

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. 28**

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

INDEX TO PETITIONER'S APPENDIX - CHRONOLOGICAL

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

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

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

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

DOCUMENT DESCRIPTION	Date	Vol.	Page
Second Amended Complaint (<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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

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

DOCUMENT DESCRIPTION	Date	Vol.	Page
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

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

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

1 459. Answering Paragraph 459, Silver Nugget denies the allegations.

2 460. Answering Paragraph 460, Silver Nugget denies the allegations.

3 461. Answering Paragraph 461, Silver Nugget 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, Silver Nugget 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, Silver
14 Nugget denies the allegations.

15 464. Answering Paragraph 464, Silver Nugget admits that it is in the business of selling
16 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

17 465. Answering Paragraph 465, Silver Nugget admits that it is in the business of selling
18 cigarettes. Silver Nugget denies all remaining or inconsistent allegations.

19 466. Answering Paragraph 466, Silver Nugget admits that it is in the business of selling
20 cigarettes. Silver Nugget 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, Silver Nugget 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, Silver Nugget 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, Silver Nugget 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, Silver Nugget denies the allegations.

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

requires no response. To the extent a response is required, Silver Nugget denies the allegations.

472. Paragraph 472 contains legal conclusions rather than factual allegations, and therefore requires no response. To the extent a response is required, Silver Nugget denies the allegations.

473. Answering Paragraph 473, Silver Nugget denies the allegations.

474. Answering Paragraph 474, Silver Nugget denies the allegations.

475. Answering Paragraph 475, Silver Nugget denies the allegations.

476. Answering Paragraph 476, Silver Nugget denies the allegations.

Silver Nugget denies that Plaintiffs are entitled to judgement against, or any relief whatsoever from, Silver Nugget in this action and denies any remaining allegations, including, but not limited to, those contained in the unnumbered paragraph following paragraph 476 beginning “WHEREFORE.”

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

Any injuries allegedly sustained by Plaintiffs and/or Noreen Thompson were produced, if at all, by an intervening or superseding cause or causes, and any alleged act or omission of Silver Nugget was not the proximate or competent producing cause of Plaintiffs’ and/or Noreen Thompson’s alleged injuries or damages. To the extent Plaintiffs’ and/or Noreen Thompson’s

1 alleged injuries were caused by the use of tobacco products, the proximate cause of such alleged
2 injuries was Noreen Thompson's choice to use tobacco products.

3 **SIXTH AFFIRMATIVE DEFENSE**

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

8 **SEVENTH AFFIRMATIVE DEFENSE**

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

10 **EIGHTH AFFIRMATIVE DEFENSE**

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

13 **NINTH AFFIRMATIVE DEFENSE**

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

16 **TENTH AFFIRMATIVE DEFENSE**

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

19
20 **ELEVENTH AFFIRMATIVE DEFENSE**

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

23 **TWELFTH AFFIRMATIVE DEFENSE**

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

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 If any defects existed with respect to tobacco products sold by Silver Nugget, any such

1 alleged defects were open and obvious. Accordingly, Plaintiffs cannot recover herein against
2 Silver Nugget.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

Silver Nugget pleads the defenses available under the applicable products liability statutes of the State of Nevada.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent Plaintiffs seeks to impose liability on Silver 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

Silver Nugget denies liability for any award of punitive damages not based solely on the specific allegations of Silver 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 Silver 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 Silver Nugget was undertaken in good faith and for a valid business purpose.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages against Silver 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 Silver Nugget's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Silver 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 Silver 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 Silver Nugget's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Silver 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 Silver Nugget cannot be sustained because an award of punitive damages in this case, combined with any prior, contemporaneous or subsequent judgments or settlements against Silver 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 Silver 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 Silver 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 Silver 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, Silver Nugget invokes each and every
7 constitutional defense available to it under the Constitutions (or similar charters) of each of the 50
8 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and
9 possessions. This specifically includes, but is not limited to, provisions relating to due process,
10 access to the courts, freedom of speech, freedom of association, freedom to petition the government
11 for redress of grievances, and limitations on compensatory and punitive damages.

