

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA CAMACHO; AND ANTHONY
CAMACHO,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE HONORABLE
NADIA KRALL, DISTRICT JUDGE,

Respondents,

and

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; and ASM NATIONWIDE
CORPORATION d/b/a SILVERADO SMOKES &
CIGARS, a domestic corporation; LV SINGHS
NC. d/b/a SMOKES & VAPORS, a domestic
corporation,

Real Parties in Interest.

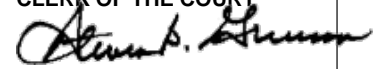
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*PETITIONERS' APPENDIX
VOLUME 1 (Nos. 1-227)*

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DISTRICT COURT

CLARK COUNTY, NEVADA

12 SANDRA CAMACHO, individually,
13 and ANTHONY CAMACHO, individually,

14 Plaintiffs,

15 v.

16 PHILIP MORRIS USA, INC., a foreign
17 corporation; R.J. REYNOLDS TOBACCO
18 COMPANY, a foreign corporation,
19 individually, and as successor-by-merger to
20 LORILLARD TOBACCO COMPANY and as
21 successor-in-interest to the United States
22 tobacco business of BROWN &
23 WILLIAMSON TOBACCO CORPORATION,
24 which is the successor-by-merger to THE
25 AMERICAN TOBACCO COMPANY;
26 LIGGETT GROUP, LLC., a foreign
27 corporation; and ASM NATIONWIDE
28 CORPORATION d/b/a SILVERADO
SMOKES & CIGARS, a domestic corporation,
and LV SINGHS INC. d/b/a SMOKES &
VAPORS, a domestic corporation; DOES I-X;
and ROE BUSINESS ENTITIES XI-XX,
inclusive,

Defendants.

CASE NO.: A-19-807650-C

DEPT. NO.: IV

AMENDED COMPLAINT

JURY TRIAL DEMAND

COMES NOW, SANDRA CAMACHO, individually, and ANTHONY CAMACHO, individually, by and through their attorney of record, CLAGGETT & SYKES LAW FIRM, complaining of Defendants and allege as follows:

JURISDICTION, VENUE, AND PARTIES

1. This Court has jurisdiction over this matter under NRS 14.065 and NRS 4.370(1), as the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess of \$15,000.00. Venue is proper pursuant to NRS 13.040, as Defendants, or any one of them, reside and/or conduct business in Clark County, Nevada at the commencement of this action.

2. Plaintiff, SANDRA CAMACHO (hereinafter "Plaintiff"), was and is at all times relevant herein, a resident of Clark County, Nevada.

3. Plaintiff, ANTHONY CAMACHO, was and is at all times relevant herein, married to Plaintiff, SANDRA CAMACHO, and was and is a resident of Clark County, Nevada.

4. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Defendant PHILIP MORRIS USA, Inc. (hereinafter "PHILIP MORRIS"), was and is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of Virginia with its principal place of business located in the State of Virginia. Defendant, PHILIP MORRIS, resides and/or conducts business in every county within the State of Nevada and did so during all times relevant to this action.

5. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Defendant R.J. REYNOLDS TOBACCO COMPANY, Inc. (hereinafter "R.J. REYNOLDS"), was and is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of North Carolina with its principal place of business located in the State of North Carolina. Defendant, R.J.

1 REYNOLDS, resides and/or conducts business in every county within the State of Nevada and did so
2 during all times relevant to this action.

3 6. R.J. REYNOLDS TOBACCO COMPANY is also the successor-by-merger to
4 LORILLARD TOBACCO COMPANY (hereinafter "LORILLARD"), and is the successor-in-interest
5 to the United States tobacco business of BROWN & WILLIAMSON TOBACCO CORPORATION
6 (n/k/a Brown & Williamson Holdings, Inc.) (hereinafter "BROWN & WILLIAMSON"), which is the
7 successor-by-merger to the AMERICAN TOBACCO COMPANY (hereinafter "AMERICAN").
8

9 7. Plaintiffs are informed and believe and thereon allege that at all times relevant herein,
10 Defendant LIGGETT GROUP, Inc. (f/k/a LIGGETT GROUP, INC., f/k/a BROOKE GROUP, LTD.,
11 Inc., f/k/a LIGGETT & MEYERS TOBACCO COMPANY) (hereinafter "LIGGETT"), was and is a
12 corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was duly
13 organized, created, and existing under and by virtue of the laws of the State of Delaware with its
14 principal place of business located in the State of North Carolina. Defendant, LIGGETT, resides and/or
15 conducts business in every county within the State of Nevada and did so during all times relevant to
16 this action.
17

18 8. The TOBACCO INDUSTRY RESEARCH COMMITTEE ("TIRC") was formed in
19 1954, and later was re-named the COUNCIL FOR TOBACCO RESEARCH ("CTR"). This was a
20 disingenuous, fake "research committee" organized by Defendants as part of their massive public
21 relations campaign to create a controversy regarding the health hazards of cigarettes.
22

23 9. The TOBACCO INSTITUTE, INC. ("TI") was formed in 1958 and was intended to
24 supplement the work of TIRC/CTR. TI spokespeople appeared on media/news outlets responding on
25 behalf of the cigarette industry with misrepresentations and false statements regarding health concerns
26 over cigarettes.
27
28

1 10. Plaintiffs are informed and believe, and thereon allege that Defendant, ASM
2 NATIONWIDE CORPORATION d/b/a SILVERADO SMOKES & CIGARS (“SILVERADO”), was
3 and is a domestic corporation authorized to do business within this jurisdiction of Clark County,
4 Nevada, and was duly organized, created, and existing under and by virtue of the laws of the State of
5 Nevada. At all times material, SILVERADO’S registered agent resides at 430 E. Silverado Ranch
6 Blvd. No 120. SILVERADO’S owns and operates a store that sells tobacco and cigarette products
7 located at 430 E. Silverado Ranch Blvd, Ste. 120, Las Vegas NV 89123. SILVERADO’S is a retailer
8 of tobacco and cigarette products and is registered with the State of Nevada as a licensed tobacco
9 retailer, selling such items to the public, including Plaintiff, SANDRA CAMACHO.

11 11. Plaintiffs are informed and believe, and thereon allege that Defendant, LV SINGHS
12 INC. d/b/a SMOKES & VAPES (“SMOKES & VAPES”), was and is a domestic corporation
13 authorized to do business within this jurisdiction of Clark County, Nevada, and was duly organized,
14 created, and existing under and by virtue of the laws of the State of Nevada. At all times material,
15 SMOKES & VAPES’ registered agent resides at 9101 w. Sahara Ave. Ste 101, Las Vegas NV 89117.
16 SMOKES & VAPES owns and operates a store that sells tobacco and cigarette products located at 430
17 E. Silverado Ranch Blvd. Ste 120, Las Vegas NV 89183. ASM’S is a retailer of tobacco and cigarette
18 products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to
19 the public, including Plaintiff, SANDRA CAMACHO.

22 12. Plaintiffs further allege that Defendants, at all times material to this cause of action,
23 through their agents, employees, executives, and representatives, conducted, engaged in and carried on a
24 business venture of selling cigarettes in the State of Nevada and/or maintained an office or agency in this
25 state and/or committed tortious acts within the State of Nevada and knowingly allowed the Plaintiff to be
26 exposed to an unreasonably dangerous and addictive product, to-wit: cigarettes and/or cigarette smoke.

1 17. Plaintiff, SANDRA CAMACHO, was diagnosed on or about March of 2018 with
2 laryngeal cancer, which was caused by smoking L&M brand cigarettes, Marlboro brand cigarettes, and
3 Basic brand cigarettes, to which she was addicted and smoked continuously from approximately 1964
4 until 2017.

5 18. At all times material, L&M cigarettes were designed, manufactured, and sold by
6 Defendant, Liggett.

7 19. At all times material, Marlboro and Basic cigarettes were designed, manufactured, and
8 sold by Defendant, Philip Morris USA, Inc.

9 20. Plaintiff, SANDRA CAMACHO, purchased and smoked L&M, Marlboro, and Basic
10 cigarettes from the SILVERADO'S in sufficient quantities to be a substantial contributing cause of her
11 laryngeal cancer.

12 21. Plaintiff, SANDRA CAMACHO, purchased and smoked L&M, Marlboro, and Basic
13 cigarettes from the SMOKES & VAPORS in sufficient quantities to be a substantial contributing cause
14 of her laryngeal cancer.

15 22. At all times material, Defendants purposefully and intentionally designed cigarettes to
16 be highly addictive. They added ingredients such as ammonia and diammonium-phosphate to "free-
17 base" nicotine and manipulated levels of nicotine and pH in smoke to make cigarettes more addictive,
18 better tasting, and easier to inhale. They also deliberately manipulated and/or added compounds in
19 cigarettes such as arsenic, polonium-210, tar, methane, methanol, carbon monoxide, nitrosamines,
20 butane, formaldehyde, tar, carcinogens, and other deadly and poisonous compounds to cigarettes.

21 23. Astonishingly, for over half a century, Defendants concealed the addictive and deadly
22 nature of cigarettes from Plaintiff, the government, and the American public by making knowingly
23 false and misleading statements and by engaging in an over two-hundred and fifty-billion-dollar
24 conspiracy.

1 24. Despite knowing internally, dating back to the 1950s, that cigarettes were deadly,
2 addictive, and caused death and disease, Defendants, for over five decades, purposefully and
3 intentionally lied, concealed information, and made knowingly false and misleading statements to the
4 public, including Plaintiff, that cigarettes were allegedly *not* harmful.

5 25. Defendants failed to acknowledge or admit the truth until they were forced to do, as a
6 result of litigation, in the year 2000.

7 26. Plaintiff's injuries arose out of Defendants' acts and/or omissions which occurred
8 inside and outside of the State of Nevada.

9 27. At all times material to this action, Defendants knew or should have known the
10 following:

- 11 a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as
12 COPD, which includes emphysema and chronic bronchitis, laryngeal cancer, and lung
13 cancer, including squamous cell carcinoma, small cell carcinoma, adenocarcinoma,
14 and large cell carcinoma;
- 15 b. Nicotine in cigarettes is addictive;
- 16 c. Defendants placed cigarettes on the market that were defective and unreasonably
17 dangerous;
- 18 d. Defendants concealed or omitted material information not otherwise known or
19 available, knowing that the material was false and misleading, or failed to disclose a
20 material fact concerning the health effects or addictive nature of smoking cigarettes, or
21 both;
- 22 e. Defendants entered into an agreement to conceal or omit information regarding the
23 health effects of cigarettes or their addictive nature with the intention that smokers and
24 the public would rely on this information to their detriment;

- f. Defendants sold or supplied cigarettes that were defective;
- g. Defendants are negligent;
- h. Children and teenagers are more likely to become addicted to cigarettes if they begin smoking at an early age;
- i. Continued and frequent use of cigarettes highly increases one's chances of becoming, and remaining, addicted;
- j. Continued and frequent use of cigarettes highly increases one's chances of developing serious illness and death;
- k. It is extremely difficult to quit smoking;
- l. "Many, but not most, people who would like to stop smoking are able to do so" (Concealed Document, 1982);
- m. "Defendants' cannot defend continued smoking as "free choice" if the person is addicted" (Concealed Document 1980);
- n. It is possible to develop safe cigarettes free of nicotine, carcinogens, and other deadly and poisonous compounds;
- o. "The thing Defendants' sell most is nicotine" (Concealed Document 1980);
- p. Filtered, low tar, low nicotine, and "light" cigarettes are more dangerous than "regular" cigarettes;
- q. "Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and would almost certainly fail" (Concealed Document 1966);
- r. "Without the nicotine, the cigarette market would collapse, and Defendants' would all lose their jobs and their consulting fees" (Concealed Document 1977);
- s. "Carcinogens are found in practically every class of compounds in smoke" (Concealed Document 1961);

1 t. "Cigarettes have certain unattractive side effects . . . they cause lung cancer"
2 (Concealed Document 1963).

3 28. Defendants' tortious and unlawful conduct caused consumers, including SANDRA
4 CAMACHO, to suffer dangerous diseases and injuries.

5
6 **Historical Allegations of Defendants Unlawful Conduct**
7 **Giving Rise to the Lawsuit**

8 29. Lung cancer, caused by cigarette smoking, is the number one leading cause of death in
9 the United States.

10 30. Cigarettes kill more than 500,000 Americans every year. Over 20 million Americans
11 have died from lung cancer.

12 31. Lung cancer is a disease manufactured and created by the cigarette industry, including
13 Defendants herein.

14 32. Prior to 1900, lung cancer was virtually unknown as a cause of death in the United
15 States.

16 33. By 1935, there were only an estimated 4,000 lung cancer deaths. By 1945, as a result
17 of the rise of cigarette consumption, the number of deaths almost tripled.

18 34. Because of this phenomenon, scientists began conducting research and experiments
19 regarding the link between cigarette smoking and lung cancer.

20 35. In addition to scientists, Defendants themselves began to conduct similar research. By
21 February 2, 1953 Defendants had concrete proof that cigarette smoking increased the risk of lung
22 cancer. A previously secret and concealed document by Defendant, an R.J. Reynolds' states:
23

24 **Studies of clinical data tend to confirm the relationship between heavy smoking**
25 **and prolonged smoking and incidence of cancer of the lung.**

26 36. Approximately six months later on December 21, 1953, Life Magazine and Reader's
27 Digest published articles regarding a ground-breaking mouse painting study, conducted by Drs.
28

Wynder and Graham, which concluded that tar from cigarettes painted on the backs of mice developed into cancer.

37. As a result of these articles and mounting public awareness regarding the link between cigarette smoking and lung cancer, Defendants grew fearful their customers would stop smoking, which would in turn bankrupt their companies.

38. Thus, in order to maximize profits, Defendants decided to intentionally ban together to form a conspiracy which, for over half a century, was devoted to creating and spreading doubt regarding a disingenuous “open debate” about whether cigarettes were or were not harmful.

39. This conspiracy was formed in December of 1953 at the Plaza Hotel in New York City. Paul Hahn, president of American Tobacco, sent telegrams to presidents of the seven largest tobacco companies and one tobacco growers’ organization, inviting them to meet at the Plaza Hotel.



40. Executives from every cigarette company, except for Liggett, met at the Plaza Hotel on December 14, 1953. The executives discussed the following topics: (i) the negative publicity from the recent articles in the media, (ii) the need to hire a public relations firm, Hill & Knowlton, and (iii) the major threat to their corporations’ economic future.

41. In an internal planning memorandum Hill & Knowlton assessed their cigarette clients’ problems in the following manner:

“There is only one problem -- confidence, and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. **And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any pooh-poohing**

1 **logic -- every time they light a cigarette.** No resort to mere logic ever cured panic yet,
2 whether on Madison Avenue, Main Street, or in a psychologist's office. And no mere
3 recitation of arguments pro, or ignoring of arguments con, or careful balancing of the
4 two together, is going to deal with such fear now. That, gentlemen, is the nature of the
5 unexampled challenge to this office."

6 42. On December 28, 1953, Defendants again met at the Plaza Hotel where they knowingly
7 and purposefully agreed to form a fake "research committee," called the Tobacco Industry Research
8 Committee ("TIRC") (later renamed the Council for Tobacco Research ("CTR")). Paul Hahn,
9 president of American Tobacco, was elected the temporary chairman of TIRC.

10 43. TIRC's *public* mission statement was to supposedly aid and assist with so-called
11 "independent" research into cigarette use and health.

12 44. The formation and purpose of TIRC was announced on January 4, 1954, in a full-page
13 advertisement called "A Frank Statement to Cigarette Smokers" published in 448 newspapers
14 throughout the United States.

15 45. The Frank Statement was signed by the following domestic cigarette and tobacco
16 product manufacturers, including Defendants herein, organizations of leaf tobacco growers, and
17 tobacco warehouse associations that made up TIRC: American Tobacco by Paul Hahn, President;
18 B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip
19 Morris by O. Parker McComas, President; Defendant, R.J Reynolds by Edward A. Darr, President;
20 Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S.
21 Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley
22 Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company,
23 Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton,
24 General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco
25 Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson,
26 President.
27
28

46. In their Frank Statement to Cigarette Smokers, Defendants knowingly and intentionally mislead Plaintiff, the public, and the American government when they disingenuously promised to “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and health, and reveal to the public the results of their purported “objective” research.

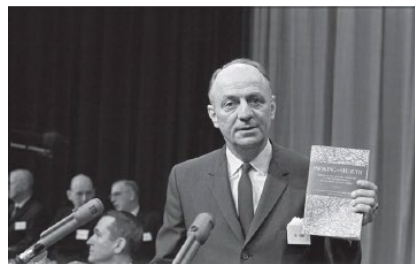
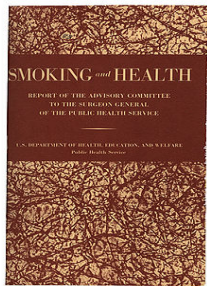
47. For the next five decades, TIRC/CTR worked diligently, and quite successfully, to rebuff the public’s concern about the dangers of cigarettes. Defendants, through TIRC/CTR, invented the false and misleading notion that there was an “open question” regarding cigarette smoking and health. They appeared on television and radio to broadcast this message.

