

In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

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

Respondents,

and

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

Real Parties in Interest

Electronically Filed  
Jun 02 2022 09:54 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

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

**PHILIP MORRIS USA INC.'S PETITION FOR  
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX  
VOL. 26**

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**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

1 459. Answering Paragraph 459, Joe's Bar denies the allegations.

2 460. Answering Paragraph 460, Joe's Bar denies the allegations.

3 461. Answering Paragraph 461, Joe's Bar denies the allegations.

4 **FOURTEENTH CLAIM FOR RELIEF**

5 **(STRICT PRODUCT LIABILITY)**

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

9 462. Answering Paragraph 462, Joe's Bar realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 461 of the Second Amended Complaint as if  
11 fully set forth herein.

12 463. Answering Paragraph 463, the allegations contain legal conclusions rather than  
13 factual allegations, and therefore, require no response. To the extent a response is required, Joe's  
14 Bar denies the allegations.

15 464. Answering Paragraph 464, Joe's Bar admits that it is in the business of selling  
16 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

17 465. Answering Paragraph 465, Joe's Bar admits that it is in the business of selling  
18 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

19 466. Answering Paragraph 466, Joe's Bar admits that it is in the business of selling  
20 cigarettes. Joe's Bar denies all remaining or inconsistent allegations.

21 467. Paragraph 467 contains legal conclusions rather than factual allegations, and therefore  
22 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

23 468. Paragraph 468 contains legal conclusions rather than factual allegations, and therefore  
24 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

25 469. Paragraph 469 contains legal conclusions rather than factual allegations, and therefore  
26 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

27 470. Paragraph 470 contains legal conclusions rather than factual allegations, and therefore  
28 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

471. Paragraph 471 contains legal conclusions rather than factual allegations, and therefore



1 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

2 472. Paragraph 472 contains legal conclusions rather than factual allegations, and therefore  
3 requires no response. To the extent a response is required, Joe's Bar denies the allegations.

4 473. Answering Paragraph 473, Joe's Bar denies the allegations.

5 474. Answering Paragraph 474, Joe's Bar denies the allegations.

6 475. Answering Paragraph 475, Joe's Bar denies the allegations.

7 476. Answering Paragraph 476, Joe's Bar denies the allegations.

8 Joe's Bar denies that Plaintiffs are entitled to judgement against, or any relief whatsoever  
9 from, Joe's Bar in this action and denies any remaining allegations, including, but not limited to,  
10 those contained in the unnumbered paragraph following paragraph 476 beginning "WHEREFORE."

11 **AFFIRMATIVE DEFENSES**

12 **FIRST AFFIRMATIVE DEFENSE**

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

14 **SECOND AFFIRMATIVE DEFENSE**

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

17 **THIRD AFFIRMATIVE DEFENSE**

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

20 **FOURTH AFFIRMATIVE DEFENSE**

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

23 **FIFTH AFFIRMATIVE DEFENSE**

24 Any injuries allegedly sustained by Plaintiffs and/or Noreen Thompson were produced, if at  
25 all, by an intervening or superseding cause or causes, and any alleged act or omission of Joe's Bar  
26 was not the proximate or competent producing cause of Plaintiffs' and/or Noreen Thompson's  
27 alleged injuries or damages. To the extent Plaintiffs' and/or Noreen Thompson's alleged injuries  
28 were caused by the use of tobacco products, the proximate cause of such alleged injuries was Noreen



1 Thompson's choice to use tobacco products.

2 **SIXTH AFFIRMATIVE DEFENSE**

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

7 **SEVENTH AFFIRMATIVE DEFENSE**

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

9 **EIGHTH AFFIRMATIVE DEFENSE**

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

12 **NINTH AFFIRMATIVE DEFENSE**

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

15 **TENTH AFFIRMATIVE DEFENSE**

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

18 **ELEVENTH AFFIRMATIVE DEFENSE**

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

21 **TWELFTH AFFIRMATIVE DEFENSE**

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

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 If any defects existed with respect to tobacco products sold by Joe's Bar, any such alleged  
27 defects were open and obvious. Accordingly, Plaintiffs cannot recover herein against  
28 Joe's Bar.