12 **FORTIETH AFFIRMATIVE DEFENSE**

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

17 **FORTY-FIRST AFFIRMATIVE DEFENSE**

18 Plaintiffs' claim for punitive damages against Silver 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 Silver Nugget cannot be sustained because an
27 award of punitive damages under Nevada law, without a bifurcated trial, would violate
28 Silver 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 Silver Nugget are
5 incorporated herein to the extent they do not conflict with Silver Nugget's affirmative defenses.

6 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

7 Silver 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, Silver
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 Silver Nugget demands a trial by jury of all claims triable as of right by jury.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

DATED this 31st day of January, 2022.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

KING & SPALDING

VALENTIN LEPPERT

(ADMITTED PRO HAC VICE)

SPENCER MILES DIAMOND

(ADMITTED PRO HAC VICE)

KING & SPALDING

URSULA MARIE HENNINGER

(ADMITTED PRO HAC VICE)

Attorneys for Defendants

R.J. REYNOLDS TOBACCO COMPANY,
QUICK STOP MARKET, LLC, JOE'S
BAR, INC., THE POKER PALACE,
SILVER NUGGET GAMING, LLC d/b/a
SILVER NUGGET CASINO, and
JERRY'S NUGGET

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

1 J Christopher Jorgensen
Nevada Bar No. 5382
2 LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
3 Las Vegas, NV 89169-5996
Tel: (702) 949-8200
4 Email: cjorgensen@lewisroca.com

5 Kelly A. Luther (*Pro Hac Vice*)
KASOWITZ BENSON TORRES LLP
6 1441 Brickell Avenue, Suite 1420
Miami, FL 33131
7 Tel: (786) 587-1045
Email: kluther@kasowitz.com

8 *Attorneys for Defendant Liggett Group LLC*

9
10 **DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

12 Plaintiffs,

13 vs.

14 **LIGGETT GROUP LLC's ANSWER
AND AFFIRMATIVE DEFENSES TO
15 PLAINTIFFS' SECOND AMENDED
COMPLAINT**

16 **JURY TRIAL DEMANDED**

17 PHILIP MORRIS USA, INC., a foreign
18 corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation,
19 individually, and as successor-by-merger to
LORILLARD TOBACCO COMPANY and
20 as successor-in-interest to the United States
tobacco business of BROWN &
WILLIAMSON TOBACCO
CORPORATION, which is the successor-
21 by-merger to THE AMERICAN TOBACCO
COMPANY; LIGGETT GROUP, LLC., a
foreign corporation; QUICK STOP
MARKET, LLC, a domestic limited liability
22 company; JOE'S BAR, INC., a domestic
corporation; THE POKER PALACE, a
domestic corporation; SILVER NUGGET
GAMING, LLC d/b/a SILVER NUGGET
23 CASINO, a domestic limited liability
company; JERRY'S NUGGET, a domestic
24 corporation; and DOES I-X; and ROE
BUSINESS ENTITIES XI-XX, inclusive.

25 Defendants.

26
27 Defendant Liggett Group LLC ("Liggett") hereby submits its Answer and Affirmative
28 Defenses to the Second Amended Complaint ("Complaint") filed by Dolly Rowan, as an

1 Individual, as Special Administrator of the Estate of Noreen Thompson, Navona Collision, as
2 an Individual, and Russell Thompson, as an Individual (collectively, "Plaintiff"). Liggett
3 hereby denies each and every allegation in the Complaint, except those expressly admitted
4 below.

5 **PRELIMINARY STATEMENT**

6 Plaintiff's Complaint improperly mixes factual averments with argumentative
7 rhetoric so as to make admissions or denials of such averments difficult or impossible.
8 Further, many of the allegations in the Complaint are overbroad, vague, or conclusory and
9 include terms that are undefined and that are susceptible to different meanings.
10 Accordingly, by way of a general response, all allegations are denied unless specifically
11 admitted, and any factual averment admitted is admitted only as to the specific facts and
12 not as to any conclusions, characterizations, implications, or speculations which are
13 contained in the averment or in the Complaint as a whole.

