

In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

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

Respondents,

and

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

Real Parties in Interest

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Case No. _____

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

**PHILIP MORRIS USA INC.'S PETITION FOR
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX
VOL. 30**

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NINTH DEFENSE

While denying at all times that any cigarettes manufactured by Liggett caused or contributed to the injuries and damages alleged in Plaintiff's Complaint, Liggett avers that Plaintiff and Decedent were warned or otherwise made aware of the alleged dangers of cigarette smoking and further, that any such dangers, to the extent they existed, were not beyond those which would have been contemplated by an ordinary consumer of cigarettes. Plaintiff, therefore, is barred from any recovery on the claims asserted.

TENTH DEFENSE

If any defects existed with respect to the cigarettes smoked by Decedent, as alleged in Plaintiff's Complaint, any such defects were open and obvious. Accordingly, Plaintiff cannot recover against Liggett.

ELEVENTH DEFENSE

Any claim or cause of action that Plaintiff may have had against Liggett is barred, in whole or in part, by the doctrines of waiver, estoppel and laches.

TWELFTH DEFENSE

Any injury or damage alleged by Plaintiff was caused by pre-existing, intervening or superseding events, factors, occurrences or conditions which were not caused by Liggett and for which Liggett is not responsible or liable.

THIRTEENTH DEFENSE

Liggett is entitled to a set-off, should any damages be awarded against it, in the amount of damages or settlement amounts recovered by Plaintiff and/or Decedent with respect to the same alleged injuries. Further, Plaintiff has no right to recover, or a verdict should be reduced by, the value of any benefits received by Plaintiff and/or Decedent from any collateral source.

FOURTEENTH DEFENSE

Plaintiff's claims against Liggett, if any, are barred in whole or in part, by Plaintiff and Decedent's failure to mitigate any injuries and damages allegedly sustained.

FIFTEENTH DEFENSE

While Liggett denies that Plaintiff is entitled to any recovery whatsoever for the claims

1 asserted in the Complaint, Plaintiff's recovery, if any, must be reduced by the doctrine of
2 comparative fault, because the negligence, fault, responsibility or want of due care of Plaintiff
3 and Decedent proximately caused or contributed to Plaintiff and Decedent's alleged injuries
4 and damages, which bars or reduces Plaintiff's recovery herein.

5 **SIXTEENTH DEFENSE**

6 Plaintiff's claims are barred or their damages are limited in whole or in part by the
7 doctrine of assumption of risk, because Decedent was aware of and appreciated the alleged
8 unreasonable dangers of smoking and nevertheless proceeded to do so.

9 **SEVENTEENTH DEFENSE**

10 If Plaintiff was injured and damaged, which injuries and damages are denied, such
11 alleged injuries and damages were caused solely by the acts, wrongs, or omissions of Plaintiff
12 and/or Decedent; by pre-existing conditions, or by forces and/or things over which Liggett
13 had no control and for which Liggett is not responsible and not liable.

14 **EIGHTEENTH DEFENSE**

15 Venue is not properly placed in this court. Alternatively, the doctrine of forum *non*
16 *conveniens* applies to the Plaintiff's claims, thereby warranting dismissal of Plaintiff's claims
17 or transfer to a convenient forum.

18 **NINETEENTH DEFENSE**

19 Plaintiff's fraudulent misrepresentation, fraudulent concealment, conspiracy to
20 commit fraudulent misrepresentation and conspiracy to commit fraudulent concealment
21 claims are barred because Plaintiff has failed to plead these claims with particularity, as
22 required by the applicable rules of civil procedure, and as such, those claims must be
23 dismissed for failure to state a cause of action upon which relief may be granted.

24 **TWENTIETH DEFENSE**

25 Plaintiff's claims for conspiracy to commit fraudulent concealment must fail because
26 of the absence of a special or fiduciary relationship between Liggett and Plaintiff and
27 Decedent which would give rise to a duty to disclose any information or facts that it did not
28

1 in fact disclose to Plaintiff.

2 **TWENTY-FIRST DEFENSE**

3 Plaintiff lacks standing to bring some or all of the claims set forth in the Complaint.

4 **TWENTY-SECOND DEFENSE**

5 Plaintiff's claims are barred, in whole or in part, by the doctrines of *res judicata*,
6 estoppel and by executed releases of the State of Nevada and to the extent that any entity
7 acting either on its own, on Plaintiff and/or Decedent's behalf, or in a *parens patriae* capacity
8 on behalf of the citizens of the State of Nevada, have realized, written off, discounted, written
9 down, settled, and/or entered into an accord and satisfaction or otherwise compromised
10 Plaintiff's claims.

11 **TWENTY-THIRD DEFENSE**

12 The law of the State of Nevada and the Due Process Clause of the Fourteenth
13 Amendment to the United States Constitution forbid punishing Liggett for lawfully selling a
14 legal product.

