denies the allegations.

5 461. Answering Paragraph 461, Poker Palace 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, Poker Palace 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, Poker  
16 Palace denies the allegations.

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

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

21 466. Answering Paragraph 466, Poker Palace admits that it is in the business of selling  
22 cigarettes. Poker Palace 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, Poker Palace 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, Poker Palace 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, Poker Palace 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, Poker Palace 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, Poker Palace 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, Poker Palace denies the allegations.

6 473. Answering Paragraph 473, Poker Palace denies the allegations.

7 474. Answering Paragraph 474, Poker Palace denies the allegations.

8 475. Answering Paragraph 475, Poker Palace denies the allegations.

9 476. Answering Paragraph 476, Poker Palace denies the allegations.

10 Poker Palace denies that Plaintiffs are entitled to judgement against, or any relief whatsoever  
11 from, Poker Palace 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 Poker  
28 Palace was not the proximate or competent producing cause of Plaintiffs' and/or Noreen



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

#### **SIXTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTH AFFIRMATIVE DEFENSE**

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

#### **NINTH AFFIRMATIVE DEFENSE**

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

#### **TENTH AFFIRMATIVE DEFENSE**

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

#### **ELEVENTH AFFIRMATIVE DEFENSE**

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

#### **TWELFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

If any defects existed with respect to tobacco products sold by Poker Palace, any such alleged

1 defects were open and obvious. Accordingly, Plaintiffs cannot recover herein against  
2 Poker Palace.

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 Poker Palace is entitled to set-off, should any damages be awarded against it, in the amount  
18 of damages or settlement amounts recovered by Plaintiffs and/or Noreen Thompson with respect to  
19 the same alleged injuries. Poker Palace 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 Poker Palace 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**

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

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Poker Palace 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. Poker Palace 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 Poker Palace 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**

Poker Palace denies liability for any award of punitive damages not based solely on the specific allegations of Poker Palace's conduct made the subject of this lawsuit and that allegedly affected Plaintiffs and/or Noreen Thompson because consideration of other conduct would subject Poker Palace 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 Poker Palace was undertaken in good faith and for a valid business purpose.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims for punitive damages against Poker Palace 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 Poker Palace's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Poker Palace'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 Poker Palace, 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 Poker Palace's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Poker Palace'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 Poker Palace cannot be sustained because an award of punitive damages in this case, combined with any prior, contemporaneous or subsequent judgments or settlements against Poker Palace 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 Poker Palace'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 Poker Palace; (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 Poker Palace's due process and  
2 equal 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, Poker Palace 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 Poker Palace, which liability  
14 Poker Palace 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 Poker Palace 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 Poker Palace cannot be sustained because an  
27 award of punitive damages under Nevada law, without a bifurcated trial, would violate  
28 Poker Palace'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 Poker Palace are  
4 incorporated herein to the extent they do not conflict with Poker Palace's affirmative defenses.

5 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

6 Poker Palace 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, Poker Palace  
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 Poker Palace demands a trial by jury of all claims triable as of right by jury.

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DATED this 31<sup>st</sup> day of January, 2022.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

KING & SPALDING

VALENTIN LEPPERT

(ADMITTED PRO HAC VICE)

SPENCER MILES DIAMOND

(ADMITTED PRO HAC VICE)

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URSULA MARIE HENNINGER

(ADMITTED PRO HAC VICE)

*Attorneys for Defendants*

R.J. 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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 31<sup>st</sup> day of January, 2022, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT POKER PALACE 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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/s/ Sharon L. Murnane  
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INC., THE POKER PALACE, SILVER

NUGGET GAMING, LLC d/b/a SILVER

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  
JOE'S BAR, INC. 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 JOE'S BAR, INC. TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant Joe's Bar, Inc. ("Joe's Bar"), 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, Joe's Bar states that the allegations contain legal conclusions rather than factual allegations, and therefore, require no response. To the extent the allegations require a response, Joe's Bar denies the allegations to the extent they contradict or are inconsistent with the law.

