

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 09:55 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. 27

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

2 458. Answering Paragraph 458, Jerry's Nugget denies the allegations.

3 459. Answering Paragraph 459, Jerry's Nugget denies the allegations.

4 460. Answering Paragraph 460, Jerry's Nugget denies the allegations.

5 461. Answering Paragraph 461, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's
16 Nugget denies the allegations.

17 464. Answering Paragraph 464, Jerry's Nugget admits that it is in the business of selling
18 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

19 465. Answering Paragraph 465, Jerry's Nugget admits that it is in the business of selling
20 cigarettes. Jerry's Nugget denies all remaining or inconsistent allegations.

21 466. Answering Paragraph 466, Jerry's Nugget admits that it is in the business of selling
22 cigarettes. Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget 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, Jerry's Nugget denies the allegations.

6 473. Answering Paragraph 473, Jerry's Nugget denies the allegations.

7 474. Answering Paragraph 474, Jerry's Nugget denies the allegations.

8 475. Answering Paragraph 475, Jerry's Nugget denies the allegations.

9 476. Answering Paragraph 476, Jerry's Nugget denies the allegations.

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

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

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

17 **SECOND AFFIRMATIVE DEFENSE**

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

20 **THIRD AFFIRMATIVE DEFENSE**

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

23 **FOURTH AFFIRMATIVE DEFENSE**

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

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Any injuries allegedly sustained by Plaintiffs and/or Noreen Thompson were produced, if at
28 all, by an intervening or superseding cause or causes, and any alleged act or omission of Jerry's

1 Nugget was not the proximate or competent producing cause of Plaintiffs' and/or Noreen
2 Thompson's alleged injuries or damages. To the extent Plaintiffs' and/or Noreen Thompson's
3 alleged injuries were caused by the use of tobacco products, the proximate cause of such alleged
4 injuries was Noreen Thompson's choice to use tobacco products.

5 **SIXTH AFFIRMATIVE DEFENSE**

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

10 **SEVENTH AFFIRMATIVE DEFENSE**

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

12 **EIGHTH AFFIRMATIVE DEFENSE**

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

15 **NINTH AFFIRMATIVE DEFENSE**

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

18 **TENTH AFFIRMATIVE DEFENSE**

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

21
22 **ELEVENTH AFFIRMATIVE DEFENSE**

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

25 **TWELFTH AFFIRMATIVE DEFENSE**

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

THIRTEENTH AFFIRMATIVE DEFENSE

If any defects existed with respect to tobacco products sold by Jerry's Nugget, any such alleged defects were open and obvious. Accordingly, Plaintiffs cannot recover herein against Jerry's Nugget.

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

Jerry's Nugget 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. Jerry's Nugget 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

1 community.

2 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

8 **NINETEENTH AFFIRMATIVE DEFENSE**

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

11 **TWENTIETH AFFIRMATIVE DEFENSE**

12 Plaintiffs' product liability claims are barred because the cigarettes sold by Jerry's Nugget
13 are not dangerous to an extent beyond that contemplated by the ordinary consumer.

14 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 Jerry's Nugget pleads the defenses available under the applicable products liability statutes of
19 the State of Nevada.

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent Plaintiffs seeks to impose liability on Jerry's Nugget 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

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages against Jerry's Nugget 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 Jerry's Nugget's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Jerry's Nugget'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 Jerry's Nugget, 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 Jerry's Nugget's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Jerry's Nugget'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 Jerry's Nugget cannot be sustained because an award of punitive damages in this case, combined with any prior, contemporaneous or subsequent judgments or settlements against Jerry's Nugget 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 Jerry's Nugget'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 Jerry's Nugget; (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 Jerry's Nugget'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, Jerry's Nugget invokes each and
7 every constitutional defense available to it under the Constitutions (or similar charters) of each of the
8 50 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 Jerry's Nugget, which liability
14 Jerry's Nugget specifically denies, any alleged injuries or damages were caused in whole or in part
15 by the negligence of Plaintiffs and/or Noreen Thompson, thereby barring Plaintiff's recovery in
16 whole or in part.

17 **FORTY-FIRST AFFIRMATIVE DEFENSE**

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

25 **FORTY-SECOND AFFIRMATIVE DEFENSE**

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

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

3 **FORTY-THIRD AFFIRMATIVE DEFENSE**

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

6 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

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

11 WHEREFORE, having fully answered Plaintiffs' Second Amended Complaint, Jerry's
12 Nugget prays for judgment against Plaintiffs as follows:

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

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

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

18 **JURY DEMAND**

19 Jerry's Nugget demands a trial by jury of all claims triable as of right by jury.

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21 ///

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24 ///

25 ///

26 ///

27 ///

28 ///

1 DATED this 31st day of January, 2022.

2 BAILEY ♦ KENNEDY

3 By: /s/ Joseph A. Liebman

4 DENNIS L. KENNEDY

5 JOSEPH A. LIEBMAN

6 KING & SPALDING

7 VALENTIN LEPPERT

8 (ADMITTED PRO HAC VICE)