15 **TWENTY-FOURTH DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, because the alleged conduct of
17 Liggett was undertaken in good faith for valid business purposes.

18 **TWENTY-FIFTH DEFENSE**

19 Plaintiff's claims are barred, in whole or in part, because Liggett's advertisements for
20 its cigarettes comply, and always have complied, with all applicable regulations of the Federal
21 Trade Commission and all other applicable law.

22 **TWENTY-SIXTH DEFENSE**

23 The Complaint fails to state facts sufficient to entitle Plaintiff to an award of punitive
24 damages.

25 **TWENTY-SEVENTH DEFENSE**

26 Plaintiff's claims against Liggett for punitive damages cannot be sustained because
27 any award of punitive damages under a process that fails to bifurcate the issue of punitive
28 damages from the remaining issues would violate Liggett's due process rights guaranteed by

1 the Fifth and Fourteenth Amendments to the United States Constitution and applicable
2 provisions of the Nevada Constitution, and would be improper under the common law,
3 statutory law, and public policy of the Nevada.

4 **TWENTY-EIGHTH DEFENSE**

5 Plaintiff's claims, including claims for punitive damages, are preempted and barred,
6 in whole or in part, by the operation of the Supremacy Clause of the United States
7 Constitution, art. VI, § 2, the Federal Cigarette Labeling and Advertising Act, as amended,
8 15 U.S.C. § 1331, et seq., and the Federal Trade Commission's policies and regulations
9 regarding the cigarette industry. Specifically, under the doctrine of conflict preemption,
10 because Congress has specifically foreclosed the removal of tobacco products from the
11 market, any claims of liability based on Liggett's manufacture, marketing and sale of
12 cigarettes are preempted.

13 **TWENTY-NINTH DEFENSE**

14 Plaintiff's claims for punitive damages are barred by due process under the Federal
15 and State Constitutions to the extent Plaintiff seeks to impose punishment for harm allegedly
16 caused to non-parties.

17 **THIRTIETH DEFENSE**

18 Plaintiff's claims for punitive damages are barred to the extent that they are based
19 upon conduct unrelated to Plaintiff's alleged harm.

20 **THIRTY-FIRST DEFENSE**

21 Plaintiff's claims for punitive or exemplary damages or other civil penalties are barred
22 or reduced by applicable law or statute or, in the alternative, are unconstitutional insofar as
23 they violate the due process protections afforded by the United States Constitution, the
24 excessive fines clause of the Eighth Amendment of the United States Constitution, the Full
25 Faith and Credit Clause of the United States Constitution, and applicable provisions of the
26 Constitution of this State or that of any other state whose laws may apply. Any law, statute
27 or other authority purporting to permit the recovery of punitive damages or civil penalties in
28 this case is unconstitutional, facially and as applied, to the extent that, without limitation, it:

(1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages or civil penalties and/or the amount, if any; (2) is void for vagueness in that it fails to provide adequate advance notice as to what conduct will result in punitive damages or civil penalties; (3) unconstitutionally may permit recovery of punitive damages or civil penalties based on harms to third parties, out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed, or did not proximately cause harm, to plaintiff; (4) unconstitutionally may permit recovery of punitive damages or civil penalties in an amount that is not both reasonable and proportionate to the amount of harm, if any, to plaintiff and to the amount of compensatory damages, if any; (5) unconstitutionally may permit jury consideration of net worth or other financial information relating to Liggett; (6) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any award of punitive damages or civil penalties; (7) lacks constitutionally sufficient standards for appellate review of any award of punitive damages or civil penalties; (8) would unconstitutionally impose a penalty, criminal in nature, without according to Liggett the same procedural protections that are accorded to criminal defendants under the constitutions of the United States, this State, and any other state whose laws may apply; and (9) otherwise fails to satisfy Supreme Court precedent, including, without limitation, *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *TXO Prod. Corp. v. Alliance Res., Inc.*, 509 U.S. 443 (1993); *BMW of N. Am. v. Gore*, 517 U.S. 559 (1996); *State Farm Ins. Co. v. Campbell*, 538 U.S. 408 (2003); and *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

THIRTY-SECOND 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 Plaintiff 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.

THIRTY-THIRD DEFENSE

Plaintiff's claims for punitive damages are barred to the extent that they are based

1 upon conduct occurring outside the State of Nevada.

2 **THIRTY-FOURTH DEFENSE**

3 Plaintiff's claims for punitive damages against Liggett cannot be sustained because an
4 award of punitive damages under Nevada law would violate Liggett's procedural and
5 substantive due process rights and equal protection rights under the Fifth and Fourteenth
6 Amendments to the United States Constitution and Liggett's due process rights under cognate
7 provisions of the Nevada Constitution, and would be improper under the common law and
8 public policies of the United States and the State of Nevada. Moreover, the foregoing
9 considerations, and considerations of due process, comity and state sovereignty, bar any
10 attempts to punish Liggett, except to the extent the alleged conduct had a direct impact in this
11 State and a direct nexus to the specific harm suffered by Plaintiff.