14 The Complaint also contains many purported quotations from numerous sources,
15 some identified, some not. Liggett, therefore, does not admit the authenticity of any
16 documents from which the alleged quotations were taken, and reserves the right to challenge
17 the accuracy of the quotations (either as quoted or in the context of material not quoted).
18 Further, with reference to all quotations, citations to documents, or any such averments
19 which might be offered into evidence, Liggett specifically reserves its right to object to the
20 use of said averments or the Complaint as a whole in evidence for any purpose.

21 In answering allegations consisting of quotations, an admission that the material
22 quoted was contained in a document or uttered by the person quoted shall not constitute an
23 admission that the substantive content of the quotation is or is not true. All such quotations
24 appearing in documents or testimony "speak for themselves" in the sense that the truth of
25 the matters asserted may only be judged in light of all relevant facts and circumstances. If
26 Plaintiff seeks to rely on such materials, Plaintiff must specifically prove the truth of such
27 materials subject to the right of Liggett to object. Accordingly, to the extent that any such
28 quoted materials are deemed allegations against Liggett, they are denied unless expressly

1 admitted.

2 The allegations of the Complaint, including headings and sub-headings used therein,
3 have been inserted for reference purposes and should not be taken as any express or implied
4 admission of any specific allegation. To the extent they are deemed allegations, they are
5 denied.

6 Except as expressly admitted herein, Liggett is without knowledge or information
7 sufficient to form a belief as to the truth of any of the allegations contained in the Complaint
8 as they pertain to the other defendants, and therefore, denies those allegations.

9 **JURISDICTION, VENUE, AND PARTIES**

10 1. To the extent the allegations contained in paragraph 1 purport to state legal
11 conclusions rather than factual allegations, no response is required. To the extent a response
12 is required, Liggett admits that this actions purports to seek damages in excess of \$15,000,
13 but denies Plaintiff is entitled to any relief against Liggett whatsoever. Liggett also admits
14 that it conducts business in the State of Nevada, including Clark County. Liggett is without
15 knowledge as to the remaining allegations contained in paragraph 1 and therefore denies
16 those allegations.

17 2. Liggett is without knowledge or information sufficient to form a belief as to
18 the truth of the allegations contained in paragraph 2 and therefore denies those allegations.

19 3. Liggett is without knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained in paragraph 3 and therefore denies those allegations.

21 4. Liggett is without knowledge or information sufficient to form a belief as to
22 the truth of the allegations contained in paragraph 4 and therefore denies those allegations.

23 5. Liggett is without knowledge or information sufficient to form a belief as to
24 the truth of the allegations contained in paragraph 5 and therefore, denies those allegations.

25 6. Liggett is without knowledge or information sufficient to form a belief as to
26 the truth of the allegations contained in paragraph 6 and therefore, denies those allegations.

27 7. Liggett is without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in paragraph 7 and therefore, denies those allegations.

1 8. Liggett states that it is unable to respond to the allegations contained in
2 paragraph 8 because the phrase “all times relevant to this action” is not defined in the
3 Complaint. Liggett denies that it is a corporation. Liggett admits that it is a Delaware limited
4 liability company, a LLC, with its principal place of business in North Carolina and that it
5 has been and is engaged in the business of manufacturing cigarettes for distribution at the
6 wholesale level, which may have resulted in eventual retail sales of Liggett cigarettes in the
7 State of Nevada. Liggett denies the remaining allegations contained in paragraph 8.

8 9. Liggett admits that Tobacco Industry Research Committee was formed in or
9 around 1954 and that it changed its name to the Council for Tobacco Research in 1964.
10 Liggett denies the remaining allegations contained in paragraph 9.

11 10. Liggett admits upon information and belief that The Tobacco Institute, Inc.
12 was formed in 1958. Liggett denies the remaining allegations contained in paragraph 10.

13 11. Liggett is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations contained in paragraph 11 and therefore, denies those allegations.

15 12. Liggett is without knowledge or information sufficient to form a belief as to
16 the truth of the allegations contained in paragraph 12 and therefore, denies those allegations.

