

In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

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

Respondents,

and

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

Real Parties in Interest

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

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

**VOL. 34**

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## INDEX TO PETITIONER'S APPENDIX - CHRONOLOGICAL

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

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

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

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

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

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

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



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

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

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

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

<b>DOCUMENT DESCRIPTION</b>	<b>Date</b>	<b>Vol.</b>	<b>Page</b>
Order Denying Defendants' Motion to Strike the Lawyer-Related Allegations in Plaintiff's Amended Complaint	09/12/2021	4	642–49
Order Denying Defendants Philip Morris USA Inc.'s and Liggett Group LLC's Motion to Dismiss Plaintiff's Second Amended Complaint ( <i>Tully</i> , No. A-19-802987-C)	04/20/2021	35	1617–1625
Order Denying Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Complaint Under NRCP 12(b)(5)	08/25/2020	1	123–36
Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to File Amended Wrongful Death Complaint, and Plaintiff's Motion to Substitute Parties	03/11/2021	2	300–09
Order Granting Plaintiffs' Motion to Reconsider Order Granting Defendant Philip Morris USA Inc.'s Motion to Dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5)	04/19/2022	35	1485–91
Order Granting Plaintiffs' Motion to Reconsider Order Granting Defendant R.J. Reynolds Tobacco Company's Motion to Dismiss Plaintiffs' Amended Complaint Under NRCP 12(b)(5) ( <i>Camacho</i> , No. A-19-807650-C)	11/03/2021	35	1626–1632
Plaintiff's Amended Complaint	03/15/2021	3	310–438
Plaintiff's Motion for Leave to File Second Amended Complaint	12/21/2021	12-17	927–1065

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

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

1 paragraph 388 and, accordingly, denies the same.

2 389. Paragraph 389 does not require an answer because it asserts incorrect legal  
3 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
4 Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are  
5 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
6 remaining allegations contained in paragraph 389.

7 390. Paragraph 390 does not require an answer because it asserts incorrect legal  
8 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
9 Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are  
10 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
11 remaining allegations contained in paragraph 390.

12 391. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
13 Complaint and denies the remaining allegations of paragraph 391.

14 392. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
15 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies  
16 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
17 action, and denies the remaining allegations contained in paragraph 392.

18 393. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
19 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies  
20 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
21 action, and denies the remaining allegations contained in paragraph 393.

22 394. Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that  
23 Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this action,  
24 and denies the remaining allegations contained in paragraph 394.

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27 ///

28 ///



**ELEVENTH CLAIM FOR RELIEF**

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

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

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

396. Reynolds admits that Plaintiffs purport to assert various claims for relief in the Second Amended Complaint. Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 396.

397. Reynolds is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 397 and, on that basis, denies those allegations.

398. Reynolds is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 398 and, on that basis, denies those allegations.

399. Reynolds is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 399 and, on that basis, denies those allegations.

400. Reynolds admits that Plaintiffs purport to bring a claim pursuant to NRS 41.085(4). Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the remaining allegations contained in paragraph 400 that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 400 and, on that basis, denies those allegations.

401. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 401 and, on that basis, denies those allegations.

402. Reynolds admits that Plaintiffs purport to bring a claim pursuant to NRS 41.085(5). Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are entitled to judgment against, or any relief whatsoever from Reynolds in this action, and denies the



1 remaining allegations contained in paragraph 402 that apply to Reynolds. Reynolds is without  
2 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining  
3 allegations contained in paragraph 402 and, on that basis, denies those allegations.

4 403. Reynolds admits that N.R.S. T. 52, Ch. 589, Deceptive Trade Practices has been in  
5 effect since 1973. Reynolds denies the remaining allegations contained in paragraph 403.

6 404. Paragraph 404 does not require an answer because it asserts legal conclusions, rather  
7 than stating factual allegations. To the extent that any answer is required, Reynolds denies the  
8 allegations contained in paragraph 404.

9 405. Paragraph 405 does not require an answer because it asserts legal conclusions, rather  
10 than stating factual allegations. To the extent that any answer is required, Reynolds admits Plaintiffs  
11 purport to bring a claim pursuant to NRS 41.600. Reynolds denies the remaining allegations  
12 contained in paragraph 405.

13 406. Reynolds admits Plaintiffs purport to quote portions of NRS 598.0915. Reynolds  
14 states that the statute speaks for itself and denies the remaining allegations contained in paragraph  
15 406.