12 **THIRTY-FIFTH DEFENSE**

13 Liggett denies liability for any award of punitive damages not based solely on the
14 specific allegations of Liggett's conduct made the subject of this lawsuit and that allegedly
15 affected Plaintiff, because consideration of other conduct would subject Liggett to
16 impermissible multiple punishments for the same conduct, in violation of the Fifth and
17 Fourteenth Amendments to the United States Constitution and the cognate provisions of the
18 Nevada Constitution.

19 **THIRTY-SIXTH DEFENSE**

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

25 **THIRTY-SEVENTH DEFENSE**

26 Liggett adopts and incorporates by reference any and all affirmative defenses asserted
27 by other defendants in this lawsuit to the extent such affirmative defenses are not raised herein
28 and are not inconsistent with a position taken by Liggett herein.

DEMAND FOR JURY TRIAL

Liggett hereby demands a trial by jury of all issues so triable.

Wherefore, Liggett demands judgment dismissing Plaintiff's Complaint in its entirety,
together with costs and disbursements of this action and such other and further relief as this
Court deems just and proper.

DATED this 31st day of January, 2022.

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ. Rule 5(b) and E.D.C.R. 8.05, I caused a true and correct copy of the foregoing **Liggett Group LLC's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint and Demand for Jury Trial** to be served via the Court's Odyssey EFile & Serve system, which will send an electronic copy to all interested parties. The date and time of the electronic service is in place of the date and place of deposit in the mail.

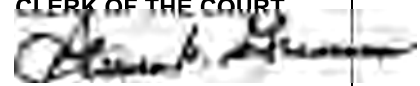
DATED this 31st day of January, 2022.

/s/ Annette Jaramillo

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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,

Plaintiffs,

vs.

Case No. A-20-811091-C

Dept. No. V

**ANSWER, DEFENSES AND JURY
DEMAND OF DEFENDANT R. J.
REYNOLDS TOBACCO COMPANY TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

PHILIP MORRIS USA, INC., a foreign corporation; R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, individually, and as successor-by-merger to LORILLARD TOBACCO COMPANY and as successor-in-interest to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC., a foreign corporation; QUICK STOP MARKET, LLC, a domestic limited liability company; JOES BAR, INC., a domestic corporation; THE POKER PALACE, a domestic corporation; SILVER NUGGET GAMING, LLC d/b/a SILVER NUGGET CASINO, a domestic limited liability company, JERRY'S NUGGET, a domestic corporation; and DOES 1-X; and ROE BUSINESS ENTITIES XI-XX. inclusive,

Defendants.

JURY DEMAND

ANSWER, DEFENSES AND JURY DEMAND OF DEFENDANT R. J. REYNOLDS TOBACCO COMPANY TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant R. J. Reynolds Tobacco Company, individually, as successor-by-merger to Lorillard Tobacco Company, and as successor-in-interest to the U.S. tobacco business of Brown & Williamson Tobacco Corporation (n/k/a Brown & Williamson Holdings, Inc.), which is successor-by-merger to The American Tobacco Company ("Reynolds"), files this Answer, Defenses and Jury Demand to Plaintiffs' Second Amended Complaint:

PRELIMINARY STATEMENT

The Second Amended Complaint in this case improperly mixes factual allegations with argumentative rhetoric so as to make admissions or denials of such allegations difficult or impossible. Further, much of the pleading consists of a selective recitation of historical facts and/or rumors, which are both irrelevant and inflammatory in tone and content. The Second Amended Complaint also contains a selective recitation of statistics, scientific premises and conclusions, technical discussions and medical conclusions, few of which are identified as to source or supported by relevant data. Reynolds cannot reasonably identify the sources of such allegations so as to respond meaningfully. Finally, many of the allegations contained in the Second Amended Complaint are overly broad, vague, or conclusory. Accordingly, by way of a general response, all

1 allegations are denied unless specifically admitted, and any factual allegation admitted is admitted
2 only as to the specific facts and not to any conclusions, characterizations, implications, or
3 speculations which are in the allegation or in the Second Amended Complaint as a whole.

4 In addition, the Second Amended Complaint refers to Reynolds and other Defendants on a
5 collective basis, failing to plead with particularity allegations against Reynolds. Such ambiguous
6 pleading is insufficient to apprise Reynolds in any meaningful sense of the allegations against it.
7 Moreover, throughout the Second Amended Complaint, Plaintiffs allege various misrepresentations
8 by Reynolds and also refers to Reynolds and others as conspirators. Reynolds denies making any
9 misrepresentations. Reynolds states that Brown & Williamson Tobacco Corporation (hereinafter,
10 “Brown & Williamson”) acquired The American Tobacco Company (hereinafter, “American
11 Tobacco”) on December 22, 1994 and that American Tobacco was merged into Brown &
12 Williamson on February 28, 1995 and denies the existence of, and its participation in, any alleged
13 conspiracy. Reynolds further generally denies that it acts or has acted in concert with any other
14 cigarette manufacturers, tobacco companies, or trade associations, except as expressly admitted.
15 Reynolds nevertheless has attempted to respond to Plaintiffs’ allegations to the extent possible under
16 these circumstances. To the extent that any specific allegations are made, or intended to be made,
17 against Reynolds that are not specifically admitted below, they are denied.