9 SPENCER MILES DIAMOND

10 (ADMITTED PRO HAC VICE)

11 KING & SPALDING

12 URSULA MARIE HENNINGER

13 (ADMITTED PRO HAC VICE)

14 *Attorneys for Defendants*

15 R.J. REYNOLDS TOBACCO COMPANY,

16 QUICK STOP MARKET, LLC, JOE'S

17 BAR, INC., THE POKER PALACE,

18 SILVER NUGGET GAMING, LLC d/b/a

19 SILVER NUGGET CASINO, and

20 JERRY'S NUGGET

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 31st day of January, 2022, service of the foregoing **ANSWER, DEFENSES, AND JURY DEMAND OF DEFENDANT JERRY'S NUGGET TO PLAINTIFFS' SECOND AMENDED COMPLAINT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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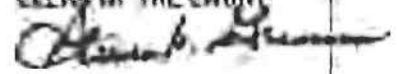
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---	---

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--	--

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



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NUGGET CASINO, and JERRY'S NUGGET

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

**ANSWER, DEFENSES, AND JURY
DEMAND OF DEFENDANT
SILVER NUGGET GAMING, LLC TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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 SILVER NUGGET GAMING, LLC TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant Silver Nugget Gaming, LLC d/b/a Silver Nugget Casino ("Silver 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, Silver 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, Silver Nugget denies the allegations to the extent they contradict or are inconsistent with the law.

2-4. Answering Paragraphs 2-4, Silver 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, Silver 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. Silver Nugget is without knowledge or information sufficient to form a belief as to the truth

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

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

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

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

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

18 10. Answering Paragraph 10, Silver 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 11. Answering Paragraph 11, Silver 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 12. Answering Paragraph 12, Silver 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 13. Answering Paragraph 13, Silver 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 14. Answering Paragraph 14, Silver Nugget admits that it is a Nevada limited liability
3 company. Silver Nugget further admits that it sells tobacco products, including cigarettes, and is
4 licensed with the state of Nevada to do so. Silver Nugget is without knowledge or information
5 sufficient to form a belief as to the truth of any remaining allegations contained in said paragraph,
6 and therefore denies them on that basis.

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

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

13 **FACTS COMMON TO ALL CLAIMS**

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

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

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

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

4 26. Answering Paragraph 26, Silver 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 27. Answering Paragraph 27, Silver Nugget is without knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in said paragraph, and therefore
9 denies them on that basis.

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

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

16 30. Answering Paragraph 30, Silver 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 31-37. Paragraphs 31-37 contain no allegations against Silver Nugget; to the extent this
20 paragraph is attempting to implicitly allege any liability against Silver Nugget, 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 Silver Nugget; to the
24 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, those
25 allegations are denied.

26 **Conspiratorial Involvement by Defendants' Lawyers**

27 108-116. Paragraphs 108 through 116 contain no allegations against Silver Nugget; to the
28 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
10 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
20 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
2 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
12 extent these paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
22 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
4 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
15 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
25 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those
26 allegations are denied.

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1 **NINTH CLAIM FOR RELIEF**

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

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

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

9 349-374. Paragraphs 349 through 374 contain no allegations against Silver Nugget; to the
10 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those
11 allegations are denied.

12 **TENTH CLAIM FOR RELIEF**

13 **(CIVIL CONSPIRACY)**

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

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

19 376-394. Paragraphs 376 through 394 contain no allegations against Silver Nugget; to the
20 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, those
21 allegations are denied.

22 **ELEVENTH CLAIM FOR RELIEF**

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

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

27 395. Answering Paragraph 395, Silver Nugget realleges and incorporates by reference the
28 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 Silver Nugget; to the

1 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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 Silver Nugget; to the
11 extent those paragraphs are attempting to implicitly allege any liability against Silver Nugget, 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, Silver Nugget 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, Silver
23 Nugget denies the allegations.

24 442-444. Answering Paragraphs 442-444, Silver Nugget 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, Silver

1 Nugget denies the allegations.

2 446. Answering Paragraph 446, Silver 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.

5 447. 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, Silver
7 Nugget denies the allegations.

8 448. Answering Paragraph 448, Silver Nugget admits that it is in the business of selling
9 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

10 449. Answering Paragraph 449, Silver Nugget admits that it is in the business of selling
11 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

12 450. Answering Paragraph 450, Silver Nugget admits that it is in the business of selling
13 cigarettes. Silver Nugget 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, Silver Nugget 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, Silver Nugget 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, Silver Nugget 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, Silver Nugget 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, Silver Nugget 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, Silver Nugget 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, Silver Nugget denies the allegations.

28 458. Answering Paragraph 458, Silver Nugget denies the allegations.