48. TIRC/CTR hired fake scientists and spokespeople to attack genuine, legitimate scientific studies. Virtually none of the so-called “research” funded by TIRC/CTR centered on the immediate questions relating to carcinogenesis and tobacco. Rather than addressing the compounds and carcinogens in cigarette smoke and their hazardous effect on the human body, TIRC/CTR instead directed its resources to alternative theories of the origins of cancer, centering on genetic factors and environmental risks.

49. The major initiative of TIRC/CTR, through their Scientific Advisory Board (SAB), was to, “create the appearance of [Defendants] devoting substantial resources to the problem without the risk of funding further ‘contrary evidence.’”

50. TIRC/CTR’s efforts worked brilliantly and cigarette consumption rapidly increased.

51. In 1964 there was another dip in the consumption of cigarettes because the United States Surgeon General reported, “cigarette smoking is causally related to lung cancer in men . . . the data for women, though less extensive, points in the same direction.”



1
2 52. The cigarette industry's *public* response, through TIRC, to the 1964 Surgeon General
3 Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry
4 would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were
5 any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements.
6 As a result, cigarette consumption again began to rise.
7

8 53. Despite Defendant's *public* response, internally they were fully aware of the magnitude
9 and depth of lies and deception they were promulgating. They knew and understood they were
10 making fake, misleading promises that would never come to fruition. Their own internal records
11 reveal that they knew, even back in 1964, that cigarettes were not only hazardous, but deadly:

12 **"Cigarettes have certain unattractive side effects . . . they cause lung**
13 **cancer"** (Concealed Document 1963).

14 **"Carcinogens are found in practically every class of compounds in smoke"**
15 **(Concealed Document 1961).**

16 **"The amount of evidence accumulated to indict cigarette smoke as a**
17 **health hazard is overwhelming. The evidence challenging such indictment**
18 **is scant"** (Concealed Document 1962).

19 54. Furthermore, not only did Defendants know and appreciate the dangers of cigarettes,
20 but they were also intentionally manipulating ingredients, such as nicotine, in cigarettes to make
21 them more addictive. Their documents reveal they knew the following:

22 **"Our industry is based upon design, manufacture and sale of attractive**
23 **dosage forms of nicotine"** (Concealed Document 1972).

24 **"We can regulate, fairly precisely, the nicotine . . . to almost any desired**
25 **level management might require"** (Concealed Document 1963).

26 **"Cigarette[s] that do not deliver nicotine cannot satisfy the habituated**
27 **smoker and would almost certainly fail"** (Concealed Document 1966).

28 **"Nicotine is addictive . . . We are then, in the business of selling nicotine,**
an addictive drug" (Concealed Document 1963).

1 **“We have deliberately played down the role of nicotine”** (Concealed
2 Document 1972).

3 **“Very few consumers are aware of the effects of nicotine, i.e., it’s addictive**
4 **nature and that nicotine is a poison”** (Concealed Document 1978).

5 **“Determine minimum nicotine required to keep normal smoker ‘hooked.’”**
6 (Concealed Document 1965).

7 **“The thing we sell most is nicotine”** (Concealed Document 1980).

8 **“Without the nicotine, the cigarette market would collapse, and**
9 **Defendants’ would all lose their jobs and their consulting fees”** (Concealed
10 Document 1977).

11 55. Defendants deliberately added chemicals such as urea, ammonia, diammonium-
12 phosphate, tar, nitrosamines, arsenal, polonium-210, formaldehyde, and other carcinogens to
13 cigarettes. They “free-based” nicotine in cigarettes and manipulated levels of pH in smoke to make
14 cigarettes more addictive and easier to inhale.

15 56. Defendant’s sole priority was to make as much money as quickly as possible, with no
16 concern about the safety and well-being of their customers.

17 57. In 1966, the United States Government mandated that a “Caution” Label be placed on
18 packs of cigarettes stating, “Cigarette Smoking May be Hazardous to Your Health.”

19 58. The cigarette industry responded to the “Caution” label by continuing their massive
20 public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the
21 public.
22

23 59. Throughout this period Defendants also introduced “filtered” cigarettes – cigarettes
24 falsely marketed, advertised, and promoted as “less tar” and “less nicotine.”

25 60. However, internally, in Defendants’ previously concealed, hidden documents,
26 discussions regarding the true nature of filtered cigarettes was revealed – filters were just as harmful,
27 dangerous, and hazardous as unfiltered cigarettes; In fact, they were more dangerous. In a previously
28

1 secret document from 1976, Ernie Pepples from Brown & Williamson states, “the smoker of a filter
2 cigarette was getting as much or more nicotine and tar as he would have gotten from a regular
3 cigarette.”

4
5 61. Throughout the 1960s, 1970s, 1980s and 1990s, the cigarette industry, including
6 Defendants herein, spent two-hundred and fifty-billion-dollars in marketing efforts to promote the
7 sale of cigarettes.

8 62. The cigarette industry spent more money on marketing and advertising cigarettes *in*
9 *one day* than the public health community spent *in one year*.

10 63. Cigarette smoking was glamorized – celebrities smoked, athletes smoked, doctors
11 smoked, politicians smoked – everyone smoked cigarettes.

12 64. As early as the 1920s, and continuing today, cigarette manufacturers, including
13 Defendants herein, were also intentionally targeting children. Their documents reveal:

14
15 **“School days are here. And that means BIG TOBACCO BUSINESS for**
16 **somebody . . . line up the most popular students”** (Concealed Document
17 1927).

18 **“SUMMER SCHOOL IS STARTING . . . lining up these students . . . as**
19 **consumers”** (Concealed Document 1928).

20 **“Today’s teenager is tomorrow’s potential regular customer”** (Concealed
21 Document 1981).

22 **“The 14-24 age group . . . represent tomorrow’ cigarette business”**
23 (Concealed Document 1974).

24 65. Cigarette manufacturers, including Defendants herein, also targeted and prayed upon
25 minority populations in an effort to increase their market share and ultimately their profits.

26 66. Cigarettes were the number one most heavily advertised product on television until the
27 United States Government banned television advertisements in 1972.
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67. When cigarettes advertising was banned on television Defendants turned to marketing in stadiums, sponsoring sporting events such as the Winston Cup and Marlboro 500, sponsoring concerts, utilizing print advertisements in magazines, adding product placement in movies, and more.



68. Meanwhile, internally Defendants were praising themselves for accomplishing this “brilliantly conceived” conspiracy which deceived SANDRA CAMACHO, millions of Americans, the government, and the public health community.

“for nearly 20 years, this industry has employed a single strategy to defend itself . . . brilliantly conceived and executed . . . a holding strategy . . . creating doubt about the health charge without actually denying it”
(Concealed Document 1972).

69. In 1985, four rotating warning labels were placed on packs of cigarettes which warned, for the first time, that smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.

70. The cigarette industry, including Defendants herein, opposed these warning labels and throughout the 1980s, despite the warning labels being placed on their cigarettes, spoke publicly through their representatives in the Tobacco Institute (TI) that it was allegedly still unknown whether smoking cigarettes caused cancer or was addictive because, apparently, “more research was needed.”

1 71. In 1988 the United States Surgeon General reported that cigarettes and other forms of
2 tobacco were addicting, and nicotine is the drug in tobacco that causes addiction. In fact, in his
3 report, the Surgeon General compared tobacco addiction to heroine and cocaine.

4 72. In response, the cigarette industry, including Defendants herein, issued a press release
5 knowingly and disingenuously stating, "Claims that cigarettes are addictive is irresponsible and
6 scare tactics."

7 73. Defendants continued to publicly deny the addictive nature and health hazards of
8 smoking cigarettes until the year 2000, after litigation was brought against them by the Attorneys
9 Generals of multiple States and their previously concealed documents were made public.

10 74. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein,
11 testified under oath before the United States Congress that it was their opinion that it had not been
12 proven that cigarettes were addictive, caused disease, or caused one single person to die.
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20 75. Despite their own intensive research and (millions of) internal documents describing
21 the dangers and addictive qualities of cigarettes, Defendants' negligently, willfully, maliciously, and
22 intentionally made false and misleading statements to Congress, the public, and Plaintiff, SANDRA
23 CAMACHO.
24
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26 76. Even after Defendants knowingly lied during these Congressional hearings,
27 Defendants continued, and still are continuing to, perpetuate their conspiracy.
28

1 77. For example, in 1997 Liggett announced that they would voluntarily place a warning
2 label on their cigarette packages, in addition to the labels mandated by the United States government,
3 that smoking is addictive. Defendant, Philip Morris, immediately filed a restraining order against
4 Liggett to prevent them from adding this warning label. Then, in 1998 Liggett sold its three major
5 cigarette brands, L&N, Lark, and Chesterfield, to Philip Morris who immediately removed the
6 “smoking was addictive” warning label from these products.

7
8 78. Furthermore from 2000 through 2010, Defendants continued to mislead the public by
9 marketing and promoting “light” and “ultra-light” cigarettes despite knowing internally that such
10 cigarettes were just as dangerous and addictive as “regular” cigarettes.

11 79. In 2010 after Defendants were required, by the United States government, to remove
12 the misleading “light” and “ultra-light” labels from their cigarettes, they instead added “onserts” to
13 their packages of cigarettes explaining that, for example, “Your Marlboro Lights pack is changing.
14 But your cigarette stays the same. In the future, ask for ‘Marlboro in the gold pack.’”

15
16 80. Additionally, as recently as 2018, Defendants have continued to oppose proposed FDA
17 regulations which would reduce or eliminate the levels of nicotine in cigarettes.

18 81. As recently as 2019, Defendants do not admit or acknowledge that nicotine in their
19 cigarette smoke “is” addictive.

20 82. As recently as 2019, Defendants do not admit or acknowledge that nicotine addiction
21 can cause diseases.

22
23 83. As recently as 2019, Defendants continue to make false or misleading statements that
24 filtered cigarettes, lights, ultra-lights and low tar are less hazardous than conventional full favored
25 cigarettes.

26 84. Finally, Defendants have continued to target and prey upon children, teenagers,
27 minorities, and other segment populations, all in the name of money.

1 85. Defendants, despite being rivals and competitors, locked arms and banned together to
2 purposefully and internationally engage in an over 65-year conspiracy to deceive the public
3 regarding the addictive nature and health hazards of cigarette smoking.

4 86. This sophisticated conspiracy involved hundreds of billions of dollars spent on
5 marketing efforts, massive deception including lying under oath before Congress and other
6 governmental entities, forming fake organizations with fake scientists and fake research, and
7 creating a “brilliantly conceived” public relations campaign designed to create and sustain doubt
8 and confusion regarding a – made up – cigarette controversy.

9 87. This conspiracy is memorialized through Defendants’ own documents authored by
10 their own executives and scientists, including over fourteen million previously concealed records.

11 **FIRST CLAIM FOR RELIEF**

12 **(NEGLIGENCE)**

13 **Sandra Camacho Against Defendants Philip Morris and Liggett**

14 88. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87
15 and incorporate the same herein by reference.

16 89. Defendants owed a duty to the general public, including Plaintiff, to manufacture,
17 design, sell, market, promote, and/or otherwise produce a product and/or any of its component parts
18 safe and free of unreasonable and harmful defects when used in the manner and for the purpose it
19 was designed, manufactured, and/or intended to be used.

20 90. Plaintiff was exposed to and did inhale smoke from cigarettes which were designed,
21 manufactured, marketed, distributed, and/or sold by Defendants.

22 91. Each exposure to Defendants’ cigarettes caused Plaintiff to inhale smoke which caused
23 him to become addicted to cigarettes, and further caused him to develop pharyngeal cancer and suffer
24 severe bodily injuries.

- 1 92. Defendants were negligent in all the following respects, same being the proximate
2 and/or legal cause of SANDRA CAMACHO's injuries and disabilities, including but not limited to:
3 a. designing and manufacturing an unreasonably dangerous and deadly product;
4 b. designing and manufacturing cigarettes to be addictive;
5 c. designing and manufacturing cigarettes to be inhalable;
6 d. manipulating the level of nicotine in cigarettes to make them more addictive;
7 e. genetically modifying nicotine in tobacco plants;
8 f. blending different types of tobacco to obtain a desired amount of nicotine;
9 g. engineering cigarettes to be rapidly inhaled into the bloodstream;
10 h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and
11 other deadly, poisonous compounds to cigarettes;
12 i. adding and/or manipulating compounds such as ammonia and diammonium phosphate
13 to Defendants' cigarettes to "free-base" nicotine;
14 j. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and
15 low tar;
16 k. adding "onserts" to packages of cigarettes even after the United States government
17 banned marketing of "light" and "ultra-light" cigarettes;
18 l. manipulating levels of pH in Defendants' cigarettes;
19 m. targeting children who could not understand or comprehend the seriousness or
20 addictive nature of nicotine and smoking;
21 n. targeting minority populations such as African Americans, Hispanics, and women to
22 obtain a greater market share to increase their profits;
23 o. failing to develop and utilize alternative designs, manufacturing methods, and/or
24 materials to reduce and/or eliminate harmful materials from cigarettes;
25
26
27
28

- 1 p. continuing to manufacture, distribute, and/or sell cigarettes when Defendant knew at
2 all times material that its products could cause, and in fact were more likely to cause,
3 injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal
4 cancer, lung cancer, and/or other forms of cancer when used as intended;
5
6 q. making knowingly false and misleading statements to Plaintiff, the public, and the
7 American government that cigarettes were safe and/or not proven to be dangerous;
8
9 r. failing to remove and recall cigarettes from the stream of commerce and the
10 marketplace upon ascertaining that said products would cause disease and death.
11
12 93. Additionally, prior to July 1, 1969, Defendants failed to warn/and or adequately warn
13 foreseeable users, such as SANDRA CAMACHO, of the following, including but not limited to:
14
15 a. failing to warn and/or adequately warn foreseeable users, such as SANDRA
16 CAMACHO, of the dangerous and deadly nature of cigarettes;
17
18 b. failing to warn foreseeable users, such as SANDRA CAMACHO, that they could
19 develop fatal injuries including, but not limited to, emphysema, COPD, throat cancer,
20 laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking
21 and/or inhaling smoke from Defendants' cigarettes;
22
23 c. failing to warn foreseeable users, such as SANDRA CAMACHO, that the use of
24 cigarettes would more likely than not lead to addiction, habituation, and/or dependence;
25
26 d. failing to warn foreseeable users, such as SANDRA CAMACHO, that quitting and/or
27 limiting use of cigarettes would be extremely difficult, particularly if users started
28 smoking at an early age;

e. failing to disclose to consumers of cigarettes, such as SANDRA CAMACHO, the
results of genuine scientific research conducted by and/or known to Defendant that
cigarettes were dangerous, defective, and addictive.

1 94. Defendants breached said aforementioned duties of due and reasonable care in that they
2 produced, designed, manufactured, sold, and/or marketed defective cigarettes and/or any of its
3 component parts which contained risks of harm to the user/consumer and which were reasonably
4 foreseeable to cause harm in the use or exercise of reasonable and/or ordinary care.
5

6 95. As a direct and proximate and/or legal result of Defendants' aforementioned
7 negligence, SANDRA CAMACHO was severely injured when she was exposed to Defendants'
8 cigarettes. Each exposure to Defendants' cigarettes caused SANDRA CAMACHO to become
9 addicted to cigarettes and to inhale smoke which caused her to develop laryngeal cancer, in addition
10 to other related physical conditions which resulted in and directly caused her to suffer severe bodily
11 injuries. Each exposure to such products was harmful and caused or contributed substantially to
12 SANDRA CAMACHO's aforementioned injuries.
13

14 96. SANDRA CAMACHO's aforementioned injuries arose out of and were connected to
15 and incidental to the way Defendants' designed, manufactured, marketed, distributed, and/or sold
16 its products.
17

18 97. The aforementioned damages of SANDRA CAMACHO were directly and proximately
19 and/or legally caused by Defendants' negligence, in that it produced, sold, manufactured, and/or
20 otherwise placed into the stream of intrastate and interstate commerce, cigarettes which it knew, or
21 in the exercise of ordinary care should have known, were deleterious and highly harmful to
22 SANDRA CAMACHO's health and well-being.
23

24 98. Defendants, prior to selling and/or distributing the cigarettes to which SANDRA
25 CAMACHO was exposed, knew or should have known that exposure to cigarette smoke was
26 harmful and caused injuries including, but not limited to, lung cancer, pharyngeal cancer, laryngeal
27 cancer, emphysema, COPD, heart disease, other forms of cancer, and/or result in death.
28

1 99. As a direct and proximate and/or legal cause of Defendants' aforesaid negligence,
2 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining
3 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

4 100. As a further direct and proximate and/or legal cause of Defendants' aforesaid
5 negligence, SANDRA CAMACHO has incurred damages, both general and special, including
6 medical expenses as a result of the necessary treatment of her injuries, and will continue to incur
7 damages for future medical treatment necessitated by smoking-related injuries she has suffered, in
8 a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

9 101. As a further direct and proximate and/or legal cause of Defendants' aforesaid
10 negligence, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and
11 other health care providers to examine, treat, and care for her and did incur medical and incidental
12 expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA
13 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
14 (\$15,000.00)

15 102. As a further direct and proximate and/or legal cause of Defendants' aforesaid
16 negligence, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered
17 and continues to suffer loss of companionship and care, emotional and moral support and/or sexual
18 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

19 103. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

20 104. Defendants' conduct was despicable and so contemptible that it would be looked down
21 upon and despised by ordinary decent people and was carried on by Defendants with willful and
22 conscious disregard for the safety of SANDRA CAMACHO.

105. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005 in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future.

106. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent agents, independent contractors, and/or servants, as set forth herein.

107. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SECOND CLAIM FOR RELIEF

(GROSS NEGLIGENCE)

SANDRA CAMACHO Against Defendant Philip Morris and Liggett

108. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87 and 88 - 107 and incorporate the same herein by reference.

109. Defendants manufactured and created an unreasonably dangerous, addictive, and defective product that caused SANDRA CAMACHO to develop laryngeal cancer. At all times material hereto, Defendants had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to SANDRA CAMACHO would result. Despite that knowledge, the Defendants willfully and wantonly pursued a course of conduct that was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety or rights of SANDRA CAMACHO and Defendants actively and knowingly participated in such conduct, and/or its officers, director or managers knowingly condoned, ratified or consented to such conduct.

110. Upon information and belief, through an examination of Defendants' own previously secret internal documents, Defendants had reason to know facts which could lead a reasonable person

1 to realize that their cigarettes could cause an unreasonable risk of bodily harm to others and involved
2 a high probability that substantial harm would result. Specifically, Defendants had reason to know
3 facts that their cigarettes caused diseases including but not limited to lung cancer, COPD, emphysema,
4 heart disease, pharyngeal cancer, laryngeal cancer, oral cavity cancer.

5
6 111. Defendants knew there were ways to minimize the disease and destruction their
7 product, cigarettes, caused through alternative safer designs of cigarettes including but not limited to
8 nicotine free or reduced nicotine cigarettes.

9
10 112. Defendants willfully, purposefully, and knowingly did not make safer cigarettes and in
11 fact manipulated the compounds in cigarettes to make them more addictive, deadly, and dangerous.

12 113. Defendants and their co-conspirators also purposefully and knowingly manipulated the
13 public including SANDRA CAMACHO by marketing and promoting their filter, “light” and “low-
14 tar” cigarettes as safer, despite knowing these cigarettes are in fact more dangerous.

15 114. Defendants’ actions in creating, manufacturing, and selling cigarettes despite having
16 knowledge that these actions created an unreasonable risk of bodily harm and involved a high
17 probability that substantial harm would result, was an extreme departure from the ordinary duty of
18 care owed and constitutes gross negligence.

19
20 115. SANDRA CAMACHO’S aforementioned injuries arose out of and were connected to
21 and incidental to the way Defendants’ designed, manufactured, marketed, distributed, and/or sold its
22 products.

23 116. The aforementioned damages of SANDRA CAMACHO were directly and proximately
24 and/or legally caused by Defendants’ gross negligence, in that it produced, sold, manufactured, and/or
25 otherwise placed into the stream of intrastate and interstate commerce, cigarettes which it knew, or in
26 the exercise of ordinary care should have known, were deleterious and highly harmful to SANDRA
27 CAMACHO’S health and well-being.
28

117. As a direct and proximate and/or legal result of Defendants' aforementioned gross negligence, SANDRA CAMACHO was severely injured when she was exposed to Defendants' cigarettes. Each exposure to Defendants' cigarettes caused SANDRA CAMACHO to become addicted to cigarettes and to inhale smoke which caused her to develop laryngeal cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries. Each exposure to such products was harmful and caused or contributed substantially to SANDRA CAMACHO'S aforementioned injuries.

118. As a direct and proximate and/or legal cause of Defendants' aforesaid gross negligence, SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

119. As a further direct and proximate and/or legal cause of Defendants' aforesaid gross negligence, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

120. As a further direct and proximate and/or legal cause of Defendants' aforesaid gross negligence, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat, and care for her and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

121. As a further direct and proximate and/or legal cause of Defendants' aforesaid negligence, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered

1 and continues to suffer loss of companionship and care, emotional and moral support and/or sexual
2 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00)

3 122. The actions of Defendants as complained of in this claim for relief was undertaken
4 knowingly, wantonly, willfully, and/or maliciously.

5 123. Defendants' conduct was despicable and so contemptible that it would be looked down
6 upon and despised by ordinary decent people and was carried on by Defendants with willful and
7 conscious disregard for the safety of SANDRA CAMACHO.

8 124. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
9 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
10 example of Defendants and to deter similar conduct in the future.

11 125. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
12 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
13 agents, independent contractors, and/or servants, as set forth herein.

14 126. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
15 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
16 attorney fees and costs of suit.

17 **THIRD CLAIM FOR RELIEF**

18 **(STRICT PRODUCTS LIABILITY)**

19 **Sandra Camacho Against Defendants Philip Morris and Liggett**

20 127. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87
21 and incorporate the same herein by reference.

22 128. Upon information and belief, at all times material, Defendants were/are in the business
23 of designing, engineering, manufacturing, distributing, marketing, selling, and/or otherwise placing
24 cigarettes into the stream of commerce.

129. The products complained of were cigarettes designed, manufactured, marketed, distributed, and/or sold by Defendants and used by SANDRA CAMACHO.

130. The aforesaid products were distributed, sold, manufactured, and/or otherwise placed into the stream of commerce by Defendants.

131. Defendants' defective and unreasonably dangerous cigarettes reached SANDRA CAMACHO without substantial change from that in which such products were when within the possession of Defendants.

132. Defendants' cigarettes were dangerous beyond the expectation of the ordinary user/consumer when used as intended or in a manner reasonably foreseeable by Defendants.

133. The nature and degree of danger of Defendants' cigarettes were beyond the expectation of the ordinary consumer, including SANDRA CAMACHO, when used as intended or in a reasonably foreseeable manner.

134. Defendants' cigarettes were unreasonably dangerous because a less dangerous design and/or modification was economically and scientifically feasible.

135. Defendants' cigarettes were defective and unreasonably dangerous in the following ways, including but not limited to:

- a. designing and manufacturing an unreasonably dangerous and deadly product;
- b. designing and manufacturing cigarettes to be addictive;
- c. designing and manufacturing cigarettes to be inhalable;
- d. manipulating levels of nicotine in cigarettes to make them more addictive;
- e. genetically modifying nicotine in tobacco plants;
- f. blending different types of tobacco to obtain a desired amount of nicotine;
- g. engineering cigarettes to be rapidly inhaled into the lungs;

- h. adding carcinogens, polonium-210, urea, arsenal, formaldehyde, nitrosamines, and other deadly, poisonous compounds to cigarettes;
- i. adding and/or manipulating compounds such as ammonia and diammonium phosphate to Defendants' cigarettes to "free-base" nicotine;
- j. manipulating levels of pH in Defendants' cigarettes;
- k. utilizing deadly and harmful additives, compounds, and ingredients in their cigarette design and manufacturing process when alternative, less dangerous materials were available;
- l. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and low tar;
- m. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;
- n. prior to July 1, 1969, failing to warn and/or adequately warn foreseeable users, such as SANDRA CAMACHO, of the dangerous and deadly nature of cigarettes;
- o. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that they could develop fatal injuries including, but not limited to, emphysema, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;
- p. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that the use of cigarettes would more likely than not lead to addiction, habituation and/or dependence;
- q. prior to July 1, 1969, failing to warn foreseeable users, such as SANDRA CAMACHO, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;

136. SANDRA CAMACHO was unaware of the defective and unreasonably dangerous condition of Defendants' cigarettes, and at a time when such products were being used for the purposes for which they were intended, was exposed to, breathed smoke from, and inhaled Defendants' cigarettes.

138. SANDRA CAMACHO was unaware of the hazards and defects in Defendants' cigarettes, to-wit: That exposure to said products would cause SANDRA CAMACHO to become addicted and develop laryngeal cancer.

139. As a direct and proximate and/or legal cause of the aforesaid defective and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was injured. SANDRA CAMACHO thereby experienced great pain to her body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

140. As a further direct and proximate and/or legal cause of the defective and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

141. As a further direct and proximate and/or legal cause of the aforementioned defective and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,

1 and care for her and did incur medical and incidental expenses thereby. The exact amount of such
2 expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered
3 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

4
5 142. As a further direct and proximate and/or legal cause of Defendants' aforesaid defective
6 and unreasonably dangerous condition of Defendants' cigarettes, Plaintiff, ANTHONY
7 CAMACHO, as SANDRA CAMACHO'S husband, has suffered and continues to suffer loss of
8 companionship and care, emotional and moral support and/or sexual intimacy and alleges he has
9 suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

10 143. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

11 144. Defendants' conduct was despicable and so contemptible that it would be looked down
12 upon and despised by ordinary decent people and was carried on by Defendants with willful and
13 conscious disregard for the safety of SANDRA CAMACHO.

14
15 145. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
16 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
17 example of Defendants, and to deter similar conduct in the future.

18 146. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
19 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
20 agents, independent contractors, and/or servants, as set forth herein.

21
22 147. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
23 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
24 attorney fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(FRAUDULENT MISREPRESENTATION)

Sandra Camacho Against Defendants Philip Morris and Liggett

148. Plaintiffs repeat and re-allege each and every allegation as contained in paragraphs 1 through 87 and incorporate the same herein by reference.

149. Beginning at an exact time unknown to Plaintiff, and continuing even today, the cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a campaign designed to deceive the public, including SANDRA CAMACHO, the government, and others as to the health hazards and addictive nature of cigarettes, through false statements and/or misrepresentations of material facts.

150. Defendants made intentional misrepresentations, false promises, concealed information, and failed to disclose material information to SANDRA CAMACHO, the public, and the American government.

151. Defendants carried out its campaign of fraud, false statements, and/or misrepresentations in at least six ways:

- a. Defendants falsely represented to SANDRA CAMACHO that questions about smoking and health would be answered by an unbiased, trustworthy source;
- b. Defendants misrepresented and confused facts about health hazards of cigarettes and addiction;
- c. Defendants, along with other cigarette manufacturers, spent billions of dollars hiring lawyers, fake scientists, and public relations firms to misdirect purported “objective” scientific research;
- d. Defendants discouraged meritorious litigation by engaging in “scorched earth” tactics – in fact in a previously secret 1988 document they commented “to paraphrase General

Patton, the way we won these cases was not by spending all of [their] money, but by making that other son of a bitch spend all of his;”

- e. Defendants suppressed and distorted evidence to protect its existence and profits
- f. Defendants designed, marketed, and sold “filtered” and “light” cigarettes despite knowing internally that such cigarettes were just as addictive, dangerous, and deadly as “regular” cigarettes.

152. Cigarette manufacturers, including Defendants herein, knew cigarettes were dangerous and addictive. It became their practice, purpose, and goal to question any scientific research which concluded cigarettes were dangerous. They did this through misleading media campaigns, mailings to doctors and other scientific professionals, and testimony before governmental bodies.

153. Defendants made multiple misrepresentations to SANDRA CAMACHO including misrepresentations and misleading statements in advertisements, news programs and articles, media reports, and press releases.

154. These misrepresentations and false statements include, but are not limited to, the aforementioned statements and conduct contained in the *Historical Allegations of Defendants Unlawful Conduct Giving Rise to the Lawsuit* section above.

155. These misrepresentations and false statements also include the following statements which were heard, read, and relied upon by Plaintiff, SANDRA CAMACHO, including but not limited to

- a. In 1953, Cigarette manufacturers, including Defendants herein, took out a full-page advertisement called the “Frank Statement to Cigarette Smokers” which falsely assured the public, the American government, and SANDRA CAMACHO, that the cigarette manufacturers, including Defendant herein, would purportedly “safeguard” the health

- 1 of smokers, support allegedly “disinterested” research into smoking and health, and
2 reveal to the public the results of their alleged “objective” research
- 3 b. Beginning in 1953 and continuing for decades, Cigarette manufacturers, including
4 Defendants herein, falsely assured the public that TIRC/CTR was an “objective”
5 research committee when internal company document reveal that TIRC/CTR
6 functioned not for the promotion of scientific goals, but for public relations, politics,
7 and positioning for litigation;
8
- 9 c. In the 1950s and 1960s, Cigarette manufacturers, including Defendants herein,
10 sponsored, were quoted in, and helped publish articles to mislead the public including
11 but not limited to the following: “Smoke-Cancer Tie Termed Obscure” (1955), “Study
12 of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962),
13 “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in
14 Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);
15
- 16 d. In response to the 1964 Surgeon General Report which linked cigarette smoking to
17 health, the cigarette industry falsely assured the public that (i) cigarettes were not
18 injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii)
19 more research was needed, and (iv) if there were any bad elements discovered in
20 cigarettes, the cigarette manufacturers would remove those elements;
21
- 22 e. In the 1950s and 1960s, the Cigarette manufacturers, including Defendants herein,
23 advertised and promoted cigarettes on television and radio as safe and glamorous, to
24 the extent that cigarette advertising was the number one most heavily advertised
25 product on television;
26
27
28

- f. Falsely advertised and promoted “filtered” and “light” cigarettes as “low tar” and “low nicotine” through print advertisements in magazines and newspapers throughout the 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- g. Knowingly made false and misleading statements to governmental entities, including in 1982 when the CEO of Defendant R.J. Reynolds, Edward Horrigan, disingenuously stated during a governmental hearing, “there is absolutely no proof that cigarettes are addictive;
- h. In 1984, continuing to purposefully target children yet openly in press releases falsely claim, “We don’t advertise to children . . . Some straight talk about smoking for young people;”
- i. In 1988, in response to the United States Surgeon General’s report that cigarettes are addictive and nicotine is the drug in tobacco that causes addiction, issuing a press release knowingly and disingenuously stating, “Claims that cigarettes are addictive is irresponsible and scare tactics;”
- j. Through representatives in the Tobacco Institute, making countless publicized appearances on television and radio disingenuously denying cigarettes were addictive and claimed smoking was a matter of free choice and smokers could quit smoking if they wanted to;
- k. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein, knowingly providing false and misleading testimony under oath before the United States Congress that it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die.

156. Defendants made intentional misrepresentations to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. The aforementioned representations were regarding material facts about cigarettes and were knowingly false;
- b. Defendants knew said representations were false at the time they made such statements;
- c. Defendants knew SANDRA CAMACHO did not hold sufficient information to understand or appreciate the dangers of cigarettes;
- d. Defendants intended to induce SANDRA CAMACHO, and did indeed induce SANDRA CAMACHO, to rely upon the aforementioned false representations/acts/statements;
- e. SANDRA CAMACHO was unaware of the falsity of Defendants' aforementioned false representations/acts/statements;
- f. CLEVELAND CALRK was justified in relying upon Defendants' misrepresentations because they were made by Defendants who possessed superior knowledge regarding the health hazards and addictive nature of cigarettes;
- g. As a direct and proximate and/or legal cause of Defendants' intentional misrepresentations, SANDRA CAMACHO became addicted to cigarettes and developed laryngeal cancer.

157. Furthermore, Defendants made false promises to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. Defendants made false promises to the public, including SANDRA CAMACHO to (i) cooperate with public health, including the Surgeon General, (ii) conduct allegedly "objective" research regarding the addictive nature and health hazards of cigarettes, (ii) remove any harmful elements to cigarettes, if there were any, (iv) form purported "objective" research committees dedicated to undertaking an interest in health as its

“basic responsibility paramount to every other consideration,” (v) falsely pledging to provide aid and assistance to research cigarette use and health and others;

- b. At all times material, Defendants did not intend to keep its promises;
- c. Defendants made its promises with the intent to induce Plaintiff to begin and continue smoking;
- d. Plaintiff was unaware of Defendants’ intention not to perform their promises;
- e. Plaintiff acted in reliance upon Defendants’ promises;
- f. Plaintiff was justified in relying upon Defendants’ promises;
- g. As a direct and proximate and/or legal cause of Defendants’ false promises, SANDRA CAMACHO became addicted to cigarettes and developed laryngeal cancer.