**FOURTEENTH AFFIRMATIVE DEFENSE**

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

**FIFTEENTH AFFIRMATIVE DEFENSE**

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

**SIXTEENTH AFFIRMATIVE DEFENSE**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**

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

**EIGHTEENTH AFFIRMATIVE DEFENSE**

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

1 choice to smoke. Plaintiffs are, therefore, barred from any recovery, or any recoverable damages  
2 must be reduced in proportion to the amount of negligence attributable to Plaintiffs and/or Noreen  
3 Thompson.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

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

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 Plaintiffs' product liability claims are barred because the cigarettes sold by Joe's Bar are not  
9 dangerous to an extent beyond that contemplated by the ordinary consumer.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 Joe's Bar pleads the defenses available under the applicable products liability statutes of the  
15 State of Nevada.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 Plaintiffs' claims are barred to the extent Plaintiffs seeks to impose liability on Joe's Bar  
27 retroactively or for conduct which was not actionable at the time it occurred.  
28

**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**

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

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims for punitive damages against Joe's Bar 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 Joe's Bar's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Joe's Bar'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 Joe's Bar, 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 Joe's Bar's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Joe's Bar'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 Joe's Bar cannot be sustained because an award of punitive damages in this case, combined with any prior, contemporaneous or subsequent judgments or settlements against Joe's Bar that include punitive damages arising out of the same

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

5 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

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

11 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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



**THIRTY-NINTH AFFIRMATIVE DEFENSE**

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

**FORTIETH AFFIRMATIVE DEFENSE**

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

**FORTY-FIRST AFFIRMATIVE DEFENSE**

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

**FORTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claim for punitive damages against Joe's Bar cannot be sustained because an award of punitive damages under Nevada law, without a bifurcated trial, would violate Joe's Bar's right to equal protection and due process under the Fifth and Fourteenth Amendments to the United States Constitution and under Article 1, Section 8 of the Nevada Constitution.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

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

1 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

2 Joe's Bar hereby gives notice that it intends to rely upon any other defense that may become  
3 available or appear during the discovery proceedings in this case and hereby reserves its right to  
4 amend its Answer to assert any such defenses based on Nevada law, or other defenses that may  
5 become available in the course of litigation.

6 WHEREFORE, having fully answered Plaintiffs' Second Amended Complaint, Joe's Bar  
7 prays for judgment against Plaintiffs as follows:

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

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

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

13 **JURY DEMAND**

14 Joe's Bar demands a trial by jury of all claims triable as of right by jury.

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

16 BAILEY ♦ KENNEDY

17 By: /s/ Joseph A. Liebman

18 DENNIS L. KENNEDY

19 JOSEPH A. LIEBMAN

20 KING & SPALDING

21 VALENTIN LEPPERT

22 (ADMITTED PRO HAC VICE)

23 SPENCER MILES DIAMOND

24 (ADMITTED PRO HAC VICE)

25 KING & SPALDING

26 URSULA MARIE HENNINGER

27 (ADMITTED PRO HAC VICE)

28 *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 JOE'S BAR, INC. 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:

SEAN K. CLAGGETT WILLIAM T. SYKES MATTHEW S. GRANDA MICAH ECHOLS <b>CLAGGETT &amp; SYKES LAW FIRM</b> 4101 Meadows Lane, Suite 100 Las Vegas, Nevada 89107	Email: sclaggett@claggettlaw.com wsykes@claggettlaw.com mgranda@claggettlaw.com  <i>Attorneys for Plaintiff</i> NOREEN THOMPSON
--	--

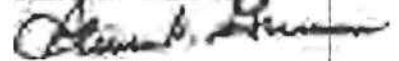
KIMBERLY L. WALD, ESQ. <b>KELLEY UUSTAL, PLC</b> 500 North Federal Highway, Suite 200 Fort Lauderdale, Florida 33301	Email: klw@kulaw.com  <i>Attorneys for Plaintiff</i> NOREEN THOMPSON
---	---