17 13. Liggett is without knowledge or information sufficient to form a belief as to
18 the truth of the allegations contained in paragraph 13 and therefore, denies those allegations.

19 14. Liggett is without knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained in paragraph 14 and therefore, denies those allegations.

21 15. Liggett is without knowledge or information sufficient to form a belief as to
22 the truth of the allegations contained in paragraph 15 and therefore, denies those allegations

23 16. Liggett admits that it has been and is engaged in the business of manufacturing
24 cigarettes for distribution at the wholesale level, which may have resulted in eventual retail
25 sales of Liggett cigarettes in the State of Nevada. Liggett denies the remaining allegations
26 contained in paragraph 16.

27 17. Liggett is without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in paragraph 17 and therefore, denies those allegations.

1 18. Liggett is without knowledge or information sufficient to form a belief as to
2 the truth of the allegations contained in paragraph 18 and therefore, denies those allegations.

3 19. Liggett denies the allegations contained in paragraph 19.

4 **FACTS COMMON TO ALL CLAIMS**

5 20. In response to paragraph 20, Liggett realleges its responses to the preceding
6 paragraphs.

7 21. Liggett is without knowledge or information sufficient to form a belief as to
8 the truth of the allegations contained in paragraph 21 and therefore denies those allegations.

9 22. Liggett is without knowledge or information sufficient to form a belief as to
10 the truth of the allegations contained in paragraph 22 and therefore denies those allegations.

11 23. Liggett is without knowledge or information sufficient to form a belief as to
12 the truth of the allegations contained in paragraph 23 and therefore denies those allegations.

13 24. Liggett is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations contained in paragraph 24 and therefore denies those allegations.

15 25. Liggett admits that it has at times designed and manufactured Pyramid brand
16 cigarettes for distribution at the wholesale level. Liggett is otherwise without knowledge or
17 information sufficient to form a belief as to the truth of the allegations contained in paragraph
18 25 and therefore denies those allegations.

19 26. Liggett is without knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained in paragraph 26 and therefore denies those allegations.

21 27. Liggett is without knowledge or information sufficient to form a belief as to
22 the truth of the allegations contained in paragraph 27 and therefore denies those allegations.

23 28. Liggett is without knowledge or information sufficient to form a belief as to
24 the truth of the allegations contained in paragraph 28 and therefore denies those allegations.

25 29. Liggett is without knowledge or information sufficient to form a belief as to
26 the truth of the allegations contained in paragraph 29 and therefore denies those allegations.

27 30. Liggett is without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in paragraph 30 and therefore denies those allegations.

1 31. Liggett denies the allegations contained in paragraph 31.

2 32. Liggett denies the allegations contained in paragraph 32, including the
3 existence of or its participation in a conspiracy.

4 33. Liggett denies the allegations contained in paragraph 33.

5 34. Liggett denies the allegations contained in paragraph 34.

6 35. Liggett denies the allegations contained in paragraph 35.

7 36. Liggett admits that, as the United States Surgeon General and respected
8 medical researchers have found, cigarette smoking causes health problems, including, lung
9 cancer, heart and vascular disease and emphysema. Liggett further admits that cigarettes
10 contain nicotine that is naturally occurring in tobacco, and that, as the United States Surgeon
11 General, the United States Food and Drug Administration and respected medical researchers
12 have found, nicotine is addictive. Regardless of its addictive nature, cigarette smokers can
13 reach and successfully carry out a decision to quit smoking. Liggett denies the remaining
14 allegations contained in paragraph 36 including its subparts.

15 37. Liggett denies the allegations contained in paragraph 37.

16 **Historical Allegations of Defendants Unlawful Conduct**
17 **Giving Rise to the Lawsuit**

18 38. Liggett admits that cigarette smoking causes lung cancer. Liggett denies the
19 remaining allegations contained in paragraph 38.

20 39. Liggett is without knowledge or information sufficient to form a belief as to
21 the truth of the allegations contained in paragraph 39 and therefore denies those allegations.

22 40. Liggett denies the allegations contained in paragraph 40.