158. As a direct and proximate and/or legal cause of Defendants’ fraudulent acts and misrepresentations, SANDRA CAMACHO was injured. SANDRA CAMACHO thereby experienced great pain to her body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

159. As a further direct and proximate and/or legal cause of Defendants’ fraudulent acts and misrepresentations, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

160. As a further direct and proximate and/or legal cause of Defendants’ fraudulent acts and misrepresentations, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat, and care for her and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but SANDRA

1 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
2 (\$15,000.00).

3 161. As a further direct and proximate and/or legal cause of Defendants' aforesaid
4 fraudulent acts and misrepresentations, Plaintiff, ANTHONY CAMACHO, as SANDRA
5 CAMACHO'S husband, has suffered and continues to suffer loss of companionship and care,
6 emotional and moral support and/or sexual intimacy and alleges he has suffered damages in excess of
7 Fifteen Thousand Dollars (\$15,000.00).
8

9 162. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

10 163. Defendants' conduct was despicable and so contemptible that it would be looked down
11 upon and despised by ordinary decent people and was carried on by Defendants with willful and
12 conscious disregard for the safety of SANDRA CAMACHO.
13

14 164. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
15 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
16 example of Defendants, and to deter similar conduct in the future.

17 165. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
18 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
19 agents, independent contractors, and/or servants, as set forth herein.
20

21 166. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
22 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
23 attorney fees and costs of suit.
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FIFTH CLAIM FOR RELIEF

(FRAUDULENT CONCEALMENT)

Sandra Camacho Against Defendants Philip Morris and Liggett

176. Plaintiffs repeat and re-allege each and every allegation as contained in paragraphs 1 through 87 and paragraphs 148-175 and incorporate the same herein by reference.

177. Beginning at an exact time unknown to SANDRA CAMACHO, and continuing today, cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out, a campaign designed to deceive the public, including SANDRA CAMACHO, physicians, the government, and others as to the true danger of cigarettes.

178. Cigarette manufacturers, including Defendants herein, carried out their plan by concealing and suppressing facts, information, and knowledge about the dangers of smoking, including addiction.

179. Defendants carried out its scheme by concealing its knowledge concerning the dangers of cigarettes and its addictive nature as set forth in the *Historical Allegations of Defendants Unlawful Conduct Giving Rise to the Lawsuit* allegations referenced above.

180. Defendants also carried out such scheme by concealing its knowledge concerning, but not limited to, the following:

- a. the highly addictive nature of nicotine cigarettes;
- b. the design of cigarettes to make them more addictive and easier to inhale;
- c. the manipulating and controlling of nicotine content of their products to create and perpetuate users' addiction to cigarettes;
- d. the manufacturing and engineering process of making cigarettes, including adding tar, carcinogens, arsenal, polonium-210, formaldehyde, nitrosamines, and other compounds;

- e. the deliberate use of ammonia technology and/or certain tobacco;
- f. blends to boost the pH of cigarette smoke to “free base” nicotine in cigarettes;
- g. its intentional use of tobacco high in nitrosamines—a potent carcinogen not found in natural, green tobacco leaf, but created during the tobacco curing process;
- h. its scheme to target and addict children to replace customers who were dying from smoking cigarettes;
- i. the true results of its research regarding the dangers posed by smoking cigarettes. For example, in response to the 1965 Surgeon General report that related cigarette smoking to lung cancer in men, the cigarette manufacturers, including Defendant herein, concealed their research, from the year prior, which concluded:

Moreover, nicotine is addictive. We are, then in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms ... But cigarettes - we assume the Surgeon General's Committee to say - despite the beneficent effect of nicotine, have certain unattractive side effects:

1. They cause, or predispose to, lung cancer.
 2. They contribute to certain cardiovascular disorders.
 3. They may well be truly causative in emphysema, etc.
- j. the risks of contracting cancer, including but not limited to laryngeal cancer, esophageal cancer, other head and neck cancers, oral cancer, emphysema, COPD, lung cancer, heart disease, strokes, bladder cancer, other forms of cancer;
 - k. filtered, low tar, low nicotine, and/or “light” cigarettes were not safe, safer, or less dangerous than “regular” cigarettes;
 - l. the Federal Trade Commission (“FTC”) method of measuring “tar & nicotine” levels underestimated and did not accurately reflect the levels of tar and nicotine delivered to a smoker.

181. Cigarette manufacturers, including Defendants herein, also concealed and/or made fraudulent statements and misrepresentations to the public, including SANDRA CAMACHO, through their actions, funding, and involvement with TIRC/CTR, including but not limited to the following:

- a. falsely concealing the true purpose of TIRC/CTR was public relations, politics, and positioning for litigation;
- b. falsely pledging to provide aid and assistance to research cigarette use and health;
- c. expressly undertaking a disingenuous interest in health as its “basic responsibility paramount to every other consideration;”
- d. affirmatively assumed a (broken) promise to truthfully disclose adverse information regarding the health hazards of smoking;
- e. purposely created the illusion that scientific research regarding the dangers of cigarettes was being conducted and the results of which would be made public;
- f. concealing information regarding the lack of bona fide research being conducted by TIRC/CTR and the lack of funds being provided for research;
- g. concealing that TIRC/CTR was nothing more than a “public relations” front and shield.

182. Defendants made false promises to Plaintiff, SANDRA CAMACHO, in the following ways:

- a. Defendants assumed the responsibility to provide SANDRA CAMACHO, and the public, accurate and truthful information about their own products
- b. Defendants concealed and/or suppressed the aforementioned material facts about the dangers of cigarettes;
- c. Defendants were under a duty to disclose material facts about the dangers of cigarettes to Plaintiff;

- d. Defendants knew it was concealing material facts about the dangers of cigarettes from Plaintiff;
- e. Defendants intended to induce Plaintiff to smoke and become addicted to cigarettes;
- f. Plaintiff was unaware of the dangerous and addictive nature of cigarettes, and would not have begun or continued to smoke had he known the aforementioned concealed and/or suppressed information Defendants' possessed;
- g. Plaintiff was unaware of the danger of Defendants' cigarettes, the addictive nature of Defendants' cigarettes, and that low tar, low nicotine, "light," and/or filtered cigarettes were just as dangerous as unfiltered and "regular" cigarettes;
- h. Plaintiff justifiably relied upon Defendants to disseminate the superior knowledge and information it possessed regarding the dangers of cigarettes;
- i. The concealment and/or suppressed of material facts regarding the hazards of cigarettes caused Plaintiff to become addicted to cigarettes, and also caused her to develop laryngeal cancer.

183. As a direct and proximate and/or legal cause of Defendants' fraudulent concealment, SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

184. As a further direct and proximate and/or legal cause of Defendants' fraudulent concealment, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

185. As a further direct and proximate and/or legal cause of Defendants' fraudulent concealment, SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other

1 health care providers to examine, treat, and care for her and did incur medical and incidental expenses
2 thereby. The exact amount of such expenses is unknown at this present time, but SANDRA
3 CAMACHO alleges that she has suffered special damages in excess of Fifteen Thousand Dollars
4 (\$15,000.00).

5
6 186. As a further direct and proximate and/or legal cause of Defendants' aforesaid
7 fraudulent concealment, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband,
8 has suffered and continues to suffer loss of companionship and care, emotional and moral support
9 and/or sexual intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars
10 (\$15,000.00).

11 187. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

12 188. Defendants' conduct was despicable and so contemptible that it would be looked down
13 upon and despised by ordinary decent people and was carried on by Defendants with willful and
14 conscious disregard for the safety of SANDRA CAMACHO.

15
16 189. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
17 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
18 example of Defendants, and to deter similar conduct in the future.

19 190. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
20 damages arising from the outrageous and unconscionable conduct of its employees, agents, apparent
21 agents, independent contractors, and/or servants, as set forth herein.

22
23 191. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
24 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
25 attorney fees and costs of suit.

SIXTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

Sandra Camacho Against Defendants Philip Morris; R.J. Reynolds; and Liggett

192. Plaintiffs repeat and re-allege the allegations as contained in paragraphs 1 through 87, paragraphs 148 – 191 and incorporate the same herein by reference.

193. Defendants acted in concert to accomplish an unlawful objective for the purposes of harming Plaintiff, SANDRA CAMACHO. Defendants' actions include, but are not limited to the following:

- a. Defendants, along with other cigarette manufacturers, and CTR, TIRC, and TI, along with attorneys and law firms retained by Defendants, unlawfully agreed to conceal and/or omit, and did in fact conceal and/or omit, information regarding the health hazards of cigarettes and/or their addictive nature with the intention that smokers and the public would rely on this information to their detriment. Defendants agreed to execute their scheme by performing the abovementioned unlawful acts and/or by doing lawful acts by unlawful means;
- b. Defendants, along with other entities including TIRC, CTR, TI and persons including their in-house lawyers and outside retained counsel, entered into a conspiracy in 1953 to conceal the harms of smoking cigarettes;
- c. Defendants, through their executives, employees, agents, officers and representatives made numerous public statements from 1953 through 2000 directly denying the health hazards and addictive nature of smoking cigarettes.

194. After the year 2000, Defendants continued their conspiratorial acts in furtherance of their conspiracy related to the harms of smoking including but not limited to the following acts:

- a. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
- b. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- c. Marketing and/or advertising lights and ultra-light cigarettes as safer or less hazardous to health;
- d. Knowingly concealing from the public that filtered, low tar, lights, and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes;
- e. Adding “onserts” to packages of cigarettes even after the United States government banned marketing of “light” and “ultra-light” cigarettes;
- f. Opposing, and continuing to oppose proposed FDA regulations to reduce or eliminate levels of nicotine in cigarettes;
- g. Continuing to market and prey upon children and teenagers who are not able to understand or appreciate the risks and dangers associated with cigarette smoking.

195. Defendants’ actions, as they relate to their acts in furtherance of their conspiracy as alleged in this complaint, continues through the present.

196. Two or more of the cigarette manufacturers, including Defendants herein, by their aforementioned concerted actions, intended to accomplish, and did indeed accomplish, an unlawful objective of misleading and deceiving the public, for the purpose of harming Plaintiff.

197. As a direct proximate and/or legal cause of Defendants’ concerted actions, SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

198. As a further direct and proximate and/or legal cause of Defendants’ concerted actions, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future

1 medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of
2 Fifteen Thousand Dollars (\$15,000.00).

3 199. As a further direct and proximate and/or legal cause of Defendants' concerted actions,
4 SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care
5 providers to examine, treat, and care for her and did incur medical and incidental expenses thereby.
6 The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO
7 alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).
8

9 200. As a further direct and proximate and/or legal cause of Defendants' aforesaid concerted
10 actions, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO'S husband, has suffered and
11 continues to suffer loss of companionship and care, emotional and moral support and/or sexual
12 intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).
13

14 201. Defendants' concerted actions were taken knowingly, wantonly, willfully, and/or
15 maliciously.

16 202. Defendants' conduct was despicable and so contemptible that it would be looked down
17 upon and despised by ordinary decent people and was carried on by Defendants with willful and
18 conscious disregard for the safety of SANDRA CAMACHO.

19 203. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
20 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
21 example of Defendants, and to deter similar conduct in the future.
22

23 204. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
24 damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent
25 agents, independent contractors, and/or servants, as set forth herein.
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205. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SEVENTH CLAIM FOR RELIEF

(VIOLATION OF DECEPTIVE TRADE PRACTICES ACT – NRS 598.0903)

Sandra Camacho Against Defendants Philip Morris; R.J. Reynolds; And Liggett

206. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs herein and incorporate the same herein by reference.

207. At all times relevant herein, there was a statute in effect entitled Nevada Deceptive Trade Practices Act, NRS 598.0903 et. seq.

208. Defendants are subject to the provisions of the Nevada Deceptive Trade Practices Act, and Plaintiff is one of the persons the Act was enacted to protect.

209. Plaintiffs bring this claim pursuant to NRS 41.600, which entitles any person who is the victim of consumer fraud to bring an action. A deceptive trade practice as defined in NRS 598.0915 to 598.0925 constitutes consumer fraud.

210. NRS 598.0915 states that a person engages in a deceptive trade practice if, in the course of his or her business or occupation:

2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease.

3. Knowingly makes a false representation as to affiliation, connection, association with or certification by another person.

5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith.

7. Represents that goods or services for sale or lease are of a particular

standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model.

15. Knowingly makes any other false representation in a transaction.

211. Upon information and belief, Defendants knowingly violated NRS 598.0915 by making the following false and misleading statements and representations, including but not limited to:

212. Upon information and belief, Defendants knowingly violated NRS 598.0915 by making the following false and misleading statements and representations, including but not limited to:

- a. making countless publicized appearances on television and radio disingenuously denying cigarettes were addictive and claimed smoking was a matter of free choice and smokers could quit smoking if they wanted to;
- b. representing to the public that it was not known whether cigarettes were harmful or caused disease;
- c. falsely advertising and promoting cigarettes as safe, not dangerous, and not harmful;
- d. falsely advertising and promoting “filtered” and “light” cigarettes as “low tar” and “low nicotine” through print advertisements in magazines and newspapers throughout the 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- e. falsely representing that questions about smoking and health would be answered by an allegedly unbiased, trustworthy source;
- f. misrepresenting and confusing facts about health hazards of cigarettes and addiction;
- g. creating a made up “cigarette controversy”;
- h. taking out a full page advertisement called the “Frank Statement to Cigarette Smokers”

1 which falsely assured the public, the American government, and SANDRA
2 CAMACHO, that would purportedly “safeguard” the health of smokers, support
3 allegedly “disinterested” research into smoking and health, and reveal to the public the
4 results of their alleged “objective” research;

- 5
- 6 i. falsely assuring the public that TIRC/CTR was an “objective” research committee
7 when internal company documents reveals that TIRC/CTR functioned not for the
8 promotion of scientific goals, but for public relations, politics, and positioning for
9 litigation;
- 10 j. sponsoring, being quoted in, and helping publish articles to mislead the public
11 including but not limited to the following: “Smoke-Cancer Tie Termed Obscure”
12 (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called
13 Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco
14 Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study”
15 (1962);
- 16 k. responding to the 1964 Surgeon General Report which linked cigarette smoking to
17 health, by falsely assuring the public that (i) cigarettes were not injurious to health, (ii)
18 the industry would cooperate with the Surgeon General, (iii) more research was needed,
19 and (iv) if there were any bad elements discovered in cigarettes, the cigarette
20 manufacturers would remove those elements;
- 21 l. advertising and promoting cigarettes on television and radio as safe and glamorous, to
22 the extent that cigarette advertising was the number one most heavily advertised
23 product on television;
- 24 m. making knowingly false and misleading statements during a governmental hearing,
25 including stating that, “there is absolutely no proof that cigarettes are addictive;”
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- 1 n. purposefully targeting children yet openly in press releases falsely claiming, “We don’t
2 advertise to children . . . Some straight talk about smoking for young people;”
3 o. responding the 1988 United States Surgeon General’s report that nicotine is the drug
4 in tobacco that causes addiction, by issuing press releases stating, “Claims that
5 cigarettes are addictive is irresponsible and scare tactics;”
6
7 p. lying under oath before the United States Congress in 1994 that it was their opinion
8 that it had not been proven that cigarettes were addictive, caused disease, or caused one
9 single person to die.

10 213. As a direct and proximate and/or legal cause of Defendants’ aforementioned acts,
11 SANDRA CAMACHO was injured and experienced great pain to her body and mind, sustaining
12 injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).
13

14 214. As a further direct and proximate and/or legal cause of Defendants’ aforementioned
15 acts, SANDRA CAMACHO has incurred damages, both general and special, including medical
16 expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for
17 future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess
18 of Fifteen Thousand Dollars (\$15,000.00).
19

20 215. As a further direct proximate and/or legal cause of Defendants’ aforementioned acts,
21 SANDRA CAMACHO was required to, and did, employ physicians, surgeons, and other health care
22 providers to examine, treat, and care for her and did incur medical and incidental expenses thereby.
23 The exact amount of such expenses is unknown at this present time, but SANDRA CAMACHO
24 alleges that she has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).
25

26 216. As a further direct and proximate and/or legal cause of Defendants’ aforementioned
27 acts, Plaintiff, ANTHONY CAMACHO, as SANDRA CAMACHO’S husband, has suffered and
28 continues to suffer loss of companionship and care, emotional and moral support and/or sexual

intimacy and alleges he has suffered damages in excess of Fifteen Thousand Dollars (\$15,000.00).

217. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

218. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people and was carried on by Defendants with willful and conscious disregard for the safety of SANDRA CAMACHO.

219. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an example of Defendants, and to deter similar conduct in the future.

220. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent agents, independent contractors, and/or servants, as set forth herein.

221. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

EIGHTH CLAIM FOR RELIEF

(STRICT PRODUCT LIABILITY)

**Sandra Camacho Against Defendant, ASM Nationwide Corporation
d/b/a Silverado Smokes & Cigars and LV Singhs Inc. d/b/a Smokes & Vapors**

222. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 and 87 and paragraphs 127 - 147 and incorporate the same herein by reference.

223. Defendants, SILVERADO and SMOKES & VAPORS, are in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

224. Defendants, SILVERADO and SMOKES & VAPORS' sold cigarettes to the public, including Plaintiff SANDRA CAMACHO.

225. The aforesaid products were distributed, sold and/or otherwise placed into the stream of

commerce by Defendants, SILVERADO and SMOKES & VAPORS.

226. Defendants, SILVERADO and SMOKES & VAPORS', defective and unreasonably dangerous cigarettes reached SANDRA CAMACHO without substantial change from that in which such products were when within the possession of Defendants.

227. Defendants, SILVERADO and SMOKES & VAPORS' cigarettes were dangerous beyond the expectation of the ordinary user/consumer when used as intended or in a manner reasonably foreseeable by Defendants.

228. The nature and degree of danger of Defendants, SILVERADO and SMOKES & VAPORS' cigarettes were dangerous beyond the expectation of the ordinary consumer, including SANDRA CAMACHO, when used as intended or in a reasonably foreseeable manner.

229. Defendants, SILVERADO and SMOKES & VAPORS' cigarettes were unreasonably dangerous because a less dangerous design and/or modification was economically and scientifically feasible.

230. As a direct and proximate and/or legal cause of the aforesaid defective and unreasonably dangerous condition of cigarette products sold by Defendants, SILVERADO and SMOKES & VAPORS, SANDRA CAMACHO was injured. SANDRA CAMACHO thereby experienced great pain to her body and mind, and sustained injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

231. As a further direct and proximate and/or legal cause of the defective and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by smoking-related injuries she has suffered, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

232. As a further direct and proximate and/or legal cause of the aforementioned defective

1 and unreasonably dangerous condition of Defendants' cigarettes, SANDRA CAMACHO was
2 required to, and did, employ physicians, surgeons, and other health care providers to examine, treat,
3 and care for her and did incur medical and incidental expenses thereby. The exact amount of such
4 expenses is unknown at this present time, but SANDRA CAMACHO alleges that she has suffered
5 special damages in excess of Fifteen Thousand Dollars (\$15,000.00).
6

7 233. As a further direct and proximate and/or legal cause of Defendants' aforesaid defective
8 and unreasonably dangerous condition of Defendants' cigarettes, Plaintiff, ANTHONY CAMACHO,
9 as SANDRA CAMACHO'S husband, has suffered and continues to suffer loss of companionship and
10 care, emotional and moral support and/or sexual intimacy and alleges he has suffered damages in
11 excess of Fifteen Thousand Dollars (\$15,000.00).
12

13 234. Defendants' actions were taken knowingly, wantonly, willfully, and/or maliciously.

14 235. Defendants' conduct was despicable and so contemptible that it would be looked down
15 upon and despised by ordinary decent people and was carried on by Defendants with willful and
16 conscious disregard for the safety of SANDRA CAMACHO.

17 236. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
18 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
19 example of Defendants, and to deter similar conduct in the future.

20 237. To the extent NRS 42.007 applies, Defendants are vicariously liable for punitive
21 damages arising from the outrageous and unconscionable conduct of their employees, agents, apparent
22 agents, independent contractors, and/or servants, as set forth herein.

23 238. Defendants' actions have forced Plaintiffs to retain counsel to represent them in the
24 prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
25 attorney fees and costs of suit.
26

27 WHEREFORE, Plaintiffs, SANDRA CAMACHO and ANTHONY CAMACHO expressly
28

1 reserving the right to amend this Complaint at the time of trial to include all items of damage not yet
2 ascertained, demand judgment against Defendants, PHILIP MORRIS USA, INC.; R.J. REYNOLDS
3 TOBACCO COMPANY, individually, and as successor-by-merger to LORILLARD TOBACCO
4 COMPANY and as successor-in-interest to the United States tobacco business of BROWN &
5 WILLIAMSON TOBACCO CORPORATION, which is the successor-by-merger to THE
6 AMERICAN TOBACCO COMPANY; LIGGETT GROUP, LLC.; ASM NATIONWIDE
7 CORPORATION d/b/a SILVERADO SMOKES & CIGARS; LV SINGHS INC. d/b/a SMOKES &
8 VAPORS; DOES I-X; and ROE BUSINESS ENTITIES XI-XX as follows:

10 1. For general damages in excess of Fifteen Thousand Dollars (\$15,000.00), to be set
11 forth and proven at the time of trial;

12 2. For special damages in excess of Fifteen Thousand Dollars (\$15,000.00), to be set forth
13 and proven at the time of trial;

14 3. For exemplary and punitive damages in excess of Fifteen Thousand Dollars
15 (\$15,000.00);

16 4. For reasonable attorneys' fees;

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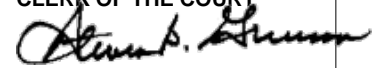
5. For costs of suit incurred;
6. For a jury trial on all issues so triable; and
7. For such other relief as to the Court seems just and proper.

DATED this 26th day of February 2020.

CLAGGETT & SYKES LAW FIRM

/s/ Sean K. Claggett

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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 SANDRA CAMACHO, individually, and
15 ANTHONY CAMACHO, individually,

16 Plaintiffs,

17 vs.

18 PHILIP MORRIS USA, INC., a foreign
19 corporation; R.J. REYNOLDS TOBACCO
20 COMPANY, a foreign corporation, individually,
21 and as successor-by-merger to LORILLARD
22 TOBACCO COMPANY and as successor-in-
23 interest to the United States tobacco business of
24 BROWN & WILLIAMSON TOBACCO
25 CORPORATION, which is the successor-by-
26 merger to THE AMERICAN TOBACCO
27 COMPANY; LIGGETT GROUP, LLC., a
28 foreign corporation; ASM NATIONWIDE
CORPORATION d/b/a SILVERADO SMOKES
& CIGARS, a domestic corporation; and LV
SINGHS INC. d/b/a SMOKES & VAPORS, a
domestic corporation; DOES I-X; and ROE
BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Case No.: A-19-807650-C

Dept. No.: IV

HEARING REQUESTED

**DEFENDANT ASM NATIONWIDE
CORPORATION'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
PLAINTIFFS' PUNITIVE DAMAGES
CLAIM**

///

Defendant ASM Nationwide Corporation d/b/a Silverado Smokes & Cigars (“Silverado”), by and through its counsel of record, hereby submits this Motion for Partial Summary Judgment on Plaintiffs’ Punitive Damages Claim.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs’ Amended Complaint asserts a cause of action for strict products liability against Silverado for the mere sale of cigarettes. *See* Am. Compl. ¶¶ 222–38. For their strict products liability claim, Plaintiffs seek punitive damages. *See id.* ¶ 236. This Court should grant partial summary judgment on Plaintiffs’ punitive damages claim because Plaintiffs have no evidence that establishes that Silverado is guilty of oppression, fraud, or malice pursuant to NRS 42.005. Further, Plaintiffs’ claim for punitive damages is preempted by federal law. And, even if the punitive damages claim were not preempted (and it is), the claim would fail because the only underlying claim against Silverado (strict products liability) fails as a matter of law. Because there is no genuine dispute as to any material fact, summary judgment should be entered in Silverado’s favor.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

The following facts are undisputed for the purposes of this Motion: (1) Mrs. Camacho purchased cigarettes from Silverado, starting in the 1990s, *see* Dep. of Sandra Camacho at 182:03–11, 185:06–09 (Dec. 7, 2021) (Ex. A); (2) Silverado is licensed in the State of Nevada to sell cigarettes, *see* NRS 370.33, 370.567; and (3) cigarettes were and are a legal product, and were and are sold in packages containing federally-mandated warning labels at the relevant times.

III. LEGAL STANDARD

The Court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Nev. R. Civ. P. 56. Summary judgment is appropriate “when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a

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matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005).¹ “[I]f the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.’” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602–03, 172 P.3d 131, 134 (2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)). “In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.* at 603.

IV. ARGUMENT

Silverado is entitled to summary judgment on Plaintiffs’ punitive damages claim because Plaintiffs cannot establish that Silverado is guilty of fraud, malice, or oppression under NRS 42.005, and because their punitive damages claim is preempted. Plaintiffs’ punitive damages claim also fails because the sole underlying claim against Silverado (strict products liability) fails as a matter of law.²

A. There is No Evidence that Silverado Engaged in Fraud, Malice, or Oppression Through its Sole Alleged Conduct: the Sale of Cigarettes.

Plaintiffs seek punitive damages pursuant to NRS 42.005. *See* Am. Compl. ¶ 236. On the issue of punitive damages, the standard for recovery is more stringent because of Plaintiffs’ burden to prove punitive damages by *clear and convincing evidence*. The “clear and convincing evidence” standard “must produce ‘satisfactory’ proof that is ‘so strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest.’” *Ricks v. Dabney*, 124 Nev. 74, 79, 177 P.3d 1060, 1063 (2008) (quoting *In re Drakulich*, 111 Nev. 1156, 1566, 908 P.2d 709, 714 (1995)). It “requires a finding of high probability.” *Shade Foods, Inc.*

¹ The Nevada Supreme Court has adopted the federal summary judgment standard. *See id.*

² Silverado incorporates by reference the arguments articulated in its contemporaneously-filed Motion for Partial Summary Judgment on Plaintiffs’ Strict Liability Claims.



1 *v. Innovative Prods. Sales & Marketing, Inc.*, 93 Cal. Rptr. 2d 364, 394 (2000) (quoting *In re*
2 *Angelia P.*, 171 Cal. Rptr. 637, 643 (1981)). The evidence must be “so clear as to leave no
3 substantial doubt” and “sufficiently strong to command the unhesitating assent of every
4 reasonable mind.” *Id.* at 394 (quoting *In re Angelia P.*, 171 Cal. Rptr. at 643). When faced with a
5 claim for punitive damages, a trial court must first make a threshold showing that the plaintiff has
6 sufficient evidence to meet the higher “clear and convincing evidence” standard, before it submits
7 the question for a jury’s consideration. *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev.
8 725, 740, 192 P.3d 243, 253 (2008).

9 Moreover, Silverado is a corporate defendant, and corporations can only operate through
10 their employees. A corporation therefore may only be liable for punitive damages based on its
11 employee’s conduct if:

- 12 (a) The employer had advance knowledge that the employee was unfit
13 for the purposes of the employment and employed the employee
with a conscious disregard of the rights or safety of others;
- 14 (b) The employer expressly authorized or ratified the wrongful act of
15 the employee for which the damages are awarded; or
- 16 (c) The employer is personally guilty of oppression, fraud or malice,
express or implied.

17 *See* NRS 42.007(1).

18 A corporation is not liable for punitive damages “unless the elements of paragraph (a), (b)
19 or (c) are met by an officer, director or managing agent of the corporation who was expressly
20 authorized to direct or ratify the employee’s conduct on behalf of the corporation.” *See* NRS
21 42.007(1)(c). The Nevada Supreme Court has confirmed the application of NRS 42.007 to
22 punitive damages claims against a corporation by stating that “NRS 42.007 ensures that employers
23 are subject to punitive damages only for their own culpable conduct and not for the misconduct of
24 lower level employees.” *Thitchener*, 124 Nev. at 746, 192 P.3d at 257.

25 To prevail on a claim for punitive damages, NRS 42.005 requires a plaintiff to prove “by
26 clear and convincing evidence that the defendant has been guilty of oppression, fraud, or
27 malice . . .” Fraud is defined as “an intentional misrepresentation, deception or concealment of a
28 material fact known to the person with the intent to deprive another person of his or her rights or



property or to otherwise injure another person.” NRS 42.001(2). Malice is “conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.” NRS 41.001(3). And oppression is defined as “despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the person.” NRS 42.001(4). A party “acts with conscious disregard when it knows of the probable harmful consequences of a wrongful act and willfully and deliberately fails to act to avoid those consequences.” *Kinder Morgan Energy Partners, L.P. v. Claytor*, 130 Nev. 1205, 1205 (2014).

Plaintiffs have not asserted a fraud claim against Silverado. Rather, the sole claim brought against Silverado is strict products liability for allegedly selling/distributing a defective and unreasonably dangerous product: cigarettes. *See* Am. Compl. ¶¶ 222–38. Therefore, Plaintiffs cannot seek punitive damages against Silverado for fraudulent conduct when they have not even alleged it.

Plaintiffs, likewise, have no evidence that Silverado is guilty of conduct that constitutes “malice” or “oppression” to support their claim for punitive damages against Silverado. As an initial matter, Plaintiffs have not made any allegation sufficient to satisfy the requirements of NRS 42.007(1)(a), (b), or (c). NRS 42.007 is not a guideline or suggestion—it is a directive by the Nevada Legislature that corporations cannot be held liable for punitive damages if the alleged punitive conduct was committed by employees without authority to direct and set company policy. *See Thitchener*, 124 Nev. at 747, 192 P.3d at 258. This alone is fatal to Plaintiffs’ punitive damages claim against Silverado.

Even so, Silverado vehemently denies that any of its employees, in any capacity, ever acted with oppression or malice such that punitive damages could even be considered, had Plaintiffs’ properly pled the claim. There is no evidence—or even allegation—of any such employee or any such state of mind. But even clearer is the absence of any suggestion that a director, officer or managing agent of Silverado ever did so, or ever ratified any such conduct.³

³ Discovery has proceeded in this case for months, and is now complete. Over the entirety of the case, Plaintiffs have failed to adduce evidence in any form that a corporate agent of Silverado acted with oppression or malice. In particular, Plaintiffs have not even identified a managing agent with the



Nevada law is clear: For a corporation to be liable for punitive damages, the alleged punitive conduct must have been committed by or ratified by a high-level corporate agent. Here, there is no evidence that any officer, director or managing agent of Silverado acted with conscious disregard of any known risk, and similarly never ratified any such conduct, and under NRS 42.007. Rather, Silverado (i) lawfully sold a legal product to Mrs. Camacho, (ii) bearing a warning label, (iii) that was sold at a time (i.e., 1990s to 2017) where the ordinary consumer was well aware of the dangers of smoking. Indeed, Silverado is (and has been) licensed to sell cigarettes by the State of Nevada. *See* NRS 370.033, 370.567. The sale of a legal product bearing a warning label, that is not unreasonably dangerous, by a retailer licensed to sell it cannot be a basis for punitive damages, without more, because there is nothing “wrongful” or “punishable” about lawfully selling a legal, non-defective product. And that is all Plaintiffs have alleged Silverado has done. *See Claytor*, 130 Nev. at 1205. Because Plaintiffs have no evidence that Silverado engaged in fraudulent, malicious, or oppressive conduct through its lawful sale of the cigarettes at issue during the relevant timeframes, Plaintiffs’ punitive damages claim against Silverado fails as a matter of law. Summary judgment is therefore appropriate on Plaintiffs’ punitive damages claim.

B. Plaintiffs’ Punitive Damages Claim Against Silverado is Preempted.

As a second and independent basis for granting summary judgment, by seeking to punish Silverado for the mere sale of a legal product, Plaintiffs are unlawfully attempting to prevent Silverado (and other retailers) from selling cigarettes. Claims that essentially seek to outlaw or ban the sale of cigarettes—or claims that would have that effect—are federally preempted because they conflict with clear congressional policy against “the removal of tobacco products from the market.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 137–38 (2000); *see also Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873–74 (2000); *see also* Trial Tr. at 2264:08–12, *Garcia v. R.J. Reynolds Tobacco Co.*, No. 2007-045267 (Fla. 11th Cir. Ct. May 18, 2021) (the court recognizing that “cigarettes can be sold. They are FDA approved.”) (Ex. B).

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authority to set Silverado policy—much less that any managing agent consciously ratified the malicious conduct of any employee.



In fact, in applying the Supreme Court’s *FDA* decision, Florida’s Fourth District Court of Appeal held that conflict preemption barred claims for the continued manufacture of cigarettes because a cause of action imposing liability for nothing more than the manufacture and sale of cigarettes is “contrary to Congress’s intent to protect commerce and not to ban tobacco products.” *Liggett Grp., Inc. v. Davis*, 973 So. 2d 467, 472–73 (Fla. 4th DCA 2007), *rev. granted on other grounds*, 978 So. 2d 160 (Fla. 2008), *rev. dismissed*, 997 So. 2d 400 (Fla. 2008). Because Plaintiffs’ punitive damages claim is premised entirely on Silverado’s lawful sale of cigarettes, that claim fails as a matter of law under conflict preemption because it would improperly seek to impose liability against and punish Silverado for nothing more than the sale of cigarettes.