18 The Second Amended Complaint also contains purported quotations from various sources.
19 Reynolds does not admit the authenticity of any documents from which the quotations were taken,
20 and reserves the right to challenge the accuracy of the quotations (either as quoted or in the context
21 of material not quoted). Further, several quotations originate in documents protected by attorney-
22 client privilege, the work product doctrine, the joint defense privilege, and/or the common interest
23 privilege. Reynolds states that it is improper for Plaintiffs to have referred to and quoted from such
24 documents in the Second Amended Complaint and reserves its right to assert such privilege, move to
25 strike such references and demand return of any such documents that Plaintiffs may have in their
26 possession, custody, or control.

27 In answering allegations consisting of quotations, an admission that the material quoted was
28 contained in a document or uttered by the person quoted shall not constitute an admission that the

1 substantive content of the quotation is or is not true. All such quotations appearing in documents or
2 testimony “speak for themselves” in the sense that the truth of the matters asserted may only be
3 judged in light of all relevant facts and circumstances obtaining at the time the statement was made.
4 If Plaintiffs seek to rely on such materials, Plaintiffs must specifically prove the truth of such
5 materials subject to the right of Reynolds to object. Accordingly, to the extent that any such quoted
6 materials are deemed allegations against Reynolds, they are denied.

7 The Second Amended Complaint also purports to selectively quote, improperly characterize,
8 and/or reference portions of the district court’s opinion in *United States v. Philip Morris USA, Inc.*,
9 449 F. Supp. 2d 1 (D.D.C. 2006), *aff’d* in part, vacated in part, 566 F.3d 1095 (D.C. Cir. 2009),¹
10 Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or
11 appropriately characterized and denies Plaintiffs’ innuendo and implication regarding the content or
12 meaning of the opinion. The United States litigation was a separate action unrelated to this case
13 which involved different facts, alleged injuries, legal claims, and theories from those alleged by
14 Plaintiffs in this action. Accordingly, Reynolds denies that the opinion in *United States v. Philip*
15 *Morris USA, Inc.* has any legal significance whatsoever relative to Plaintiffs’ claims or ability to
16 seek relief or recover damages from Reynolds in this matter.

17 The foregoing comments and objections are incorporated, to the extent appropriate, into each
18 heading and numbered paragraph of this Answer. Except as expressly admitted, Reynolds denies the
19 allegations contained in the headings, numbered paragraphs, and unnumbered paragraphs of the
20 Second Amended Complaint, including any factual allegations that are implied or intended to be
21 implied by the headings of the Second Amended Complaint.

22 **ANSWER**

23 1. Paragraph 1 does not require an answer because it asserts legal conclusions, rather
24 than stating factual allegations. To the extent that any answer is required, Reynolds admits that this
25 action purports to seek damages in excess of \$15,000.00. Reynolds also admits that it conducts
26 business in the State of Nevada, including in Clark County. Reynolds is without knowledge or
27

28 ¹ Hereinafter, “*United States v. Philip Morris USA, Inc.*”

1 information sufficient to form a belief as to the truth or falsity of the remaining allegations contained
2 in paragraph 1 concerning venue and, on that basis, denies those allegations.

3 2. Reynolds is without knowledge or information sufficient to form a belief as to the
4 truth or falsity of the allegations contained in paragraph 2 and, on that basis, denies those allegations.

5 3. Reynolds is without knowledge or information sufficient to form a belief as to the
6 truth or falsity of the allegations contained in paragraph 3 and, on that basis, denies those allegations.

7 4. Reynolds is without knowledge or information sufficient to form a belief as to the
8 truth or falsity of the allegations contained in paragraph 4 and, on that basis, denies those allegations.

9 5. Reynolds is informed and believes that Philip Morris USA Inc. ("Philip Morris") is a
10 Virginia corporation that conducts business in the State of Nevada, including Clark County.

11 Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of
12 the remaining allegations contained in paragraph 5 and, on that basis, denies those allegations.

13 6. Reynolds admits that it is a North Carolina corporation with its principal place of
14 business in Winston-Salem, North Carolina. Reynolds also admits that it is a foreign corporation
15 that is licensed to do business and is doing business in the State of Nevada, including in Clark
16 County. Reynolds denies the remaining allegations contained in paragraph 6.