23 41. Liggett is without knowledge or information sufficient to form a belief as to
24 the truth of the allegations contained in paragraph 41 and therefore denies those allegations.

25 42. Liggett is without knowledge or information sufficient to form a belief as to
26 the truth of the allegations contained in paragraph 42 and therefore denies those allegations.

27 43. Liggett is without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in paragraph 43 and therefore denies those allegations.

1 44. To the extent the allegations contained in paragraph 44 are deemed to be
2 directed to Liggett, they are denied. Liggett is otherwise without knowledge or information
3 sufficient to form a belief as to the truth of the allegations contained in paragraph 44 and
4 therefore denies those allegations.

5 45. To the extent Plaintiff purports to characterize certain information appearing
6 in LIFE Magazine and Reader's Digest on December 21, 1953, any such information speaks
7 for itself. Liggett further admits that the mainstream media, including the publications
8 referenced in paragraph 45 reported on Drs. Wynder and Graham's findings. Liggett denies
9 the allegations contained in paragraph 45 to the extent that Plaintiff mischaracterizes the
10 content of these documents. Liggett is otherwise without knowledge or information
11 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
12 45 and therefore denies those allegations.

13 46. Liggett denies the allegations contained in paragraph 46.

14 47. Liggett denies the allegations contained in paragraph 47, including the
15 existence of or its participation in a conspiracy.

16 48. Liggett admits that Paul M. Hahn sent telegrams in December 1953. Liggett
17 denies the remaining allegations contained in paragraph 48, including that Plaintiff fairly or
18 accurately characterizes that telegram. Liggett denies the remaining allegations contained in
19 paragraph 48, including the existence of or its participation in a conspiracy.

20 49. Liggett admits that it did not attend a meeting at the Plaza Hotel on December
21 14, 1953. Liggett denies the allegations contained in paragraph 49 to the extent that Plaintiff
22 mischaracterizes the content of any documents purportedly describing that meeting. Liggett
23 is otherwise without knowledge or information sufficient to form a belief as to the truth of
24 the allegations contained in paragraph 49 and therefore denies those allegations.

25 50. Liggett denies the allegations contained in paragraph 50 to the extent that
26 Plaintiff mischaracterizes the document referenced in paragraph 50. Liggett is otherwise
27 without knowledge or information sufficient to form a belief as to the truth of the allegations
28 contained in paragraph 50 and therefore denies those allegations.

1 51. Liggett denies the allegations contained in paragraph 51 to the extent that
2 Plaintiff mischaracterizes the documents referenced in paragraph 51. Liggett is otherwise
3 without knowledge or information sufficient to form a belief as to the truth of the allegations
4 contained in paragraph 51 and therefore denies those allegations.

5 52. Liggett is without knowledge or information sufficient to form a belief as to
6 the truth of the allegations contained in paragraph 52 and therefore denies those allegations.

7 53. Liggett admits that “A Frank Statement to Cigarette Smokers” was published
8 in newspapers in the United States. Liggett is otherwise without knowledge or information
9 sufficient to form a belief as to the truth of the allegations contained in paragraph 53 and
10 therefore denies those allegations

11 54. Liggett denies the allegations contained in paragraph 54 to the extent that
12 Plaintiff mischaracterizes the documents referenced in paragraph 54. Liggett further states
13 that the sponsors of the Frank Statement are identified in that document and that document
14 speaks for itself. Liggett is otherwise without knowledge or information sufficient to form a
15 belief as to the truth of the allegations contained in paragraph 54 and therefore denies those
16 allegations.

17 55. Liggett denies the allegations contained in paragraph 55.

18 56. Liggett denies the allegations contained in paragraph 56 to the extent that
19 Plaintiff mischaracterizes the Frank Statement. Liggett denies the allegations contained in
20 paragraph 56 as they relate to Liggett. Liggett is otherwise without knowledge or information
21 sufficient to form a belief as to the truth of the allegations contained in paragraph 56 and
22 therefore denies those allegations.

23 57. Liggett is without knowledge or information sufficient to form a belief as to
24 the truth of the allegations contained in paragraph 57 and therefore denies those allegations.