C. Plaintiffs’ Strict Liability Claim Against Silverado Fails.

Plaintiffs cannot seek punitive damages against Silverado because their underlying claim for strict liability fails. As laid out in greater detail in Defendants’ Motion for Partial Summary Judgment on Plaintiffs’ Strict Liability Claims, Plaintiffs must not only prove that the product is defective but must also prove that the “defective product[] is ‘more dangerous than would be contemplated by the ordinary user having the ordinary knowledge available in the community.’” *Ford Motor Co. v. Trejo*, 133 Nev. 520, 521, 402 P.3d 649, 650 (2017) (quoting *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 413, 470 P.2d 135, 138 (1970)).

Yet Plaintiffs cannot point to any evidence regarding consumer expectations about the dangers of smoking from 1990 to 2017. Moreover, the uncontroverted evidence clearly shows that by 1990 the ordinary consumer knew that cigarette smoking can cause throat cancer and is addictive. Because Plaintiffs’ strict liability claim fails as a matter of law, their derivative punitive damages claim predicated on strict liability necessarily fails as well.

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CONCLUSION

For these reasons, the Court should grant summary judgment in Silverado's favor on Plaintiffs' punitive damages claim pursuant to Nevada Rule of Civil Procedure 56.

Dated this 25th day of May, 2022.

/s/ Howard J. Russell

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2022, a true and correct copy of the foregoing
**DEFENDANT ASM NATIONWIDE CORPORATION'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON PLAINTIFFS' PUNITIVE DAMAGES CLAIM** was
electronically filed and served on counsel through the Court's electronic service system pursuant
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An employee of WEINBERG, WHEELER,
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Exhibit A

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

SANDRA CAMACHO,)
individually, and ANTHONY)

4

CAMACHO, individually,) CASE NO.:
A-19-807650-C

5

Plaintiffs,)

6

vs.)

7

PHILIP MORRIS USA INC., a)
foreign corporation; R.)

8

J. REYNOLDS TOBACCO)

9

COMPANY, a foreign) DEPOSITION OF
corporation,) SANDRA CAMACHO
individually, and as) VOL. III

10

successor-by-merger to)

LORILLARD TOBACCO COMPANY)

11

and as)

successor-in-interest to)

12

the United States tobacco)

business of BROWN &)

13

WILLIAMSON TOBACCO)

CORPORATION, which is the)

14

successor-by-merger to)

THE AMERICAN TOBACCO)

15

COMPANY; LIGGETT GROUP,)

LLC, a foreign)

16

corporation; ASM)

NATIONWIDE CORPORATION)

17

d/b/a SILVERADO SMOKES &)

CIGARS, a domestic)

18

corporation; and LV)

SINGHS INC. d/b/a SMOKES)

19

& VAPORS, a domestic) DEPOSITION OF

corporation; DOES I-X;)

20

and ROE BUSINESS ENTITIES) SANDRA CAMACHO

XI-XX, inclusive,)

21

VOLUME III

Defendants.)

22

23

Taken on Tuesday, December 7, 2021

At 9:06 a.m.

24

Las Vegas, Nevada

25

Reported By: Karen L. Jones, CCR NO. 694

<p>176</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 VIDEOTAPED DEPOSITION OF SANDRA CAMACHO</p> <p>8 VOLUME III</p> <p>9 Taken on Tuesday, December 7, 2021</p> <p>10 Through a translator</p> <p>11 By a Certified Stenographer</p> <p>12 At 9:06 a.m.</p> <p>13 At 531 Morning Mauve Avenue</p> <p>14 Las Vegas, Nevada</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Reported By: Karen L. Jones, CCR NO. 694</p> <p>25</p>	<p>178</p> <p>1 I N D E X</p> <p>2 WITNESS: SANDRA CAMACHO</p> <p>3 EXAMINATION PAGE</p> <p>4 BY: Ms. Kenyon 190</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit 11 Medical Record 219</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>177</p> <p>1 APPEARANCES:</p> <p>2 For the Plaintiffs:</p> <p>3 KELLEY UUSTAL</p> <p>4 BY: KIMBERLY L. WALD, ESQ.</p> <p>5 500 North Federal Highway, Suite 200</p> <p>6 Fort Lauderdale, Florida 33301</p> <p>7 954.522.6601</p> <p>8 For Philip Morris USA Inc.:</p> <p>9 SHOOK, HARDY & BACON L.L.P.</p> <p>10 BY: JENNIFER KENYON, ESQ.</p> <p>11 2555 Grand Boulevard</p> <p>12 Kansas City, Missouri 64108</p> <p>13 816.474.6550</p> <p>14 For Liggett Group, LLC:</p> <p>15 KASOWITZ BENSON TORRES LLP</p> <p>16 BY: KELLY ANNE LUTHER, ESQ.</p> <p>17 1441 Brickell Avenue, Suite 1420</p> <p>18 Miami, Florida 33131</p> <p>19 786.587.1045</p> <p>20 For R. J. Reynolds Tobacco Company:</p> <p>21 KING & SPALDING</p> <p>22 BY: URSULA M. HENNINGER, ESQ.</p> <p>23 300 South Tryon Street, Suite 1700</p> <p>24 Charlotte, North Carolina 28202</p> <p>25 704.503.2631</p> <p>Also Present:</p> <p>Gian Sapienza, Legal Videographer</p> <p>Dwayne Parrette, Translator/Reader</p> <p>Anthony Camacho</p>	<p>179</p> <p>1 P R O C E E D I N G S</p> <p>2 *****</p> <p>3 THE VIDEOGRAPHER: This begins the video</p> <p>4 recorded deposition of Sandra Camacho Volume III</p> <p>5 taken Tuesday, December 7th, 2021, at 9:06 a.m. The</p> <p>6 deposition is being held at 531 Morning Mauve</p> <p>7 Avenue, Las Vegas, Nevada 89183, titled Sandra</p> <p>8 Camacho and Anthony Camacho versus Philip Morris et</p> <p>9 al., in the District Court, Clark County, Nevada,</p> <p>10 Case Number A-19-807650-C.</p> <p>11 My name is Gian Sapienza with Certified</p> <p>12 Legal Videography. The court reporter is Karen</p> <p>13 Jones with Oasis Reporting Services.</p> <p>14 Will the attorneys please state your</p> <p>15 name and affiliation for the record.</p> <p>16 MS. WALD: Kimberly Wald from Kelley</p> <p>17 Uustal on behalf of the Plaintiff Sandra Camacho.</p> <p>18 MS. KENYON: Jennifer Kenyon on behalf</p> <p>19 of Philip Morris USA.</p> <p>20 MS. HENNINGER: Ursula Henninger on</p> <p>21 behalf of R. J. Reynolds Tobacco Company.</p> <p>22 MS. LUTHER: Kelly Luther on behalf of</p> <p>23 Liggett Group, LLC.</p> <p>24 THE VIDEOGRAPHER: Thank you. The court</p> <p>25 reporter will now administer the oath.</p>

<p>180</p> <p>1 (The translator was sworn.)</p> <p>2 Whereupon,</p> <p>3 SANDRA CAMACHO,</p> <p>4 having been first duly sworn to testify to the</p> <p>5 truth, was examined, and testified as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MS. KENYON:</p> <p>9 Q. Good morning, Mrs. Camacho. How are</p> <p>10 you? Are you okay?</p> <p>11 A. Okay.</p> <p>12 Q. Can you hear me okay?</p> <p>13 A. Yes.</p> <p>14 Q. We were here in your home a few weeks</p> <p>15 ago for your deposition. The same procedures that</p> <p>16 were in place a few weeks ago are going to be --</p> <p>17 still be in place for the deposition today.</p> <p>18 Do you understand that?</p> <p>19 A. Yes.</p> <p>20 Q. So you have your answer sheets in front</p> <p>21 of you that your -- have eight to nine answers that</p> <p>22 you can point to or you have your white board in</p> <p>23 front of you.</p> <p>24 Do you understand?</p> <p>25 A. Yes.</p>	<p>182</p> <p>1 cigarettes?</p> <p>2 A. No.</p> <p>3 Q. You told us that you bought cigarettes</p> <p>4 from 7-Eleven and Texaco when you were working</p> <p>5 there, and at a smoke shop; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Is that Silverado Smokes & Cigars?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever purchase cigarettes</p> <p>10 anywhere else?</p> <p>11 A. No.</p> <p>12 Q. Are you aware that you have sued</p> <p>13 Silverado Smokes & Cigars?</p> <p>14 A. Yes.</p> <p>15 Q. Why did you not sue all of the stores</p> <p>16 where you worked and purchased cigarettes like</p> <p>17 7-Eleven and Texaco?</p> <p>18 MS. WALD: And I'm instructing my client</p> <p>19 not to answer based on attorney-client privilege.</p> <p>20 Don't answer.</p> <p>21 BY MS. KENYON:</p> <p>22 Q. You agree that it's legal to sell</p> <p>23 cigarettes in the U.S.?</p> <p>24 A. I guess so.</p> <p>25 Q. Silverado Smokes & Cigars is not</p>
<p>181</p> <p>1 Q. Let me know if at any time you can't</p> <p>2 hear me. Sound good?</p> <p>3 A. Yes.</p> <p>4 Q. If you don't understand any of my</p> <p>5 questions, just let me know. Does that sound good?</p> <p>6 A. Okay.</p> <p>7 Q. If you need a break, let me know.</p> <p>8 A. Okay.</p> <p>9 Q. You understand that you're under oath</p> <p>10 again today?</p> <p>11 A. Yes.</p> <p>12 Q. Is there anything that might affect your</p> <p>13 ability to understand my questions and answer those</p> <p>14 questions today?</p> <p>15 A. No.</p> <p>16 Q. Anything that prevents you from giving</p> <p>17 accurate testimony today?</p> <p>18 A. No.</p> <p>19 Q. So last time you were here, we were</p> <p>20 talking a little bit about your smoking history.</p> <p>21 Do you remember that?</p> <p>22 A. Yes.</p> <p>23 Q. Have you ever received free cigarettes?</p> <p>24 A. No.</p> <p>25 Q. Have you ever received free samples of</p>	<p>183</p> <p>1 breaking any laws by selling cigarettes, correct?</p> <p>2 MS. WALD: Form.</p> <p>3 THE WITNESS: I do not know.</p> <p>4 BY MS. KENYON:</p> <p>5 Q. You understand it's legal to purchase</p> <p>6 cigarettes in the United States?</p> <p>7 MS. WALD: Object to form. Asked and</p> <p>8 answered.</p> <p>9 BY MS. KENYON:</p> <p>10 Q. Correct? Did you answer?</p> <p>11 A. No.</p> <p>12 MS. WALD: Do you understand what's</p> <p>13 going on? Okay. Can you repeat the question?</p> <p>14 (The record is read by the reporter.)</p> <p>15 MS. WALD: Point to an answer.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MS. KENYON:</p> <p>18 Q. And you understand that it's legal to</p> <p>19 sell cigarettes in the United States, correct?</p> <p>20 MS. WALD: Object to form. Asked and</p> <p>21 answered.</p> <p>22 BY MS. KENYON:</p> <p>23 Q. You agree that it's legal to sell</p> <p>24 cigarettes in the United States, correct?</p> <p>25 MS. WALD: Point to an answer.</p>

<p style="text-align: right;">184</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MS. KENYON:</p> <p>3 Q. What did Silverado Smokes & Cigars do</p> <p>4 that was wrong, in your opinion?</p> <p>5 MS. WALD: Form.</p> <p>6 THE WITNESS: They sold them to me.</p> <p>7 BY MS. KENYON:</p> <p>8 Q. What did Silverado Smokes & Cigars do</p> <p>9 differently than you when you sold cigarettes at</p> <p>10 7-Eleven?</p> <p>11 MS. WALD: Objection.</p> <p>12 THE WITNESS: I do not know.</p> <p>13 BY MS. KENYON:</p> <p>14 Q. What did Silverado Smokes & Cigars do</p> <p>15 differently than you when you sold cigarettes while</p> <p>16 you were working at Texaco?</p> <p>17 MS. WALD: Objection.</p> <p>18 THE WITNESS: I do not know.</p> <p>19 BY MS. KENYON:</p> <p>20 Q. Why should they be liable for selling</p> <p>21 cigarettes but not you?</p> <p>22 MS. WALD: Objection.</p> <p>23 THE WITNESS: I do not know.</p> <p>24 BY MS. KENYON:</p> <p>25 Q. Do you think you should be liable for</p>	<p style="text-align: right;">186</p> <p>1 Q. You smoked for over 20 years before you</p> <p>2 started buying cigarettes at Silverado Smokes &</p> <p>3 Cigars, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Why didn't you choose to sue those other</p> <p>6 retailers?</p> <p>7 MS. WALD: Object to the form.</p> <p>8 Instructing my client not to answer.</p> <p>9 Attorney-client privilege.</p> <p>10 BY MS. KENYON:</p> <p>11 Q. Did you ever collect Marlboro Miles?</p> <p>12 A. Yes.</p> <p>13 Q. You were already smoking Marlboro when</p> <p>14 you started collecting miles, correct?</p> <p>15 A. That's how I got them.</p> <p>16 Q. So what I'm asking, so when did you</p> <p>17 start collecting Marlboro Miles?</p> <p>18 A. I do not remember.</p> <p>19 Q. What I'm trying to understand, you were</p> <p>20 already smoking Marlboro when you started collecting</p> <p>21 miles, correct?</p> <p>22 MS. WALD: Form.</p> <p>23 THE WITNESS: It was after I started</p> <p>24 smoking them.</p> <p>25 ///</p>
<p style="text-align: right;">185</p> <p>1 selling cigarettes?</p> <p>2 MS. WALD: Objection.</p> <p>3 THE WITNESS: I do not know. I do not</p> <p>4 remember.</p> <p>5 BY MS. KENYON:</p> <p>6 Q. When did you first purchase cigarettes</p> <p>7 at Silverado Smokes & Cigars?</p> <p>8 A. In the '90s sometime.</p> <p>9 Q. When did you last purchase cigarettes at</p> <p>10 Silverado Smokes & Cigars?</p> <p>11 MS. WALD: Write it down.</p> <p>12 THE WITNESS: When I got cancer.</p> <p>13 BY MS. KENYON:</p> <p>14 Q. Were the employees at Silverado Smokes &</p> <p>15 Cigars always courteous and professional from what</p> <p>16 you observed?</p> <p>17 A. It was only him that I remember.</p> <p>18 Q. Who are you referring to?</p> <p>19 A. Owner.</p> <p>20 Q. Do you recall the owner's name?</p> <p>21 A. I do not remember.</p> <p>22 Q. Was the owner of Silverado Smokes &</p> <p>23 Cigars always courteous and professional from what</p> <p>24 you observed?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">187</p> <p>1 BY MS. KENYON:</p> <p>2 Q. So you started collecting miles after</p> <p>3 you started smoking Marlboros, correct?</p> <p>4 MS. WALD: Form. Asked and answered.</p> <p>5 Three times.</p> <p>6 BY MS. KENYON:</p> <p>7 Q. Can you answer that question? Is that</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. You did not start smoking Marlboro</p> <p>11 because of the miles, correct?</p> <p>12 MS. WALD: Form. Asked and answered.</p> <p>13 Fourth time.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MS. KENYON:</p> <p>16 Q. So that's correct, you did not start</p> <p>17 smoking Marlboro because of the miles, correct?</p> <p>18 MS. WALD: Form. Asked and answered.</p> <p>19 THE WITNESS: Correct.</p> <p>20 MS. KENYON: Off the record.</p> <p>21 MS. WALD: Stay on the video.</p> <p>22 (A recess is taken.)</p> <p>23 MS. KENYON: Back on the record.</p> <p>24 BY MS. KENYON:</p> <p>25 Q. You doing okay? Can you point to one of</p>

Exhibit B

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2007-045267-CA-30

ODAIMA GARCIA, as Personal
Representative of the Estate of
Cruz Juan Miguel Rodriguez and
For the use and benefit of his
Surviving wife, Elena Rodriguez,

Plaintiff,

vs.

R. J. REYNOLDS TOBACCO COMPANY, et al.,

Defendants.

_____ /

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

VOLUME 19
(PAGES 2210 - 2293)

MIAMI-DADE COUNTY COURTHOUSE
ROOM 6-1
73 WEST FLAGLER STREET
MIAMI, FL 33131
Tuesday, May 18, 2021
8:30 a.m. - 11:20 a.m.

This above-entitled cause came on for jury trial
before the Honorable Reemberto Diaz, Circuit Court
Judge, taken before Vanessa Obas, RPR, and Notary Public
in and for the State of Florida at Large.