17 7. Reynolds admits that it is (a) successor-by-merger to Lorillard Tobacco Company and
18 (b) the successor-in-interest to the U.S. tobacco business of Brown & Williamson Tobacco
19 Corporation (n/k/a Brown & Williamson Holdings, Inc.), which is the successor-by-merger to The
20 American Tobacco Company. Except as admitted, Reynolds denies the allegations of paragraph 7.

21 8. Reynolds is informed and believes that Liggett Group LLC ("Liggett"), is a Delaware
22 limited liability company with its principal place of business in North Carolina that conducts
23 business in the State of Nevada, including Clark County. Reynolds is without knowledge or
24 information sufficient to form a belief as to the truth or falsity of the remaining allegations contained
25 in paragraph 8 and, on that basis, denies those allegations.

26 9. Reynolds admits that the Tobacco Industry Research Committee ("TIRC"), later
27 renamed The Council for Tobacco Research-USA, Inc. ("CTR") was formed in 1954. Reynolds
28 states that CTR was dissolved in accordance with the laws of the State of New York on or about

1 November 6, 1998. Reynolds also admits that CTR was an entity which funded scientific research
2 conducted by scientists affiliated with universities and research institutions throughout the United
3 States. Reynolds denies the remaining allegations contained in paragraph 9.

4 10. Reynolds admits that The Tobacco Institute, Inc. ("TI") was formed in 1958.
5 Reynolds states that TI was dissolved in accordance with the laws of the State of New York on or
6 about September 15, 2000. Reynolds also states that TI, like trade associations in other industries,
7 engaged in certain lobbying and public relations activities, including activities protected by the First
8 Amendment to the United States Constitution, on behalf of its members. Reynolds denies the
9 remaining allegations contained in paragraph 10.

10 11. Reynolds is without knowledge or information sufficient to form a belief as to the
11 truth or falsity of the allegations contained in paragraph 11 and, on that basis, denies those
12 allegations.

13 12. Reynolds is without knowledge or information sufficient to form a belief as to the
14 truth or falsity of the allegations contained in paragraph 12 and, on that basis, denies those
15 allegations.

16 13. Reynolds is without knowledge or information sufficient to form a belief as to the
17 truth or falsity of the allegations contained in paragraph 13 and, on that basis, denies those
18 allegations.

19 14. Reynolds is without knowledge or information sufficient to form a belief as to the
20 truth or falsity of the allegations contained in paragraph 14 and, on that basis, denies those
21 allegations.

22 15. Reynolds is without knowledge or information sufficient to form a belief as to the
23 truth or falsity of the allegations contained in paragraph 15 and, on that basis, denies those
24 allegations.

25 16. Reynolds admits that it sells for resale, to adult smokers, cigarettes that were
26 distributed and sold throughout the United States, including the State of Nevada. Reynolds lacks
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
28 paragraph 16 concerning what the Plaintiffs' Decedent was allegedly "exposed to" and is without

1 knowledge or information sufficient to form a belief as to the truth of the allegations directed toward
2 other defendants and, on that basis, denies those allegations. Reynolds denies the remaining
3 allegations contained in paragraph 16.

4 17. Reynolds is without knowledge or information sufficient to form a belief as to the
5 truth or falsity of the allegations contained in paragraph 17 and, on that basis, denies those
6 allegations.

7 18. Reynolds is without knowledge or information sufficient to form a belief as to the
8 truth or falsity of the allegations contained in paragraph 18 and, on that basis, denies those
9 allegations.

10 19. Reynolds denies the allegations contained in paragraph 19.

11 **FACTS COMMON TO ALL CLAIMS**

12 20. Reynolds incorporates by this reference its responses to the allegations repeated and
13 re-alleged by Plaintiffs in this paragraph as if fully restated herein.

14 21. Reynolds is without knowledge or information sufficient to form a belief as to the
15 truth or falsity of the allegations contained in paragraph 21 and, on that basis, denies those
16 allegations.

17 22. Reynolds admits that Pall Mall brand cigarettes were manufactured, marketed, and
18 sold for resale to adult tobacco consumers by The American Tobacco Company beginning in 1907
19 until 1995. Beginning in 1995 through July 30, 2004, Pall Mall brand cigarettes were manufactured,
20 marketed, and sold for resale to adult tobacco consumers by Brown & Williamson Tobacco
21 Corporation. Since July 30, 2004, Pall Mall brand cigarettes have been manufactured, marketed, and
22 sold for resale to adult tobacco consumers by Reynolds. Reynolds denies the remaining allegations
23 contained in paragraph 22.

24 23. Reynolds admits that Viceroy brand cigarettes were manufactured, marketed, and
25 sold for resale to adult tobacco consumers by Brown & Williamson Tobacco Corporation beginning
26 in 1953 through July 30, 2004. Since July 30, 2004 through May 1, 2008, Viceroy brand cigarettes
27 were manufactured, marketed, and sold for resale to adult tobacco consumers by Reynolds.
28 Reynolds denies the remaining allegations contained in paragraph 23.