16 407. Reynolds denies making false and misleading statements and/or representations, and  
17 denies the remaining allegations contained in paragraph 407, including each of its subparagraphs.

18 408. Reynolds denies the existence of, and its participation in, any alleged conspiracy and  
19 denies the remaining allegations contained in paragraph 408.

20 a. Reynolds denies the allegations contained in paragraph 408a. that apply to Reynolds.  
21 Reynolds is without knowledge or information sufficient to form a belief as to the  
22 truth or falsity of the remaining allegations contained in paragraph 408a. that apply to  
23 other Defendants and, on that basis, denies those allegations.

24 b. Reynolds denies the allegations contained in paragraph 408b. that apply to Reynolds.  
25 Reynolds is without knowledge or information sufficient to form a belief as to the  
26 truth or falsity of the remaining allegations contained in paragraph 408b. that apply to  
27 other Defendants and, on that basis, denies those allegations.

28 c. Reynolds denies the allegations contained in paragraph 408c, including

subparagraphs 408c.i. through 408c.ii. that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the remaining unidentified “White Papers” referenced in paragraph 408c.ii. and, accordingly, denies the allegations relating thereto. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 408c. that apply to other Defendants and, on that basis, denies those allegations.

d. Reynolds denies the allegations contained in paragraph 408d. that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 408d. that apply to other Defendants and, on that basis, denies those allegations.

i. Reynolds admits that an article written by Stanley Frank entitled “To Smoke or Not to Smoke, That is the Still the Question” appeared in various magazines. Reynolds states that this article speaks for itself, but denies that it is fairly or accurately characterized in paragraph 408d.i. Reynolds states that the allegations contained in paragraph 408d.i. purport to selectively quote, improperly characterize, and/or reference portions of the district court’s opinion in *United States v. Philip Morris USA, Inc.* Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph 408d.i. Except as expressly admitted, Reynolds denies the allegations in paragraph 408d.i.

ii. Reynolds admits that Joseph Cullman, then-chairman of Philip Morris, appeared on “Face the Nation” on January 3, 1971. Reynolds states that this broadcast and the complete statement of Joseph Cullman speaks for itself. Reynolds lacks knowledge or information sufficient to form a belief of the truth of the remaining allegations contained in paragraph 408d.ii. and, on that basis, denies those allegations.

e. Reynolds denies the existence of, or its participating in, any alleged conspiracy and

denies the remaining allegations contained in paragraph 408e. that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 408e. that apply to other Defendants and, on that basis, denies those allegations.

- i. Reynolds denies the existence of, or its participating in, any alleged conspiracy. Reynolds is without knowledge or information sufficient to form a belief as to the existence, authenticity, content, or context of the unidentified statement referenced in paragraph 408e.i. and, accordingly, denies the allegations relating thereto.
- ii. Reynolds denies the existence of, or its participating in, any alleged conspiracy. Reynolds is informed and believes that selected excerpts from a document prepared in or around 1972 by Fred Panzer are quoted accurately, although out of context, in paragraph 408e.ii. Reynolds states that the complete and precise content of the referenced document can be ascertained from the document itself, but denies that it is fairly or accurately characterized in paragraph 408e.ii. Reynolds denies the remaining allegations contained in paragraph 408e.ii.
- iii. Reynolds states that the allegation contained in paragraph 408e.iii., including its subparagraphs, purports to selectively quote a Brown & Williamson Tobacco Company document. Reynolds states that the complete text and/or content of the document may be ascertained from the document itself but, denies that it is fairly or accurately characterized. Reynolds denies the remaining allegations contained in paragraph 408e.iii.
- iv. Reynolds admits upon information and belief that Anne Browder was employed by the Tobacco Institute and on occasion appeared on television programs. Reynolds states that the complete and precise content of Ms. Browder's statement can be ascertained from the statement itself, but denies that it is fairly or accurately characterized in paragraph 408e.iv. Reynolds

denies the remaining allegations contained in paragraph 408e.iv.