212-279-9424

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<p style="text-align: right;">Page 2211</p> <p>1 APPEARANCES: 2 ATTORNEYS ON BEHALF OF THE PLAINTIFF: 3 STEPHEN E. AUSTIN CARR, ESQ. carr@kpwlaw.com 4 JUSTIN PARAFINCZUK, ESQ. parafinczuk@kpwlaw.com 5 PARAFINCZUK WOLF SUSEN 110 EAST BROWARD BLVD. 6 SUITE 1630 FORT LAUDERDALE FL 33301 7 (954) 462-6700 8 JOSE M. MENENDEZ, ESQ. MENENDEZ TRIAL ATTORNEYS 9 113 ALMERIA AVENUE CORAL GABLES FL 33134 10 (305) 445-6500 jose@josemenendezlaw.com 11 BARD D. ROCKENBACH, ESQ. BURLINGTON & ROCKENBACH, P.A. 12 444 WEST RAILROAD AVENUE SUITE 350 13 WEST PALM BEACH FL 33401 14 (561) 721-0400 bdr@flappellatelaw.com 15 ATTORNEYS ON BEHALF OF THE DEFENDANTS PHILIP MORRIS USA: 16 FRANK CRUZ-ALVAREZ, ESQ. shbpmattymiami@shb.com 17 JAMES D. GARDNER, ESQ. jgardner@shb.com 18 SHOOK, HARDY & BACON, LLP 201 SOUTH BISCAYNE BLVD. 19 SUITE 3200 MIAMI FL 33131 20 (305) 358-5171 21 ROBERT C.L. VAUGHAN, ESQ. KIM VAUGHAN LERNER, LLP 22 100 SOUTHEAST 3RD AVENUE SUITE 2001 23 FORT LAUDERDALE FL 33394 (954) 527-1115 24 rvaughan@kvllaw.com 25</p>	<p style="text-align: right;">Page 2212</p> <p>1 INDEX 2 PAGE 3 CLOSING ARGUMENT BY MR. CARR 2258 4 CERTIFICATE OF REPORTER 2293 5 6 EXHIBITS 7 DESCRIPTION PAGE 8 9 (No exhibits marked.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2213</p> <p>1 (Thereupon, the proceedings continued from Volume 18 2 at 8:30 a.m.) 3 THE COURT: Good morning. 4 Are we ready? 5 MR. MENENDEZ: Yes, Judge. 6 MR. CARR: Your Honor, we are at the clerk's 7 liberty to argue any motion first as Your Honor 8 feels appropriate. 9 THE COURT: I, yesterday, received a brief 10 regarding improper closing argument. I read that. 11 I just right now reviewed an e-mail containing 12 plaintiff's response. I printed that. I haven't 13 read it. Like, two seconds ago. I've been involved 14 with motion calendar since 8:30 this morning. I 15 apologize, but I couldn't find anybody else to cover 16 for me, so I had to get it done. 17 Are all the jurors here? 18 THE BAILIFF: Yes. 19 THE COURT: Do you want me to review this now? 20 MR. MENENDEZ: I think the slides would 21 probably make more sense before that. 22 THE COURT: Okay. What's going on? 23 MR. CRUZ-ALVAREZ: Your Honor, we -- they gave 24 us a copy of the slides they want to use for 25 closing, and so we have a few issues on them.</p>	<p style="text-align: right;">Page 2214</p> <p>1 MR. CARR: I have copies for the Court. 2 THE COURT: Okay. 3 MR. CRUZ-ALVAREZ: So, Judge, the first issue 4 really comes at -- let's see. It's, I guess, Page 5 or Slide Number 10, maybe. It's the CEOs and 6 Congress. 7 THE COURT: Okay. 8 MR. CRUZ-ALVAREZ: Your Honor, this is tied to 9 the brief that I filed last night. 10 As the Court knows, the claim for punitive 11 damages here is only on negligence and strict 12 liability. This gentleman stopped smoking -- 13 stopped using the product in 1984. This slide -- my 14 issue isn't that they're not entitled to show the 15 slide. It was evidence. They played the video. I 16 understand -- 17 THE COURT: It is evidence. 18 MR. CRUZ-ALVAREZ: Right. I understand that. 19 THE COURT: Why would the plaintiff not be able 20 to comment on the evidence that has been properly 21 presented to the jury? 22 MR. CRUZ-ALVAREZ: That's not my issue, Your 23 Honor. I don't disagree with what the Court is 24 saying. 25 My issue is how they comment on the evidence.</p>

2 (Pages 2211 to 2214)

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<p style="text-align: right;">Page 2263</p> <p>1 that. The legislature cannot do that. Regulators 2 cannot do it. You're the only ones that can punish 3 a corporation for the death of a man, the death of 4 one of their customers. 5 It takes two to make a cancer. You will hear a 6 lot from the defense about Cruz Juan Miguel 7 Rodriguez and what happened to him medically, what 8 happened to him with his family, but it takes two. 9 First, it takes a smoker. And, second, it takes a 10 cigarette manufacturer. 11 MR. VAUGHAN: Objection, Your Honor. May we 12 approach? 13 THE COURT: Let me see the lawyers sidebar, 14 please. 15 (The following proceedings were had before the 16 Court and out of the hearing of the Jury.) 17 MR. VAUGHAN: Thank you. 18 First, I apologize. I did not want to do it, 19 and I waited after the first time. I object to the 20 inference that it is improper to sell cigarettes or 21 manufacture cigarettes. It's the second time he's 22 done it, and I'm asking the Court to issue an 23 instruction that there's nothing illegal about 24 manufacturing or selling cigarettes, and the slide 25 you just saw, he just did it to — to cause cancer,</p>	<p style="text-align: right;">Page 2264</p> <p>1 one person smokes, one person manufacturers. 2 MR. CARR: That's obviously true. That's 3 obviously — 4 THE COURT: Well, it may be true — 5 MR. CARR: We haven't said anything about 6 improper. They approved that slide. They approved 7 that slide. 8 THE COURT: They approved the slide. What they 9 didn't agree was to any improper use of it. I have 10 no problem with you suggesting what you're 11 suggesting, but the cigarettes can be sold. They 12 are FDA approved. 13 MR. CARR: I understand that. Obviously — 14 THE COURT: Refrain from doing that. 15 MR. CARR: Okay. 16 MR. VAUGHAN: May I have that instruction, 17 Judge. The jury needs to hear that it is not 18 illegal to manufacture and sell cigarettes. 19 MR. CARR: We don't agree to — 20 MR. VAUGHAN: He did it twice. 21 THE COURT: I am not going to comment on the 22 evidence at this time, but I will not hesitate to do 23 so if it happens again. 24 (The sidebar was concluded and the following 25 proceedings were had in the presence of the jury:)</p>
<p style="text-align: right;">Page 2265</p> <p>1 MR. CARR: All right. You heard in opening 2 statement when Mr. Menendez told you that Cruz Juan 3 Miguel, who's new deceased, his family on his 4 behalf, Cruz Juan Miguel takes responsibilities, and 5 he takes responsibility for picking up the 6 cigarette, lighting them, smoking them, becoming 7 addicted and then eventually getting COPD and 8 emphysema. He takes responsibility. 9 The family thinks a fair amount of that 10 responsibility, based on this evidence, is 11 25 percent. You will see that on the verdict form 12 when we get to that, but I want you to know that 13 right off the bat. 14 But I'll tell you that the path of punitive 15 damages is a path to change. It's a path to make a 16 difference. 17 You heard from Dr. Kyriakoudes about 18 decades-long conspiracy. Philip Morris betrayed its 19 customers by telling them to doubt the science. You 20 actually heard about a whole industry that betrayed 21 America by telling them to doubt the science when 22 the science was crystal clear. By clear and 23 convincing evidence, the science was clear when they 24 came out with the frank statement, when they went on 25 television, denying the dangers of cigarettes.</p>	<p style="text-align: right;">Page 2266</p> <p>1 But here when they come to court, Philip Morris 2 lawyers will not talk about any defense to the 3 industry positions on the science, on addiction, 4 because they told you, frankly, the tobacco industry 5 held on to some of those positions far, far too 6 long, and it was — that concession did no good for 7 Cruz Juan Miguel Rodriguez because he quit long ago, 8 in 1984, when they were still denying the science, 9 denying the addiction. 10 Play that. 11 Remember Howard Cullman who appeared on that TV 12 show right after the surgeon general's report, and 13 here's what he said. 14 (Videotape dialogue.) 15 "Mr. Cullman, the conclusions are very stark 16 and pretty solid. They say, quite frankly, the — 17 they expressed the judgment that cigarette smoking 18 contributed substantially to mortality from certain 19 specific diseases and to the overall death rate, and 20 they have the rate of ten times as high for smokers 21 in the case of lung cancer and other cases. 22 "Well, that's awful harsh, the word 23 'substantial.' I don't believe that most people who 24 smoke get lung cancer. We are now in an era, as you 25 know, of moderation. We eat more carefully. We</p>

15 (Pages 2263 to 2266)

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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 SANDRA CAMACHO, individually, and
15 ANTHONY CAMACHO, individually,

16 Plaintiffs,

17 vs.

18 PHILIP MORRIS USA, INC., a foreign
19 corporation; R.J. REYNOLDS TOBACCO
20 COMPANY, a foreign corporation, individually,
21 and as successor-by-merger to LORILLARD
22 TOBACCO COMPANY and as successor-in-
23 interest to the United States tobacco business of
24 BROWN & WILLIAMSON TOBACCO
25 CORPORATION, which is the successor-by-
26 merger to THE AMERICAN TOBACCO
27 COMPANY; LIGGETT GROUP, LLC., a
28 foreign corporation; ASM NATIONWIDE
CORPORATION d/b/a SILVERADO SMOKES
& CIGARS, a domestic corporation; and LV
SINGHS INC. d/b/a SMOKES & VAPORS, a
domestic corporation; DOES I-X; and ROE
BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Case No.: A-19-807650-C

Dept. No.: IV

HEARING REQUESTED

**DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
PLAINTIFFS' NEGLIGENCE CLAIM**

///



Defendant PHILIP MORRIS USA INC. (“PM USA”), by and through its counsel of record, WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, and SHOOK, HARDY & BACON L.L.P., hereby submits this Motion for Partial Summary Judgment on Plaintiffs’ Negligence Claim.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

To prove negligence, Plaintiffs must prove that PM USA’s conduct—*i.e.*, a design defect or failure to warn—caused Mrs. Camacho’s alleged injury, laryngeal cancer. Plaintiffs cannot establish that essential element of their claim for multiple reasons. First, they have no evidence that the cigarettes made by PM USA that Mrs. Camacho smoked from 1990-2017 were defective because Plaintiffs have no evidence that they were more dangerous than contemplated by the ordinary user during that time frame. Second, Plaintiffs’ design-defect theory that all cigarettes are inherently dangerous is precluded by federal conflict preemption and the Restatement (Second) of Torts § 402A. None of Plaintiffs’ experts provided evidence that Mrs. Camacho developed laryngeal cancer because of any defective design in PM USA’s cigarettes.² Rather, Plaintiffs’ experts claim that all cigarettes are inherently defective, which is insufficient to support their claims. Finally, Plaintiffs’ failure-to-warn theory is expressly preempted by federal law because Mrs. Camacho did not start smoking PM USA cigarettes until the 1990s, decades after Congress preempted any claims for failure to warn post-July 1, 1969. Courts across the country have granted summary judgment on these claims in smoking and health cases with similar lack of evidence.³ This Court should do likewise because Plaintiffs cannot prove the essential elements of their negligence claim.

¹ The arguments raised herein apply equally to Plaintiffs’ strict liability claim against PM USA because “there is no practical difference in Plaintiffs’ negligence and strict liability claims in this case. Therefore, the negligence claims are subsumed in the strict liability claims.” *Carter v. Ethicon, Inc.*, No. 2:20-CV-1232-KJD-VCF, 2021 WL 1226531, at *4 (D. Nev. Mar. 31, 2021). Should the Court grant summary judgment in PM USA’s favor on one or more grounds raised herein, summary judgment on the same grounds would be warranted as to Plaintiffs’ strict liability claim. *Id.* at *3, *4.

² Indeed, none of Plaintiffs’ experts are qualified to opine on cigarette design (other than from a historical perspective, at most).

³ See *supra* I.A.2-3.



II. UNDISPUTED FACTS

1. Plaintiffs claim that smoking cigarettes manufactured by PM USA caused Mrs. Camacho to develop laryngeal cancer. (*See, e.g.*, Am. Compl. ¶¶ 17, 19, 20, 21.)

2. Mrs. Camacho seeks compensatory damages for medical expenses, loss of enjoyment of life, and physical and mental pain and suffering. (*Id.* ¶¶ 99-102, 117-21, 138-41, 139-42, 230-33.) Mr. Camacho seeks compensatory damages for loss of consortium. (*Id.*)

3. Plaintiffs claim that PM USA was negligent for designing, engineering, manufacturing, distributing, marketing, and selling defective cigarettes, which they contend caused Mrs. Camacho's laryngeal cancer. (*Id.* ¶ 92.)

4. Plaintiffs also allege that PM USA was negligent because it failed to properly warn Mrs. Camacho about the health risks and addictive nature of smoking. (*Id.* ¶ 93.)

5. Mrs. Camacho testified that she started smoking L&M cigarettes (a Liggett brand cigarette) in 1964. Sandra Camacho Dep. at 145-46 (Nov. 3, 2021) ("Sandra Camacho Dep. Vol. 2") (Ex. A).⁴

6. Starting on January 1, 1966, a congressionally mandated health warning label appeared on every cigarette package sold in the United States. (Pub. L. No. 89-92, § 4, 79 Stat. 282, 283 (1965).)

7. Mrs. Camacho smoked L&M cigarettes from approximately 1964 to 1990. Sandra Camacho Dep. Vol. 2 at 158-59.

8. She smoked Marlboro Red (a PM USA brand cigarette) from approximately 1990 to 2000. Sandra Camacho Dep. at 333 (December 8, 2021) ("Sandra Camacho Dep. Vol. 4"); Anthony Camacho Dep. at 118 (Nov. 4, 2021) (Ex. B).

9. She smoked Basic (a PM USA brand cigarette) from approximately 2000 to 2017. (*See* Am. Compl. ¶ 17); *see also* Sandra Camacho Dep. Vol. 4 at 333-34; Anthony Camacho Dep. at 118.

///

⁴ All volumes of Sandra Camacho's deposition are collected in Exhibit A.



10. Although she might have tried the Marlboro Lights cigarettes that her daughter Laura smoked, Mrs. Camacho smoked five or fewer of them in total. Sandra Camacho Dep. Vol. 2 at 84; Laura Purkett Dep. at 99-100 (Feb. 16, 2022) (Ex. C). Mrs. Camacho never smoked light or low-tar cigarettes as her regular brand. Sandra Camacho Dep. at 205 (Dec. 7, 2021) (“Sandra Camacho Dep. Vol. 3”); Anthony Camacho Dep. at 116, 149, 189; Laura Purkett Dep. at 100, 115-16; Donna Kinsella Dep. at 168-69 (Feb. 10, 2022) (Ex. D).

11. Every cigarette manufactured by PM USA that Mrs. Camacho smoked came from a pack bearing a health warning.

12. Plaintiffs disclosed three purported expert witnesses to offer opinions about cigarette design: Drs. Robert Proctor (a historian), Louis Kyriakoudes (a historian), and Judith Prochaska (a psychiatrist). (Pls.’ Expert Witness Disclosure (Feb. 10, 2022).)

13. None of these witnesses is qualified to testify about cigarette design in terms of specific design features that were a but-for cause or a substantial factor in causing Mrs. Camacho’s cancer. *See* Defendants’ expert motions to be filed on June 17, 2022.

14. None of these expert witnesses identified in their reports an alleged specific defect in any of the cigarettes Mrs. Camacho smoked beyond the inherent characteristics of all cigarettes in the market.

15. All these expert witnesses have previously testified that there is no way to make a cigarette safe for its intended use: smoking. *See* Trial Tr. at 2086:16-19, *Jordan v. R. J. Reynolds Tobacco Co.*, 2013-CA-008903-XXX-MA (Fla. 4th Cir. Ct. July 21, 2015) (Dr. Proctor’s testimony) (“Proctor *Jordan* Trial Tr.”) (Ex. E); Trial Tr. at 1426:4-8, *Martin v. R. J. Reynolds Tobacco Co.*, No. 07-34267 CA 15 (Fla. 11th Cir. Ct. May 9, 2017) (Dr. Kyriakoudes’s testimony) (“Kyriakoudes *Martin* Trial Tr.”) (Ex. F); Dr. Prochaska Dep. at 96:24-97:1, *Kaplan v. R. J. Reynolds Tobacco Co.*, No. 08-025823(19) (Fla. 17th Cir. Ct. Dec. 20, 2016) (“Kaplan Dr. Prochaska Dep.”) (Ex. G).