D. LEE ROBERTS, JR. PHILLIP N. SMITH, JR. DANIELA LABOUNTY <b>WEINBERG WHEELER HUDGINS GUNN &amp; DIAL</b> 6385 South Rainbow Boulevard, Suite 400 Las Vegas, Nevada 89118	Email: lroberts@wwhgd.com psmithjr@wwhgd.com dlabounty@wwhgd.com  <i>Attorneys for Defendant</i> PHILIP MORRIS USA, INC.
---	---

DANIEL F. POLSENBERG J. CHRISTOPHER JORGENSEN <b>LEWIS ROCA ROTHGERBER CHRISTIE</b> 3993 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169	Email: dpolsenberg@lrrc.com cjorgensen@lrrc.com  <i>Attorneys for Defendant</i> LIGGETT GROUP LLC
--	---

KELLY ANNE LUTHER <b>KASOWITZ BENSON TORRES LLP</b> 1441 Brickell Avenue, Suite 1420 Miami, Florida 33131	Email: kluther@kasowitz.com  <i>Attorneys for Defendant</i> LIGGETT GROUP LLC
--	--

/s/ Sharon L. Murnane  
Employee of BAILEY ♦ KENNEDY



1 **ANS (CIV)**

2 DENNIS L. KENNEDY

3 Nevada Bar No. 1462

4 JOSEPH A. LIEBMAN

5 Nevada Bar No. 10125

6 **BAILEY ♦ KENNEDY**

7 8984 Spanish Ridge Avenue

8 Las Vegas, Nevada 89148-1302

9 Telephone: 702.562.8820

10 Facsimile: 702.562.8821

11 DKennedy@BaileyKennedy.com

12 JLiebman@BaileyKennedy.com

13 VALENTIN LEPPERT

14 (ADMITTED PRO HAC VICE)

15 SPENCER MILES DIAMOND

16 (ADMITTED PRO HAC VICE)

17 **KING & SPALDING**

18 1180 Peachtree Street NE, Suite 16090

19 Atlanta, Georgia 30309

20 Telephone: 404.572.3578

21 Facsimile: 404.572.5100

22 VLeppert@kslaw.com

23 SDiamond@kslaw.com

24 URSULA MARIE HENNINGER

25 (ADMITTED PRO HAC VICE)

26 **KING & SPALDING**

27 300 S. Tryon Street

28 Charlotte, North Carolina 28202

Telephone: 704.503.2631

Facsimile: 704.503.2622

UHenninger@kslaw.com

*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

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  
JERRY'S NUGGET 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 JERRY'S NUGGET  
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

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

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

1 basis.

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

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

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

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

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

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

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

28           13.      Answering Paragraph 13, Jerry's Nugget is without knowledge or information

1 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
2 denies them on that basis.

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

6 15. Answering Paragraph 15, Jerry's Nugget admits that it is a Nevada corporation.  
7 Jerry's Nugget further admits that it sells tobacco products, including cigarettes, and is licensed with  
8 the state of Nevada to do so. Jerry's Nugget is without knowledge or information sufficient to form  
9 a belief as to the truth of any remaining allegations contained in said paragraph, and therefore denies  
10 them on that basis.

11 16-19. Answering Paragraphs 16-19, the allegations contain legal conclusions rather than  
12 factual allegations, and therefore, require no response. To the extent a response is required, Jerry's  
13 Nugget denies the allegations.

14 **FACTS COMMON TO ALL CLAIMS**

15 20. Answering Paragraph 20, Jerry's Nugget realleges and incorporates by reference the  
16 responses to the allegations of paragraphs 1 through 19 of the Second Amended Complaint as if fully  
17 set forth herein.

18 21. Answering Paragraph 21, Jerry's Nugget 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 22. Answering Paragraph 22, Jerry's Nugget 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 23. Answering Paragraph 23, Jerry's Nugget 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 24. Answering Paragraph 24, Jerry's Nugget is without knowledge or information  
28 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore

1 denies them on that basis.