2-4. Answering Paragraphs 2-4, Joe's Bar 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, Joe's Bar 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. Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of the

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

2         6.       Answering Paragraph 6, Joe's Bar 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. Joe's Bar is without knowledge or information sufficient to form a belief as to the truth of  
6 the remaining allegations contained in said paragraph, and therefore denies them on that basis.

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

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

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

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

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

24        12.      Answering Paragraph 12, Joe's Bar admits that it is a Nevada corporation. Joe's Bar  
25 further admits that it sells tobacco products, including cigarettes, and is licensed with the state of  
26 Nevada to do so. Joe's Bar is without knowledge or information sufficient to form a belief as to the  
27 truth of any remaining allegations contained in said paragraph, and therefore denies them on that  
28 basis.

1           13.     Answering Paragraph 13, Joe's Bar is without knowledge or information sufficient to  
2 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
3 on that basis.

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

7           15.     Answering Paragraph 15, Joe's Bar is without knowledge or information sufficient to  
8 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
9 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, Joe's  
12 Bar denies the allegations.

13                                   **FACTS COMMON TO ALL CLAIMS**

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

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

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

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

1           25.     Answering Paragraph 25, Joe's Bar is without knowledge or information sufficient to  
2 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
3 on that basis.

4           26.     Answering Paragraph 26, Joe's Bar is without knowledge or information sufficient to  
5 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
6 on that basis.

7           27.     Answering Paragraph 27, Joe's Bar is without knowledge or information sufficient to  
8 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
9 on that basis.

10          28.     Answering Paragraph 28, Joe's Bar is without knowledge or information sufficient to  
11 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
12 on that basis.

13          29.     Answering Paragraph 29, Joe's Bar is without knowledge or information sufficient to  
14 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
15 on that basis.

16          30.     Answering Paragraph 30, Joe's Bar is without knowledge or information sufficient to  
17 form a belief as to the truth of the allegations contained in said paragraph, and therefore denies them  
18 on that basis.

19          31-37.   Paragraphs 31-37 contain no allegations against Joe's Bar; to the extent this  
20 paragraph is attempting to implicitly allege any liability against Joe's Bar, those allegations are  
21 denied.

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

23          38-107.   Paragraphs 38 through 107 contain no allegations against Joe's Bar; to the extent  
24 these paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations  
25 are denied.

26                   **Conspiratorial Involvement by Defendants' Lawyers**

27          108-116.   Paragraphs 108 through 116 contain no allegations against Joe's Bar; to the  
28 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, 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, Joe's Bar 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 Joe's Bar; to the  
10 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, 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, Joe's Bar 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 Joe's Bar; to the  
20 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, 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, Joe's Bar 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 Joe's Bar; to the  
2 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, 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, Joe's Bar 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 Joe's Bar; to the  
12 extent these paragraphs are attempting to implicitly allege any liability against Joe's Bar, 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**  
**Defendants R.J. Reynolds and Liggett**

18 204. Answering Paragraph 204, Joe's Bar realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 203 of the Second Amended Complaint as if  
20 fully set forth herein.

21 205-242. Paragraphs 205 through 242 contain no allegations against Joe's Bar; to the  
22 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
23 allegations are denied.

24 **SIXTH CLAIM FOR RELIEF**

25 **(FRAUDULENT MISREPRESENTATION)**

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

28 243. Answering Paragraph 243, Joe's Bar realleges and incorporates by reference the

1 responses to the allegations of paragraphs 1 through 242 of the Second Amended Complaint as if  
2 fully set forth herein.

3 244-274. Paragraphs 244 through 274 contain no allegations against Joe's Bar; to the  
4 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
5 allegations are denied.

6 **SEVENTH CLAIM FOR RELIEF**

7 **(WRONGFUL DEATH – FRAUDULENT CONCEALMENT)**

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

11 275. Answering Paragraph 275, Joe's Bar realleges and incorporates by reference the  
12 responses to the allegations of paragraphs 1 through 274 of the Second Amended Complaint as if  
13 fully set forth herein.

14 276-313. Paragraphs 276 through 313 contain no allegations against Joe's Bar; to the  
15 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
16 allegations are denied.