v. Reynolds states that the allegations contained in paragraph 408e.v. purport to selectively quote, improperly characterize, and/or reference portions of the district court's opinion in United States v. Philip Morris USA, Inc. Reynolds states that the opinion speaks for itself but denies that it is fairly, accurately, or appropriately characterized in paragraph 408e.v. Reynolds also states that the document in the third sentence of paragraph 408e.v. 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 this documents in the Second Amended Complaint. Reynolds denies the remaining allegations of paragraph 408e.v. to the extent they are directed to Reynolds. To the extent the allegations of paragraph 408e.v. are directed toward other Defendants, Reynolds is without knowledge or information sufficient to form a belief as to truth of those remaining allegations contained in paragraph 408e.v. and, on that basis, denies those allegations.

f. Reynolds denies the allegations contained in paragraph 408f. that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 408f. that apply to other Defendants and, on that basis, denies those allegations.

g. Reynolds denies the allegations contained in paragraph 408g. that apply to Reynolds. Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 408g. that apply to other Defendants and, on that basis, denies those allegations.

409. Reynolds states the allegations in paragraph 409 are not directed toward Reynolds and, accordingly, no answer from Reynolds is required. To the extent that an answer may be deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 409 concerning another Defendant and, on

1 that basis, denies those allegations.

2 410. Reynolds states the allegations in paragraph 410 are not directed toward Reynolds  
3 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
4 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
5 truth or falsity of the allegations contained in paragraph 410 concerning another Defendant and, on  
6 that basis, denies those allegations.

7 411. Reynolds states the allegations in paragraph 411 are not directed toward Reynolds  
8 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
9 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
10 truth or falsity of the allegations contained in paragraph 411 concerning another Defendant and, on  
11 that basis, denies those allegations.

12 412. Reynolds states the allegations in paragraph 412 are not directed toward Reynolds  
13 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
14 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
15 truth or falsity of the allegations contained in paragraph 412 concerning another Defendant and, on  
16 that basis, denies those allegations.

17 413. Paragraph 413 does not require an answer because it asserts incorrect legal  
18 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
19 Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are  
20 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
21 remaining allegations contained in paragraph 413.

22 414. Paragraph 414 does not require an answer because it asserts incorrect legal  
23 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
24 Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are  
25 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
26 remaining allegations contained in paragraph 414.

27 415. Paragraph 415 does not require an answer because it asserts incorrect legal  
28 conclusions, rather than stating factual allegations. To the extent that any answer is required,

1 Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are  
2 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
3 remaining allegations contained in paragraph 415.

4 416. Paragraph 416 does not require an answer because it asserts incorrect legal  
5 conclusions, rather than stating factual allegations. To the extent that any answer is required,  
6 Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that Plaintiffs are  
7 entitled to judgment against, or any relief whatsoever from, Reynolds in this action, and denies the  
8 remaining allegations contained in paragraph 416.

9 417. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
10 Complaint and denies the remaining allegations of paragraph 417.

11 418. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
12 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies  
13 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
14 action, and denies the remaining allegations contained in paragraph 418.

15 419. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
16 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies  
17 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
18 action, and denies the remaining allegations contained in paragraph 419.

19 420. Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that  
20 Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this action,  
21 and denies the remaining allegations contained in paragraph 420.

22 **TWELTH CLAIM FOR RELIEF**

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

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

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

28 422. Reynolds denies that Plaintiffs are entitled to judgment against, or any relief



1 whatsoever from, Reynolds in this action, and denies the remaining allegations contained in  
2 paragraph 422 that apply to Reynolds. Reynolds is without knowledge or information sufficient to  
3 form a belief as to the truth or falsity of the remaining allegations contained in paragraph 422 and,  
4 on that basis, denies those allegations.

5 423. Reynolds admits that N.R.S. T. 52, Ch. 589, Deceptive Trade Practices has been in  
6 effect since 1973. Reynolds denies the remaining allegations contained in paragraph 423.

7 424. Paragraph 424 does not require an answer because it asserts legal conclusions, rather  
8 than stating factual allegations. To the extent that any answer is required, Reynolds denies the  
9 allegations contained in paragraph 424.

10 425. Paragraph 425 does not require an answer because it asserts legal conclusions, rather  
11 than stating factual allegations. To the extent that any answer is required, Reynolds admits Plaintiffs  
12 purport to bring a claim pursuant to NRS 41.600. Reynolds denies the remaining allegations  
13 contained in paragraph 425.

14 426. Reynolds admits Plaintiffs purport to quote portions of NRS 598.0915. Reynolds  
15 states that the statute speaks for itself and denies the remaining allegations contained in paragraph  
16 426.