25 58. Liggett denies the allegations contained in paragraph 58 as they relate to
26 Liggett. Liggett is otherwise without knowledge or information sufficient to form a belief as
27 to the truth of the allegations contained in paragraph 58 and therefore denies those
28 allegations.

- 1 59. Liggett denies the allegations contained in paragraph 59.
- 2 60. Liggett denies the allegations contained in paragraph 60.
- 3 61. Liggett denies the allegations contained in paragraph 61.
- 4 62. Liggett denies the allegations contained in paragraph 62.
- 5 63. Liggett denies the allegations contained in paragraph 63 to the extent that
- 6 Plaintiff mischaracterizes the documents referenced in paragraph 63. Liggett denies the
- 7 allegations contained in paragraph 63 as they relate to Liggett. Liggett is otherwise without
- 8 knowledge or information sufficient to form a belief as to the truth of the allegations
- 9 contained in paragraph 63 and therefore denies those allegations.
- 10 64. Liggett admits that there was a dip in consumption of cigarettes following the
- 11 issuance of the 1964 Surgeon General's Report. To the extent Plaintiff purports to
- 12 characterize certain information appearing in the United States Surgeon General report issued
- 13 in 1964, any such information speaks for itself. Liggett otherwise denies the allegations
- 14 contained in paragraph 64.
- 15 65. Liggett admits that it cooperated with the United States Surgeon General.
- 16 Liggett denies the remaining allegations contained in paragraph 65.
- 17 66. Liggett denies the allegations contained in paragraph 66, including to the
- 18 extent that Plaintiff mischaracterizes the documents referenced in paragraph 66.
- 19 67. Liggett denies the allegations contained in paragraph 67, including to the
- 20 extent that Plaintiff mischaracterizes the documents referenced in paragraph 67.
- 21 68. Liggett denies the allegations contained in paragraph 68.
- 22 69. Liggett denies the allegations contained in paragraph 69.
- 23 70. To the extent Plaintiff purports to characterize "labels" mandated by the
- 24 United States Congress in 1966, any such warnings speak for themselves. Liggett otherwise
- 25 denies the allegations contained in paragraph 70.
- 26 71. Liggett denies the allegations contained in paragraph 71.
- 27 72. Liggett denies the allegations contained in paragraph 72 to the extent that
- 28 Plaintiff mischaracterizes the document referenced in paragraph 64. Liggett is otherwise

1 without knowledge or information sufficient to form a belief as to the truth of the allegations
2 contained in paragraph 72 and therefore denies those allegations.

3 73. Liggett admits that it has at various times introduced filtered cigarette brands.
4 Liggett denies the remaining allegations contained in paragraph 73.

5 74. Liggett denies the allegations contained in paragraph 74, including to the
6 extent Plaintiff mischaracterizes the documents referenced in paragraph 74.

7 75. Liggett denies the allegations contained in paragraph 75.

8 76. Liggett denies the allegations contained in paragraph 76 to the extent that
9 Plaintiff mischaracterizes the statements referenced in paragraph 76. Liggett denies the
10 allegations contained in paragraph 68 as they relate to Liggett. Liggett is otherwise without
11 knowledge or information sufficient to form a belief as to the truth of the allegations
12 contained in paragraph 76 and therefore denies those allegations.

13 77. Liggett is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations contained in paragraph 77 and therefore denies those allegations.

15 78. Liggett admits that it has at times marketed its products to adult smokers and
16 has advertised and/or promoted its products by legally permissible means. Liggett is
17 otherwise without knowledge or information sufficient to form a belief as to the truth of the
18 allegations contained in paragraph 78 and therefore denies those allegations.

19 79. Liggett is without knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained in paragraph 79 and therefore denies those allegations.

21 80. Liggett denies the allegations contained in paragraph 80.

22 81. Liggett denies the allegations contained in paragraph 81.

23 82. Liggett admits that it has at times marketed its products to adult smokers and
24 has advertised and/or promoted its products by legally permissible means. Liggett is
25 otherwise without knowledge or information sufficient to form a belief as to the truth of the
26 allegations contained in paragraph 82 and therefore denies those allegations.