17 **EIGHTH CLAIM FOR RELIEF**

18 **(FRAUDULENT CONCEALMENT)**

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

21 314. Answering Paragraph 314, Joe's Bar realleges and incorporates by reference the  
22 responses to the allegations of paragraphs 1 through 313 of the Second Amended Complaint as if  
23 fully set forth herein.

24 315-347. Paragraphs 315 through 347 contain no allegations against Joe's Bar; to the  
25 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
26 allegations are denied.

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**NINTH CLAIM FOR RELIEF**

**(WRONGFUL DEATH – CIVIL CONSPIRACY)**

**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, Liggett and Philip Morris**

348. Answering Paragraph 348, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 347 of the Second Amended Complaint as if fully set forth herein.

349-374. Paragraphs 349 through 374 contain no allegations against Joe's Bar; to the extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations are denied.

**TENTH CLAIM FOR RELIEF**

**(CIVIL CONSPIRACY)**

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

375. Answering Paragraph 375, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 374 of the Second Amended Complaint as if fully set forth herein.

376-394. Paragraphs 376 through 394 contain no allegations against Joe's Bar; to the extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those allegations are denied.

**ELEVENTH CLAIM FOR RELIEF**

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

**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, Liggett and Philip Morris**

395. Answering Paragraph 395, Joe's Bar realleges and incorporates by reference the responses to the allegations of paragraphs 1 through 394 of the Second Amended Complaint as if fully set forth herein.

396-420. Paragraphs 396 through 420 contain no allegations against Joe's Bar; to the

1 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
2 allegations are denied.

3 **TWELFTH CLAIM FOR RELIEF**

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

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

7 421. Answering Paragraph 421, Joe's Bar realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 420 of the Second Amended Complaint as if  
9 fully set forth herein.

10 422-439. Paragraphs 422 through 439 contain no allegations against Joe's Bar; to the  
11 extent those paragraphs are attempting to implicitly allege any liability against Joe's Bar, those  
12 allegations are denied.

13 **THIRTEENTH CLAIM FOR RELIEF**

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

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

18 440. Answering Paragraph 440, Joe's Bar realleges and incorporates by reference the  
19 responses to the allegations of paragraphs 1 through 439 of the Second Amended Complaint as if  
20 fully set forth herein.

21 441. Answering Paragraph 441, the allegations contain legal conclusions rather than  
22 factual allegations, and therefore, require no response. To the extent a response is required, Joe's  
23 Bar denies the allegations.

24 442-444. Answering Paragraphs 442-444, Joe's Bar is without knowledge or  
25 information sufficient to form a belief as to the truth of the allegations contained in said paragraph,  
26 and therefore denies them on that basis.

27 445. Answering Paragraph 445, the allegations contain legal conclusions rather than  
28 factual allegations, and therefore, require no response. To the extent a response is required, Joe's

1 Bar denies the allegations.

2 446. Answering Paragraph 446, Joe's Bar is without knowledge or information sufficient  
3 to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies  
4 them on that basis.

5 447. Answering Paragraph 447, the allegations contain legal conclusions rather than  
6 factual allegations, and therefore, require no response. To the extent a response is required, Joe's  
7 Bar denies the allegations.

8 448. Answering Paragraph 448, Joe's Bar admits that it is in the business of selling  
9 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

10 449. Answering Paragraph 449, Joe's Bar admits that it is in the business of selling  
11 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

12 450. Answering Paragraph 450, Joe's Bar admits that it is in the business of selling  
13 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

14 451. Paragraph 451 contains legal conclusions rather than factual allegations, and therefore  
15 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

16 452. Paragraph 452 contains legal conclusions rather than factual allegations, and therefore  
17 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

18 453. Paragraph 453 contains legal conclusions rather than factual allegations, and therefore  
19 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

20 454. Paragraph 454 contains legal conclusions rather than factual allegations, and therefore  
21 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

22 455. Paragraph 455 contains legal conclusions rather than factual allegations, and therefore  
23 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

24 456. Paragraph 456 contains legal conclusions rather than factual allegations, and therefore  
25 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

26 457. Paragraph 457 contains legal conclusions rather than factual allegations, and therefore  
27 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

28 458. Answering Paragraph 458, Joe's Bar denies the allegations.