17 427. Reynolds denies making false and misleading statements and/or representations, and  
18 denies the remaining allegations contained in paragraph 427, including each of its subparagraphs.

19 428. Reynolds denies the existence of its participation in any conspiracy and denies the  
20 remaining allegations contained in paragraph 428.

21 a. Reynolds denies the allegations contained in paragraph 428a. that apply to Reynolds.  
22 Reynolds is without knowledge or information sufficient to form a belief as to the  
23 truth or falsity of the remaining allegations contained in paragraph 428a. that apply to  
24 other Defendants and, on that basis, denies those allegations.

25 b. Reynolds denies the allegations contained in paragraph 428b. that apply to Reynolds.  
26 Reynolds is without knowledge or information sufficient to form a belief as to the  
27 truth or falsity of the remaining allegations contained in paragraph 428b. that apply to  
28 other Defendants and, on that basis, denies those allegations.

- 1 c. Reynolds denies the allegations contained in paragraph 428c, including  
2 subparagraphs 428c.i. through 428c.ii. that apply to Reynolds. Reynolds is without  
3 knowledge or information sufficient to form a belief as to the existence, authenticity,  
4 content, or context of the remaining unidentified “White Papers” referenced in  
5 paragraph 428c.ii. and, accordingly, denies the allegations relating thereto. Reynolds  
6 is without knowledge or information sufficient to form a belief as to the truth or  
7 falsity of the remaining allegations contained in paragraph 428c. that apply to other  
8 Defendants and, on that basis, denies those allegations.
- 9 d. Reynolds denies the allegations contained in paragraph 428d. that apply to Reynolds.  
10 Reynolds is without knowledge or information sufficient to form a belief as to the  
11 truth or falsity of the remaining allegations contained in paragraph 428d. that apply to  
12 other Defendants and, on that basis, denies those allegations.
- 13 i. Reynolds admits that an article written by Stanley Frank entitled “To Smoke  
14 or Not to Smoke, That is the Still the Question” appeared in various  
15 magazines. Reynolds states that this article speaks for itself, but denies that it  
16 is fairly or accurately characterized in paragraph 428d.i. Reynolds states that  
17 the allegations contained in paragraph 428d.i. purport to selectively quote,  
18 improperly characterize, and/or reference portions of the district court’s  
19 opinion in United States v. Philip Morris USA, Inc. Reynolds states that the  
20 opinion speaks for itself but denies that it is fairly, accurately, or appropriately  
21 characterized in paragraph 428d.i. Except as expressly admitted, Reynolds  
22 denies the allegations in paragraph 428d.i.
- 23 ii. Reynolds admits that Joseph Cullman, then-chairman of Philip Morris,  
24 appeared on “Face the Nation” on January 3, 1971. Reynolds states that this  
25 broadcast and the complete statement of Joseph Cullman speaks for itself.  
26 Reynolds lacks knowledge or information sufficient to form a belief of the  
27 truth of the remaining allegations contained in paragraph 428d.ii. and, on that  
28 basis, denies those allegations.



- 1 e. Reynolds denies the existence of, or its participating in, any alleged conspiracy and  
2 denies the remaining allegations contained in paragraph 428e. that apply to Reynolds.  
3 Reynolds is without knowledge or information sufficient to form a belief as to the  
4 truth or falsity of the remaining allegations contained in paragraph 428e. that apply to  
5 other Defendants and, on that basis, denies those allegations.
- 6 i. Reynolds denies the existence of, or its participating in, any alleged  
7 conspiracy. Reynolds is without knowledge or information sufficient to form  
8 a belief as to the existence, authenticity, content, or context of the unidentified  
9 statement referenced in paragraph 428e.i. and, accordingly, denies the  
10 allegations relating thereto.
- 11 ii. Reynolds denies the existence of, or its participating in, any alleged  
12 conspiracy. Reynolds is informed and believes that selected excerpts from a  
13 document prepared in or around 1972 by Fred Panzer are quoted accurately,  
14 although out of context, in paragraph 428e.ii. Reynolds states that the  
15 complete and precise content of the referenced document can be ascertained  
16 from the document itself, but denies that it is fairly or accurately characterized  
17 in paragraph 428e.ii. Reynolds denies the remaining allegations contained in  
18 paragraph 428e.ii.
- 19 iii. Reynolds states that the allegation contained in paragraph 428e.iii., including  
20 its subparagraphs, purports to selectively quote a Brown & Williamson  
21 Tobacco Company document. Reynolds states that the complete text and/or  
22 content of the document may be ascertained from the document itself but,  
23 denies that it is fairly or accurately characterized. Reynolds denies the  
24 remaining allegations contained in paragraph 428e.iii.
- 25 iv. Reynolds admits upon information and belief that Anne Browder was  
26 employed by the Tobacco Institute and on occasion appeared on television  
27 programs. Reynolds states that the complete and precise content of Ms.  
28 Browder's statement can be ascertained from the statement itself, but denies