1 24. Reynolds admits that since July 1, 1913, Camel brand cigarettes have been
2 manufactured, marketed, and sold for resale to adult tobacco consumers by Reynolds. Reynolds
3 denies the remaining allegations contained in paragraph 24.

4 25. Reynolds admits, upon information and belief that Liggett manufacture, markets, and
5 sells Pyramid brand cigarettes. Reynolds denies the remaining allegations contained in paragraph
6 25.

7 26. Reynolds is without knowledge or information sufficient to form a belief as to the
8 truth or falsity of the allegations contained in paragraph 26 concerning the products that Plaintiffs'
9 Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies
10 those allegations. Reynolds denies the remaining allegations contained in paragraph 26.

11 27. Reynolds is without knowledge or information sufficient to form a belief as to the
12 truth or falsity of the allegations contained in paragraph 27 concerning the products that Plaintiffs'
13 Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies
14 those allegations. Reynolds denies the remaining allegations contained in paragraph 27.

15 28. Reynolds is without knowledge or information sufficient to form a belief as to the
16 truth or falsity of the allegations contained in paragraph 28 concerning the products that Plaintiffs'
17 Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies
18 those allegations. Reynolds denies the remaining allegations contained in paragraph 28.

19 29. Reynolds is without knowledge or information sufficient to form a belief as to the
20 truth or falsity of the allegations contained in paragraph 29 concerning the products that Plaintiffs'
21 Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies
22 those allegations. Reynolds denies the remaining allegations contained in paragraph 29.

23 30. Reynolds is without knowledge or information sufficient to form a belief as to the
24 truth or falsity of the allegations contained in paragraph 30 concerning the products that Plaintiffs'
25 Decedent, purchased and smoked and/or her alleged medical conditions and, on that basis, denies
26 those allegations. Reynolds denies the remaining allegations contained in paragraph 30.

27 31. Reynolds denies the allegations contained in paragraph 31.

28 32. Reynolds denies the existence of, and its participation in, any alleged conspiracy,

denies that it concealed and/or made false and misleading statements as alleged in the Second Amended Complaint and denies the remaining allegations contained in paragraph 32.

33. Reynolds denies the allegations contained in paragraph 33.

34. Reynolds denies the allegations contained in paragraph 34.

35. Reynolds denies the allegations contained in paragraph 35.

36. Reynolds admits that cigarette smoking significantly increases the risk of developing lung cancer and other serious diseases and that cigarette smoking causes lung cancer and other serious diseases and the duration, frequency and amount of cigarettes smoked significantly affects the risk of serious diseases. Reynolds also admits that nicotine in tobacco products is addictive. Reynolds further admits that many smokers find it difficult to quit, but Reynolds denies that smokers are unable to quit. Reynolds states that the allegations contained in paragraph 36 a. – g. purport to selectively quote and/or reference portions of the verdict in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006). Reynolds denies that the *Engle* verdict can be applied to Plaintiffs' lawsuit or to any other individual smoking and health lawsuit. Reynolds states that Plaintiffs have failed to define, and the scientific community has been unable to achieve a consensus on, what constitutes a "safe" or "safer" cigarette as stated in subparagraph n. Reynolds states that the document purportedly quoted in subparagraph t. of paragraph 36 is protected from disclosure by the attorney-client privilege, the work product doctrine and/or the joint defense or the joint interest privilege, and that it is therefore improper for Plaintiffs to have referred to and quoted this document in the Second Amended Complaint. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the remaining unidentified "Concealed Document(s)" referenced in paragraph 36 and, accordingly, denies the allegations relating thereto. Reynolds denies the remaining allegations contained in paragraph 36, including each of its subparagraphs.

37. Reynolds denies the allegations contained in paragraph 37.

38. Reynolds admits that cigarette smoking is a leading cause of preventable deaths in the United States and that cigarette smoking causes lung cancer. Except as expressly admitted, Reynolds denies the allegations contained in paragraph 38.

1 39. Reynolds admits that various estimates based upon a large number of assumptions
2 about the purported number of smoking-related deaths and illnesses have been published over many
3 years. Reynolds states that that the complete and precise content of these estimates can be
4 ascertained from the estimates themselves, but denies that they are fairly or accurately characterized
5 in paragraph 39. Except as otherwise expressly admitted elsewhere herein, Reynolds denies the
6 remaining allegations contained in paragraph 39.

7 40. Reynolds denies the allegations contained in paragraph 40.

8 41. Reynolds is without knowledge or information sufficient to form a belief as to the
9 existence, authenticity, content, or context of the unidentified estimates referenced in paragraph 41
10 and, accordingly, denies the allegations relating thereto.