27 83. Liggett admits that it has at times marketed its products to adult smokers and
28 has advertised and/or promoted its products by legally permissible means. Liggett is

1 otherwise without knowledge or information sufficient to form a belief as to the truth of the
2 allegations contained in paragraph 83 and therefore denies those allegations.

3 84. Liggett denies the allegations contained in paragraph 84, including the
4 existence of or its participation in an alleged conspiracy and to the extent Plaintiff
5 mischaracterizes the documents referenced in paragraph 84.

6 85. To the extent Plaintiff purports to characterize “labels” mandated by the
7 United States Congress in 1985, any such warnings speak for themselves. Liggett otherwise
8 denies the allegations contained in paragraph 85.

9 86. Liggett denies the allegations contained in paragraph 86.

10 87. Liggett admits that the Surgeon General issued a report on smoking and health
11 in 1988. Liggett states that the report speaks for itself and denies Plaintiff’s
12 mischaracterization of the report. Liggett denies the remaining allegations contained in
13 paragraph 87.

14 88. Liggett denies the allegations contained in paragraph 88.

15 89. Liggett denies the allegations contained in paragraph 89.

16 90. Liggett admits that its CEO testified before a Congressional subcommittee in
17 April 1994. The testimony referenced in paragraph 90 speaks for itself. Liggett denies
18 Plaintiff’s characterization of the referenced testimony. Liggett denies the remaining
19 allegations in paragraph 90.

20 91. Liggett denies the allegations contained in paragraph 91 to the extent that
21 Plaintiff mischaracterizes the referenced testimony. The testimony referenced in paragraph
22 83 speaks for itself. Liggett denies the remaining allegations in paragraph 91.

23 92. Liggett denies the allegations contained in paragraph 92.

24 93. Liggett denies the allegations contained in paragraph 93, including the
25 existence of or its participation in a conspiracy.

26 94. Liggett admits that in 1997, in addition to the warnings mandated by the
27 United States Congress, it voluntarily placed a warning label on its cigarette packs, cartons
28 and point of sale materials that “Smoking is Addictive.” That voluntary warning remains on

1 Liggett's products to this day. Liggett further states that on or about January 12, 1999, Philip
2 Morris USA, Inc. ("Philip Morris USA") entered into an agreement whereby, Philip Morris
3 USA purchased the L&M, Chesterfield, and Lark cigarette trademarks, trade names, trade
4 dress, service marks, registration, and registration applications in the United States. Liggett
5 states on information and belief that after Philip Morris USA purchased the L&M,
6 Chesterfield, and Lark cigarette trademarks, trade names, trade dress, service marks,
7 registration, and registration applications from Liggett, the phrase "Smoking is Addictive"
8 was not placed on the packages of the cigarettes Philip Morris USA sold to its direct
9 customers under those trademarks. Liggett is otherwise without knowledge or information
10 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
11 94 and therefore denies those allegations.

12 95. Liggett denies the allegations contained in paragraph 95.

13 96. Liggett states that in accordance with the Family Smoking Prevention and
14 Tobacco Control Act, it has not used descriptors such as "light," "low," "mild" on its
15 cigarettes since in or about July 2010. Liggett otherwise denies the allegations contained in
16 paragraph 96.

17 97. Liggett denies the allegations contained in paragraph 97.

18 98. Liggett denies the allegations contained in paragraph 98.

19 99. Liggett admits that cigarettes contain nicotine that is naturally occurring in
20 tobacco and that, as the United States Surgeon General, the United States Food and Drug
21 Administration and respected medical researcher have found, nicotine is addictive.
22 Regardless of its addictive nature, cigarette smokers can reach and successfully carry out a
23 decision to quit smoking. Liggett otherwise denies the allegations contained in paragraph 99.

24 100. Liggett denies the allegations contained in paragraph 100.

25 101. Liggett denies the allegations contained in paragraph 101.

26 102. Liggett denies the allegations contained in paragraph 102, including the
27 existence of or its participation in a conspiracy.
28