1 that it is fairly or accurately characterized in paragraph 428e.iv. Reynolds  
2 denies the remaining allegations contained in paragraph 428e.iv.

3 v. Reynolds states that the allegations contained in paragraph 428e.v. purport to  
4 selectively quote, improperly characterize, and/or reference portions of the  
5 district court's opinion in United States v. Philip Morris USA, Inc. Reynolds  
6 states that the opinion speaks for itself but denies that it is fairly, accurately, or  
7 appropriately characterized in paragraph 428e.v. Reynolds also states that the  
8 document in the third sentence of paragraph 428e.v. is protected from  
9 disclosure by the attorney-client privilege, the work product doctrine, and/or  
10 the joint defense or the joint interest privilege, and that it is therefore improper  
11 for Plaintiffs to have referred to this documents in the Second Amended  
12 Complaint. Reynolds denies the remaining allegations of paragraph 428e.v. to  
13 the extent they are directed to Reynolds. To the extent the allegations of  
14 paragraph 428e.v. are directed toward other Defendants, Reynolds is without  
15 knowledge or information sufficient to form a belief as to truth of those  
16 remaining allegations contained in paragraph 428e.v. and, on that basis, denies  
17 those allegations.

18 f. Reynolds denies the allegations contained in paragraph 428f. that apply to Reynolds.  
19 Reynolds is without knowledge or information sufficient to form a belief as to the  
20 truth or falsity of the remaining allegations contained in paragraph 428f. that apply to  
21 other Defendants and, on that basis, denies those allegations.

22 g. Reynolds denies the allegations contained in paragraph 428g. that apply to Reynolds.  
23 Reynolds is without knowledge or information sufficient to form a belief as to the  
24 truth or falsity of the remaining allegations contained in paragraph 428g. that apply to  
25 other Defendants and, on that basis, denies those allegations.

26 429. Reynolds states the allegations in paragraph 429 are not directed toward Reynolds  
27 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
28 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the

1 truth or falsity of the allegations contained in paragraph 429 concerning another Defendant and, on  
2 that basis, denies those allegations.

3 430. Reynolds states the allegations in paragraph 430 are not directed toward Reynolds  
4 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
5 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
6 truth or falsity of the allegations contained in paragraph 430 concerning another Defendant and, on  
7 that basis, denies those allegations.

8 431. Reynolds states the allegations in paragraph 431 are not directed toward Reynolds  
9 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
10 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
11 truth or falsity of the allegations contained in paragraph 431 concerning another Defendant and, on  
12 that basis, denies those allegations.

13 432. Reynolds states the allegations in paragraph 432 are not directed toward Reynolds  
14 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
15 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
16 truth or falsity of the allegations contained in paragraph 432 concerning another Defendant and, on  
17 that basis, denies those allegations.

18 433. Reynolds states the allegations in paragraph 433 are not directed toward Reynolds  
19 and, accordingly, no answer from Reynolds is required. To the extent that an answer may be  
20 deemed required, Reynolds is without knowledge or information sufficient to form a belief as to the  
21 truth or falsity of the allegations contained in paragraph 433 concerning another Defendant and, on  
22 that basis, denies those allegations.

23 434. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
24 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies  
25 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
26 action, and denies the remaining allegations contained in paragraph 434.

27 435. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
28 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies

1 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
2 action, and denies the remaining allegations contained in paragraph 435.

3 436. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
4 Complaint and denies the remaining allegations of paragraph 436.

5 437. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
6 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies  
7 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
8 action, and denies the remaining allegations contained in paragraph 437.