11 42. Reynolds admits that the reported incidence of lung cancer increased in the first half
12 of the 20th century and that cigarette smoking was one of the hypothesized causes. Reynolds is
13 without knowledge or information sufficient to form a belief as to the existence, authenticity,
14 content, or context of the unidentified estimates referenced in paragraph 42 and, accordingly, denies
15 the allegations relating thereto.

16 43. Reynolds is without knowledge or information sufficient to form a belief as to the
17 unidentified scientists referenced in paragraph 43. Reynolds admits there was widespread awareness
18 of possible health effects of tobacco use and that some scientists conducted research related to this
19 issue. Except as expressly admitted, Reynolds denies the remaining allegations contained in
20 paragraph 43.

21 44. Reynolds admits that a select excerpt from a 1953 document prepared by Dr. Claude
22 Teague, a former Reynolds employee, is quoted in paragraph 44. Reynolds states that the complete
23 and precise content of this document can be ascertained from the document itself but denies that it is
24 fairly or accurately characterized in this paragraph. Reynolds denies the remaining allegations
25 contained in paragraph 44.

26 45. Reynolds admits that Dr. Ernst L. Wynder and his colleagues published the results of
27 a mouse painting study in 1953 which was summarized in Life, Reader's Digest, and other publicly
28 available materials. Reynolds states that the referenced studies speak for themselves, but denies that

1 they are fairly or accurately characterized in paragraph 45. Reynolds denies the remaining
2 allegations contained in paragraph 45.

3 46. Reynolds denies the allegations contained in paragraph 46.

4 47. Reynolds denies the existence of, and its participation in, any alleged conspiracy and
5 denies the remaining allegations contained in paragraph 47.

6 48. Reynolds admits that, in December 1953, Paul Hahn, then-President of The American
7 Tobacco Company (“American”), sent a telegram to other tobacco executives. Reynolds denies that
8 the document referenced in paragraph 48 is fairly or accurately characterized in the Second
9 Amended Complaint and states that the complete and precise content of the telegram can be
10 ascertained from the document itself. Reynolds denies the remaining allegations contained in
11 paragraph 48.

12 49. Reynolds denies that executives of Reynolds, or any other employee of Reynolds,
13 were present at the meeting referenced in paragraph 49. Reynolds is informed and believes that the
14 heads of Brown & Williamson and several other tobacco companies met at the Plaza Hotel in New
15 York City on December 15, 1953 and that representatives of Hill & Knowlton, Inc. (“Hill &
16 Knowlton”) also were present. Reynolds denies the remaining allegations contained in paragraph 49
17 that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as
18 to the truth or falsity of the remaining allegations contained in paragraph 49 that apply to other
19 Defendants and, on that basis denies those allegations.

20 50. Reynolds is informed and believes that the selected excerpt from a memorandum
21 prepared by Hill & Knowlton is quoted accurately, although out of context, in paragraph 50.
22 Reynolds states that the complete and precise content of the memorandum can be ascertained from
23 the memorandum itself, but denies that it is fairly or accurately characterized in paragraph 50.
24 Reynolds denies the remaining allegations contained in paragraph 50.

25 51. Reynolds is informed and believes that the selected excerpt from a memorandum
26 prepared by Hill & Knowlton is quoted accurately, although out of context, in paragraph 51.
27 Reynolds states that the complete and precise content of the memorandum can be ascertained from
28 the memorandum itself, but denies that it is fairly or accurately characterized in paragraph 51.

1 Reynolds denies the remaining allegations contained in paragraph 51.

2 52. Reynolds denies that the allegations of paragraph 52 fairly or accurately characterize
3 either the function or policy of TIRC/CTR and denies the remaining allegations contained in
4 paragraph 52.

5 53. Reynolds admits that on January 4, 1954, a statement entitled "A Frank Statement to
6 Cigarette Smokers" (the "Frank Statement") was published in a number of newspapers nationwide.
7 Reynolds denies that the Frank Statement is fairly or accurately characterized in paragraph 53, and
8 states that the complete and precise content of the Frank Statement can be ascertained from the
9 Frank Statement itself. Reynolds denies the remaining allegations contained in paragraph 53.

10 54. Reynolds admits the sponsors of the Frank Statement are accurately summarized in
11 paragraph 54. Except as expressly admitted, Reynolds denies the allegations contained in paragraph
12 54.

13 55. Reynolds denies that the Frank Statement is fairly or accurately characterized in
14 paragraph 55, and states that the complete and precise content of the Frank Statement can be
15 ascertained from the Frank Statement itself. Reynolds denies the remaining allegations contained in
16 paragraph 55.

17 56. Reynolds states that the Frank Statement speaks for itself and denies the remaining
18 allegations contained in paragraph 56.

19 57. Reynolds denies the allegations contained in paragraph 57.