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

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

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

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

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

17       30.     Answering Paragraph 30, Jerry's Nugget 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       31-37.   Paragraphs 31-37 contain no allegations against Jerry's Nugget; to the extent this  
21 paragraph is attempting to implicitly allege any liability against Jerry's Nugget, those allegations are  
22 denied.

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

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

27       **Conspiratorial Involvement by Defendants' Lawyers**

28       108-116.   Paragraphs 108 through 116 contain no allegations against Jerry's Nugget; to the



1 extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
2 allegations are denied.

3 **FIRST CLAIM FOR RELIEF**

4 **(WRONGFUL DEATH - NEGLIGENCE)**

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

7 117. Answering Paragraph 117, Jerry's Nugget realleges and incorporates by reference the  
8 responses to the allegations of paragraphs 1 through 116 of the Second Amended Complaint as if  
9 fully set forth herein.

10 118-140. Paragraphs 118 through 140 contain no allegations against Jerry's Nugget; to the  
11 extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
12 allegations are denied.

13 **SECOND CLAIM FOR RELIEF**

14 **(NEGLIGENCE)**

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

17 141. Answering Paragraph 141, Jerry's Nugget realleges and incorporates by reference the  
18 responses to the allegations of paragraphs 1 through 140 of the Second Amended Complaint as if  
19 fully set forth herein.

20 142-158. Paragraphs 142 through 158 contain no allegations against Jerry's Nugget; to the  
21 extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
22 allegations are denied.

23 **THIRD CLAIM FOR RELIEF**

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

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

27 159. Answering Paragraph 159, Jerry's Nugget realleges and incorporates by reference the  
28 responses to the allegations of paragraphs 1 through 158 of the Second Amended Complaint as if

1 fully set forth herein.

2 160-184. Paragraphs 160 through 184 contain no allegations against Jerry's Nugget; to the  
3 extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
4 allegations are denied.

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

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

9 185. Answering Paragraph 185, Jerry's Nugget realleges and incorporates by reference the  
10 responses to the allegations of paragraphs 1 through 184 of the Second Amended Complaint as if  
11 fully set forth herein.

12 186-203. Paragraphs 186 through 203 contain no allegations against Jerry's Nugget; to the  
13 extent these paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
14 allegations are denied.

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

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

19 204. Answering Paragraph 204, Jerry's Nugget 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 Jerry's Nugget; to the  
23 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, those  
24 allegations are denied.

25 ///

26 ///

27 ///

28 ///



**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, Jerry's Nugget 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 Jerry's Nugget; to the extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, 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, Jerry's Nugget 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 Jerry's Nugget; to the extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, 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, Jerry's Nugget 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 Jerry's Nugget; to the

1 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, 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, Jerry's Nugget 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 Jerry's Nugget; to the  
11 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, 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, Jerry's Nugget 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 Jerry's Nugget; to the  
21 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, 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, Jerry's Nugget 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 Jerry's Nugget; to the  
3 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, 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, Jerry's Nugget 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 Jerry's Nugget; to the  
13 extent those paragraphs are attempting to implicitly allege any liability against Jerry's Nugget, 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, Jerry's Nugget 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, Jerry's  
25 Nugget denies the allegations.

26 442-444. Answering Paragraphs 442-444, Jerry's Nugget 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, Jerry's  
3 Nugget denies the allegations.

4        446.    Answering Paragraph 446, Jerry's Nugget 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, Jerry's  
9 Nugget denies the allegations.

10       448.    Answering Paragraph 448, Jerry's Nugget admits that it is in the business of selling  
11 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

12       449.    Answering Paragraph 449, Jerry's Nugget admits that it is in the business of selling  
13 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

14       450.    Answering Paragraph 450, Jerry's Nugget admits that it is in the business of selling  
15 cigarettes. Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget denies the allegations.

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