9 438. Reynolds denies that it engaged in the conduct alleged in the Second Amended  
10 Complaint. Reynolds also denies that Plaintiffs have any cause of action against Reynolds, denies  
11 that Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this  
12 action, and denies the remaining allegations contained in paragraph 438.

13 439. Reynolds denies that Plaintiffs have any cause of action against Reynolds, denies that  
14 Plaintiffs are entitled to judgment against, or any relief whatsoever from, Reynolds in this action,  
15 and denies the remaining allegations contained in paragraph 439.

16 **THIRTEENTH CLAIM FOR RELIEF**  
17 **(WRONGFUL DEATH – STRICT LIABILITY)**

18 **Dolly Rowan as Administrator of the Estate of Noreen Thompson, and Dolly Rowan,**  
19 **NAVONA COLLISON, and Russell Thompson, as Heirs of Noreen Thompson, Against**  
20 **Defendants, 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**

21 440-461. Plaintiffs' Thirteenth Claim, paragraphs 440-461, are not directed to Reynolds and  
22 do not seek relief from Reynolds; accordingly, no answer by Reynolds is required. To the extent a  
23 response is required, Reynolds denies the allegations of paragraph numbers 440-461.

24 **FOURTEENTH CLAIM FOR RELIEF**  
25 **(STRICT PRODUCT LIABILITY)**

26 **Dolly Rowan as Administrator of the Estate of Noreen Thompson Against Defendants**  
27 **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**

28 462-476. Plaintiffs' Fourteenth Claim, paragraphs 462-476, are not directed to Reynolds and

1 do not seek relief from Reynolds; accordingly, no answer by Reynolds is required. To the extent a  
2 response is required, Reynolds denies the allegations of paragraph numbers 462-476.

3 Reynolds denies that Plaintiffs are entitled to judgment against, or any relief whatsoever  
4 from, Reynolds in this action and denies the remaining allegations contained in the unnumbered  
5 paragraph following paragraph 476 beginning "WHEREFORE."

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

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

9 **SECOND AFFIRMATIVE DEFENSE**

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

12 **THIRD AFFIRMATIVE DEFENSE**

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

15 **FOURTH AFFIRMATIVE DEFENSE**

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

18 **FIFTH AFFIRMATIVE DEFENSE**

19 Any injuries allegedly sustained by Plaintiffs were produced, if at all, by an intervening or  
20 superseding cause or causes, and any alleged act or omission of Reynolds was not the proximate or  
21 competent producing cause of Plaintiffs' Decedent's alleged injuries or damages. To the extent  
22 Plaintiffs' Decedent's alleged injuries were caused by the use of tobacco products, the proximate  
23 cause of such alleged injuries was Plaintiffs' Decedent's choice to use tobacco products.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 If Plaintiffs' Decedent was injured or damaged, such alleged injuries or damages were caused  
26 solely or proximately by the acts, wrongs, or omissions of Plaintiffs' Decedent, by preexisting  
27 conditions, or by forces and/or things over which Reynolds had no control and for which Reynolds is  
28 not responsible or liable.

**SEVENTH AFFIRMATIVE DEFENSE**

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

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' Decedent's consent.

**NINTH AFFIRMATIVE DEFENSE**

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

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs and/or Plaintiffs' Decedent failed to mitigate any injuries and damages they may have allegedly suffered.

**ELEVENTH AFFIRMATIVE DEFENSE**

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

**TWELFTH AFFIRMATIVE DEFENSE**

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

**THIRTEENTH AFFIRMATIVE DEFENSE**

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

**FOURTEENTH AFFIRMATIVE DEFENSE**

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

**FIFTEENTH AFFIRMATIVE DEFENSE**

By operation of the Supremacy Clause, Article VI, Clause 2, of the United States



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

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 Reynolds is entitled to set-off, should any damages be awarded against it, in the amount of  
8 damages or settlement amounts recovered by Plaintiffs with respect to the same alleged injuries.  
9 Reynolds is also entitled to have any damages that may be awarded to Plaintiffs reduced by the value  
10 of any benefit or payment to Plaintiffs from any collateral source.

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' misrepresentation, fraud, and conspiracy claims and/or allegations are barred  
24 because Plaintiffs have failed to plead misrepresentation, fraud, and conspiracy with particularity, as  
25 required by the Nevada Rules of Civil Procedure and Nevada law, and must be dismissed for failure  
26 to state a claim upon which relief may be granted.