20 58. Reynolds denies that the Frank Statement is fairly or accurately characterized in
21 paragraph 58, and states that the complete and precise content of the Frank Statement can be
22 ascertained from the Frank Statement itself. Reynolds states that the allegations contained in
23 paragraph 58 purport to selectively quote, characterize, and/or reference certain unidentified
24 statements. Reynolds is without knowledge or information sufficient to form a belief as to these
25 unidentified statements and further states that the complete language and/or content of the alleged
26 statements can be ascertained from the alleged statements themselves. Reynolds denies the
27 remaining allegations contained in paragraph 58.

28 59. Reynolds denies that the allegations of paragraph 59 fairly or accurately characterize

1 either the function or policy of TIRC/CTR and denies the remaining allegations contained in
2 paragraph 59.

3 60. Reynolds admits that TIRC/CTR was an entity which funded scientific research
4 conducted by scientists affiliated with universities and research institutions throughout the United
5 States. Reynolds denies that the allegations of paragraph 60 fairly or accurately characterize either
6 the function or policy of TIRC/CTR and denies the remaining allegations contained in paragraph 60.

7 61. Reynolds denies that the allegations of paragraph 61 fairly or accurately characterize
8 either the function or policy of TIRC/CTR and denies the remaining allegations contained in
9 paragraph 61.

10 62. Reynolds states that reports pertaining to cigarette consumption are publicly available
11 and such reports speak for themselves. Reynolds denies that the allegations of paragraph 62 fairly or
12 accurately characterize either the function or policy of TIRC/CTR and denies the remaining
13 allegations contained in paragraph 62.

14 63. Reynolds states that the Tobacco Institute was a trade association not unlike the
15 thousands of other trade associations in the United States, and its purpose was to represent its
16 members in First Amendment activities, including presenting the position of its members in public
17 and legislative contexts. Reynolds states that the selected expert from a Tobacco Industry
18 publication is quoted accurately, although out of context in paragraph 63. Reynolds states that the
19 complete and precise content of the publication can be ascertained from the publication itself, but
20 denies that it is fairly or accurately characterized in paragraph 63. Reynolds denies the remaining
21 allegations contained in paragraph 63.

22 64. Reynolds states that reports pertaining to cigarette consumption are publicly available
23 and such reports speak for themselves. Reynolds admits that, in 1964, the Surgeon General issued a
24 report purporting to link cigarette smoking and lung cancer. Reynolds denies the remaining
25 allegations contained in paragraph 64.

26 65. Reynolds states that reports pertaining to cigarette consumption are publicly available
27 and such reports speak for themselves. Reynolds is without knowledge or information sufficient to
28 form a belief as to the existence, authenticity, content, or context of the unidentified statements in

1 paragraph 65 and, accordingly, denies the allegations relating thereto. Reynolds denies the
2 remaining allegations contained in paragraph 65.

3 66. Reynolds states that the first document purportedly quoted in paragraph 66 is
4 protected from disclosure by the attorney-client privilege, the work product doctrine and/or the joint
5 defense or the joint interest privilege, and that it is therefore improper for Plaintiffs to have referred
6 to and quoted this document in the Second Amended Complaint. Reynolds denies knowledge or
7 information sufficient to form a belief as to the truth of the allegations pertaining to the second
8 document purportedly quoted in paragraph 66 and accordingly denies the allegations pertaining to
9 the same. Reynolds admits that an excerpt from a document prepared by a then-Reynolds'
10 employee, Dr. Alan Rodgman, is partially accurate, although out of context, in the third document
11 referenced in paragraph 66. Reynolds states that the complete and precise content of the referenced
12 document can be ascertained from the document itself. Reynolds denies the remaining allegations
13 contained in paragraph 66.

14 67. Reynolds admits that the first document referenced in paragraph 67 appears to quote
15 accurately, although out of context, an excerpt from a document prepared by Dr. Claude Teague, a
16 former Reynolds employee; however, Reynolds states that this document was not requested by
17 anyone at Reynolds and was not addressed to any other employee at Reynolds. Reynolds denies that
18 this document reflects Reynolds' policies or positions, and further denies that this document was
19 written in the ordinary course of Reynolds' business or was within the ordinary duties and
20 responsibilities of the author. Reynolds states that the fourth and fifth documents allegedly quoted in
21 paragraph 67 are protected from disclosure by the attorney-client privilege, the work product
22 doctrine and/or the joint defense or the joint interest privilege, and that it is therefore improper for
23 Plaintiffs to have referred to and quoted these document excerpts in the Second Amended
24 Complaint. Reynolds admits that the sixth document in paragraph 67 contains a selected excerpt
25 from a document prepared in or around 1978 by an employee of Brown & Williamson Tobacco
26 Corporation which is quoted accurately, although out of context. Reynolds denies knowledge or
27 information sufficient to form a belief of the truth of the allegations pertaining to the remaining
28 documents allegedly quoted in paragraph 67 and accordingly denies the allegations relating to the