27 **TWENTIETH AFFIRMATIVE DEFENSE**

28 Plaintiffs lack either standing or capacity, or both, to bring some or all of the claims alleged

1 in the Second Amended Complaint.

2 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

3 Plaintiffs' claims are barred in whole or in part, by the First Amendment of the U.S.  
4 Constitution and cognate provisions of the Nevada Constitution, because the matters alleged involve  
5 statements made by Reynolds and others in the proper exercise of their rights to free speech and to  
6 petition the government, and because of the application of the Noerr-Pennington doctrine.

7 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims are barred, in whole or in part, by the doctrine of absolute or quasi-judicial  
9 immunity, attorney immunity, and/or the litigation privilege to the extent that they are predicated on  
10 Reynolds' defense of potential litigation, actions of its attorneys, or statements to governmental  
11 entities, including statements or positions taken in the defense of lawsuits against it or statements to  
12 legislative bodies.

13 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

14 Plaintiffs' fraud and misrepresentation claims cannot be sustained because Reynolds did not  
15 have superior knowledge of material facts pertaining to smoking and health that were not also  
16 readily available to Plaintiffs' Decedent.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' product liability claims are barred because Reynolds' cigarettes are not dangerous  
19 to an extent beyond that contemplated by the ordinary consumer.

20 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs had the means of  
22 knowing, by the exercise of ordinary intelligence, the truth of alleged statements concerning  
23 smoking and health.

24 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

27 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

28 Plaintiffs' claims cannot be sustained as to Reynolds because Plaintiffs cannot establish that



1 any reliance by Plaintiffs' Decedent on any alleged statements or omissions by Reynolds was  
2 justified or reasonable.

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 Reynolds pleads the defenses available under the applicable products liability statutes of the  
5 State of Nevada.

6 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

7 Reynolds states that as of the relevant times alleged in the Second Amended Complaint, it  
8 did not know, and in light of the then existing and reasonably available scientific and technological  
9 knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the  
10 injuries and damages complained of in the Second Amended Complaint; (2) the alleged danger of  
11 any such design characteristics; or (3) any scientifically and technologically feasible and  
12 economically practical alternate design. Reynolds further states that the injuries and damages  
13 complained of in the Second Amended Complaint were not proximately caused by the lack of any  
14 such alternate design. Any cigarettes manufactured and sold by Reynolds are, and always have  
15 been, consistent with available technological, medical, scientific and industrial state-of-the-art and  
16 comply, and have complied, with all applicable laws and governmental regulations.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 Plaintiffs' claims are barred, to the extent Plaintiffs seek to impose liability on Reynolds  
19 retroactively or for conduct which was not actionable at the time it occurred.

20 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

21 Plaintiffs' design defect claims are barred in whole or in part because Reynolds' tobacco  
22 products were designed in conformity with the generally recognized state of the art at the time they  
23 were designed, manufactured, tested, packaged, labeled, sold, or distributed.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of laches, waiver,  
26 equitable estoppel, and ratification.

27 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

28 All cigarettes manufactured to be sold in the United States since 1966, and every United

1 States cigarette advertisement since 1972, carried warnings that adequately informed Plaintiffs'  
2 Decedent of the health risks of smoking cigarettes. Such acts eliminated the elements of willfulness  
3 and reckless disregard necessary to support an award of punitive damages.

4 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' claims for punitive damages are barred to the extent that they are based upon  
6 conduct unrelated to Plaintiffs' alleged harm.

7 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims for punitive damages are barred to the extent that they are based upon  
9 conduct occurring outside the State of Nevada.

10 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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

16 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims are barred because the alleged conduct of Reynolds was undertaken in good  
18 faith and for a valid business purpose.

19 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

20 Plaintiffs' claims for punitive damages against Reynolds cannot be sustained because an  
21 award of punitive damages under Nevada law, subject to no predetermined limit, such as a  
22 maximum multiple of compensatory damages or a maximum amount of punitive damages that a jury  
23 may impose, and providing no protection against multiple awards of punitive damages for the same  
24 course of conduct, would violate Reynolds' due process rights guaranteed by the Fifth and  
25 Fourteenth Amendments to the United States Constitution, and Reynolds' due process rights under  
26 Article 1, Sections 6, 8, and 15 of the Nevada Constitution, and would be improper under the  
27 common law and public policies of the State of Nevada.

28