16. None of Plaintiffs’ expert witnesses can opine that a design defect in the PM USA cigarettes Mrs. Camacho smoked was a proximate cause of her laryngeal cancer.

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III. LEGAL STANDARD

The Court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Nev. R. Civ. P. 56. Summary judgment is appropriate “when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005).⁵ “[I]f the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.’” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602–03, 172 P.3d 131, 134 (2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)). “In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id* 123 Nev. at 603, 172 P.3d at 134.

IV. ARGUMENT

A. PM USA Is Entitled to Summary Judgment Because Plaintiffs Have No Evidence the PM USA Cigarettes that Mrs. Camacho Smoked Were Defective.

Plaintiffs have no evidence of a defect in Mrs. Camacho’s cigarettes and therefore their negligence claim based on a design defect theory fails. Under a design defect theory, a product is defective when it “failed to perform in the manner reasonably to be expected in light of its nature and intended function and was more dangerous than would be contemplated by the ordinary user having the ordinary knowledge available in the community.” *Ford Motor Co. v. Trejo*, 133 Nev. 520, 523, 402 P.3d 649, 652 (2017). As explained in Defendants’ Motion for Partial Summary Judgment on Plaintiffs’ Strict Liability Claims, which is incorporated herein, Plaintiffs have no evidence to prove that the PM USA cigarettes Mrs. Camacho smoked were more dangerous than

⁵ The Nevada Supreme Court has adopted the federal summary judgment standard. *See Wood*, 121 Nev. at 731, 121 P.2d at 1031.



would be contemplated by the ordinary user having the ordinary knowledge available in the community during the relevant time frame. As such, Plaintiffs cannot prove a required element of their claim.

B. PM USA Is Entitled to Summary Judgment Because Plaintiffs Have No Evidence that Any Design Feature Was a Legal Cause of Mrs. Camacho's Cancer.

"Negligence, is not actionable unless, without the intervention of an intervening cause, it proximately causes the harm for which complaint was made. An intervening cause means not a concurrent and contributing cause but a superseding cause which is itself the natural and logical cause of the harm." *Thomas v. Bokelman*, 86 Nev. 10, 13, 462 P.2d 1020, 1022 (1970). Plaintiffs do not have sufficient evidence to show that any design features of the PM USA brand cigarettes that Mrs. Camacho smoked proximately caused her laryngeal cancer.

1. Federal law bars Plaintiffs' design defect theories because they would result in a *de facto* ban on cigarettes.

Implied conflict preemption precludes state-law tort claims that stand as an obstacle to "the accomplishment and execution of important . . . federal objectives." *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 881 (2000) (citations and internal quotation marks omitted). The policy implicated here is Congress's decision to foreclose the removal of tobacco products from the market. *See FDA v. Brown & Williamson*, 529 U.S. 120, 137-38 (2000). A *de facto* ban on cigarettes is directly contrary to congressional policy—expressly recognized by the United States Supreme Court—against "the removal of tobacco products from the market":

Congress . . . has foreclosed the removal of tobacco products from the market. A provision of the United States Code currently in force states that '[t]he marketing of tobacco constitutes one of the greatest basic industries of the United States with ramifying activities which directly affect interstate and foreign commerce at every point, and stable conditions therein are necessary to the general welfare.' More importantly, Congress has directly addressed the problem of tobacco and health through legislation on six occasions since 1965. **When Congress enacted these statutes, the adverse health consequences of tobacco use were well known, as were nicotine's pharmacological effects. Nonetheless, Congress stopped well short of ordering a ban.**

FDA v. Brown & Williamson, 529 U.S. at 137-38 (emphasis added and internal citations omitted).



1 Congress’s clear intent to keep cigarettes on the market despite their potential adverse health
2 effects implicitly preempts and precludes Plaintiffs’ design-defect theories. *See Geier*, 529 U.S.
3 at 873-74.

4 Courts throughout the country have recognized that claims similar to Plaintiffs’—which
5 would effectively ban the manufacture and sale of cigarettes containing nicotine—are subject to
6 conflict preemption. In *Poosh v. Phillip Morris USA, Inc.*, 904 F. Supp. 2d 1009 (N.D. Cal.
7 2012), the court granted summary judgment on the plaintiff’s strict liability and negligent design
8 claims because there was “no evidence that the design of defendants’ cigarettes—as opposed to
9 plaintiff’s smoking of cigarettes—was a substantial factor in causing [the smoker’s] lung cancer.”
10 *Id.* at 1025. The court rejected the plaintiff’s inhalability and nicotine content defect theories
11 because they were implicitly preempted by congressional policy. Despite noting the “general
12 agreement that it is the nicotine that causes smokers to become addicted,” the *Poosh* court found
13 that nicotine could not constitute a defect as a matter of law because “nicotine is normally present
14 in tobacco” and therefore was an inherent characteristic of cigarettes rather than a defect. *Id.* It
15 likewise rejected the plaintiff’s theory that cigarettes are defectively designed because the smoke
16 from cigarettes is intended to be inhalable as “untenable” because “inhalable smoke is an inherent
17 feature of cigarettes.” *Id.* The court concluded:

18 Taken to its logical conclusion, the argument that cigarettes are
19 defectively designed because they deliver nicotine through the
20 inhalation of smoke, if adopted, **would mean that the only remedy**
21 **for this alleged design defect would be a ban on the manufacture**
22 **and sale of any cigarettes containing nicotine.** However, the
23 Supreme Court noted . . . ‘Congress . . . has foreclosed the removal
of tobacco products from the market [.]’ notwithstanding the general
acceptance of the adverse health consequences of using tobacco.
See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.,
529 U.S. 120, 137-138, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000).

24 *Id.* at 1025–1026 (emphasis added).

25 Likewise, in *Liggett Group, Inc. v. Davis*, the Florida Fourth District Court of Appeal
26 applied *FDA v. Brown & Williamson* in ruling that conflict preemption barred a claim that the
27 defendant was negligent in “continuing to manufacture” cigarettes because a state cause of action
28 imposing liability for nothing more than the manufacture and sale of cigarettes is “contrary to



Congress’s intent to protect commerce and not to ban tobacco products.” 973 So. 2d 467, 472–473 (Fla. 4th DCA 2007), *rev. granted on other grounds*, 978 So. 2d 160 (Fla. 2008), *rev. dismissed*, 997 So. 2d 400 (Fla. 2008).

The same logic applies here. Plaintiffs’ design-defect theory would impose liability for nothing more than manufacturing and selling cigarettes. Such a liability theory is implicitly preempted by clear Congressional policy. The Court should therefore grant summary judgment on Plaintiffs’ negligent design claims.

2. Plaintiffs Have Failed to Identify Any Specific Design Defect that Caused Mrs. Camacho’s Cancer and Instead Point to Characteristics Inherent in All Cigarettes.⁶

Plaintiffs have disclosed three witnesses who purport to have design defect opinions—Dr. Kyriakoudes, Dr. Prochaska and Dr. Proctor.⁷ (*See* Pl.’s Expert Witness Disclosure (Feb. 10, 2022).) None of these experts testified that Mrs. Camacho would have avoided her laryngeal cancer if she smoked cigarettes without any specific defect—as opposed to the risks inherent in smoking.⁸ Thus, even if Mrs. Camacho had smoked only cigarettes without the specific features that Plaintiffs claim made some cigarettes defective, Mrs. Camacho still would have faced the risk of developing cancer.

Plaintiffs have no evidence to show that any design defect in Mrs. Camacho’s PM USA brand cigarettes—as opposed to smoking of cigarettes in general—was a proximate cause of her laryngeal cancer.⁹ On the contrary, Plaintiffs’ experts opine that *all* conventional cigarettes,

⁶ Although plaintiffs need not always identify a specific defect to prevail in a strict liability case, *see Reed v. Arthrex, Inc.*, 2017 U.S. Dist. LEXIS 168247, *6-7 (D. Nev. Oct. 11, 2017), they must do so here where the product at issue is a cigarette. Without identifying some defect other than the inherent risks associated with smoking cigarettes, Plaintiffs’ claims are preempted by federal law.

⁷ PM USA notes that Dr. Kyriakoudes, Dr. Proctor, and Dr. Prochaska are not qualified to opine on cigarette design, nor are their opinions on cigarette design reliable. PM USA will file motions to exclude these opinions by the June 17, 2022 deadline.

⁸ Moreover, Plaintiffs cannot argue that Mrs. Camacho would have avoided addiction in the absence of any particular defect in PM USA brand cigarettes. Mrs. Camacho claims that she was hopelessly addicted to cigarettes after her first cigarette, decades before she ever smoked a PM USA brand cigarette. Sandra Camacho Dep. Vol. 3 at 195-96.

⁹ Nor do Plaintiffs have admissible evidence to show that use of additives increase health risks or addictiveness of smoking. In fact, Dr. Proctor recently stated, “It’s not the additives that make a cigarette harmful.” Proctor Dep. at 27–28, *In re Santa Fe Natural Tobacco Co. Marketing & Sales Practices and*



irrespective of any specific design features, are addictive and cause cancer. *See, e.g., Proctor Jordan Trial Tr. at 2086:16-19; Kyriakoudes Martin Trial Tr. at 1426:4-8; Kaplan Dr. Prochaska Dep. at 96:24-97:1.* Thus, at most, Plaintiffs’ evidence suggests that smoking in general caused Mrs. Camacho’s laryngeal cancer, as opposed to any of the specific design aspects of the PM USA cigarettes Mrs. Camacho smoked. That is wholly insufficient to create a genuine dispute of material fact on causation.

Courts across the country have consistently rejected such theories— a car is not an alternative safer design for a motorcycle, nor grape juice an alternative safer design for wine. *See also Kimball v. R.J. Reynolds Tobacco Co.*, No. C03-664JLR, 2006 WL 1148506, at *3 (W.D. Wash. Apr. 26, 2006) (“For example, a plaintiff injured in a motorcycle accident cannot argue that if the manufacturer had installed four wheels on the motorcycle, it would have been safer. ‘Two-wheeledness’ is an essential characteristic of a motorcycle.”); *City of Phila. v. Lead Indus. Ass’n*, No. 90-7064, 1992 WL 98482, at *3 (E.D. Pa. Apr. 23, 1992) (holding that the presence of lead in lead pigment could not constitute a defect, and stating: “This is akin to alleging a design defect in champagne by arguing that the manufacturer should have made sparkling cider instead. The challenge is to the product itself, not to its specific design.”).

Nor can Plaintiffs rely on their allegations that PM USA could have manufactured its cigarettes using an unspecified “alternative” or “less dangerous design.” (Am. Compl. at ¶¶ 92(o) (alleging PM USA failed “to develop and utilize alternative designs, manufacturing methods, and/or materials to reduce and/or eliminate harmful materials from cigarettes”), 111 (alleging “Defendant knew there were ways to minimize the disease and destruction of their product, cigarettes, caused through alternative safer designs of cigarettes including but not limited to nicotine free or reduced nicotine cigarettes”)). Plaintiffs have no evidence to prove those vague and unsupported allegations. They are nothing more than untested theories, and in any case there is no evidence that Mrs. Camacho would have avoided her cancer had she smoked such theoretical

Products Liability Litig., No. 1:16-MD-02695-JB-LF (D.N.M. July 31, 2019) (Ex. H); *see also id.* at 85 (“The additives are relatively unimportant in terms of the overall toxicity . . . and harm potential of a cigarette.”).



cigarettes.

Instead, the warnings on cigarette packages shield PM USA from liability based on a safer alternative design because Plaintiffs have no evidence that a commercially feasible change would have allowed Mrs. Camacho to avoid her injuries. “[W]arnings should shield manufacturers from liability unless the defect could have been avoided by a commercially feasible change in design that was available at the time the manufacturer placed the product in the stream of commerce.” *Robinson v. G.G.C., Inc.*, 107 Nev. 135, 140, 808 P.2d 522, 524-25 (1991). Plaintiffs have no evidence of a commercial feasible change in design that could override the protection provided by the warning label. Indeed, Plaintiffs have no evidence of a “safer alternative design” that Mrs. Camacho would have smoked and would thereby have avoided her injuries, let alone a commercially feasible design that would have been accepted by consumers more generally. Without that evidence, Plaintiffs cannot rely on some unspecified alternative design to prove that Mrs. Camacho’s cigarettes were defective.

In *Poosh*, the court granted summary judgment on the plaintiff’s negligent design claims because there was “no evidence that the design of defendants’ cigarettes—as opposed to plaintiff’s smoking of cigarettes—was a substantial factor in causing her lung cancer.” 904 F. Supp. 2d 1025. The court noted that the plaintiff had merely pointed to evidence indicating “that plaintiff smoked cigarettes manufactured by the defendants, and that she developed lung cancer.” *Id.* It therefore concluded that the plaintiff could not meet her burden of establishing proximate causation, stating:

While cigarettes may be considered generally harmful in the sense that smoking cigarettes can contribute to the development of various diseases, including lung cancer, plaintiff has not met her burden of showing, through admissible evidence, that ***it was the particular design of defendants’ cigarettes that caused her lung cancer.***

Id. (emphasis added).

Similarly, the court in *Whiteley* found that the plaintiff’s negligent design claim failed where her expert witnesses testified that the defendants had manipulated nicotine levels and failed to remove some harmful elements, but never testified that there was a “‘reasonable medical probability’ that the alleged ***negligent design[s]*** of those cigarette products was a substantial factor contributing to the dose of carcinogens Whiteley inhaled or ingested, and hence to her risk of



developing lung cancer.” 11 Cal Rptr. at 862-63. Specifically, the “[p]laintiff’s expert witnesses did not attempt to quantify the likelihood that the asserted design defects of cigarettes, as distinguished from smoking cigarettes in general, contributed to [the smoker] developing lung cancer.” *Id.* at 863.

As in *Pooshs* and *Whiteley*, Plaintiffs here have failed to demonstrate any causal link between the design elements in cigarettes that Mrs. Camacho smoked and Mrs. Camacho’s injuries. Furthermore, Plaintiffs’ design-based claims fail for the additional reason that they have not shown that, had PM USA not offered the cigarettes Mrs. Camacho smoked, she would have smoked less or quit smoking altogether and avoided her injuries. *See Whiteley*, 11 Cal Rptr. at 863-64 (plaintiff’s negligent design claim failed because she did not introduce evidence “from which the jury could assume that, were the suggested design changes made, Whiteley would have smoked the safer cigarettes, smoked less, or quit smoking altogether”); *see also, e.g., White v. R.J. Reynolds Tobacco Co.*, 109 F. Supp. 2d 424, 433-34 (D. Md. 2000); *Cipollone v. Liggett Grp., Inc.*, 683 F. Supp. 1487, 1493-95 (D.N.J. 1988). Accordingly, Plaintiffs lack sufficient evidence to create a genuine dispute of material fact as to any of their defect theories, which entitles PM USA to summary judgment on Plaintiffs’ negligence claims.

3. Section 402A of the Restatement (Second) of Torts forecloses Plaintiffs’ design defect theories because Cigarettes are Not Defective.

Section 402A of the Restatement (Second) of Torts, which Nevada follows,¹⁰ demands the same conclusion. Comment i provides that many common consumer products, *including tobacco*, are not unreasonably dangerous, and therefore not defective, simply because they cause harm:

i. *Unreasonably dangerous.* Many products cannot possibly be made entirely safe for all consumption, and any food or drugs necessarily involves some risk of harm, if only from over-consumption. Ordinary sugar is a deadly poison to diabetics That is not what is meant by “unreasonably dangerous” in this Section. . . . Good whiskey is not unreasonably dangerous merely because it will make some people drunk, and is especially dangerous to alcoholics; but bad whiskey, containing a dangerous amount of fusel oil, is unreasonably dangerous. **Good tobacco is not unreasonably dangerous merely because the effects of smoking**

¹⁰ *Ford Motor Co. v. Trejo*, 133 Nev. 520, 525, 402 P.3d 649, 653 (2017).



may be harmful; but tobacco containing something like marijuana may be unreasonably dangerous. Good butter is not unreasonably dangerous merely because, if such be the case, it deposits cholesterol in the arteries and leads to heart attacks; but bad butter, *contaminated* with poisonous fish oil, is unreasonably dangerous.

RESTATEMENT (SECOND) OF TORTS § 402A, Cmt. i (emphasis added). Under Comment i, products like sugar, alcohol, tobacco, and butter are not defective unless they are “contaminated.”

A design defect theory based on the inherent dangerous characteristics of cigarettes is therefore insufficient to support a negligent design claim. In other words, to prove their negligent design claims, Plaintiffs must have evidence of a product defect—other than the inherent dangerous characteristics of all cigarettes—that proximately caused Mrs. Camacho’s laryngeal cancer. Additionally, because Plaintiffs’ design-defect allegations necessarily implicate scientific or technical issues such as the biological impact of certain product characteristics, they must establish the existence of the defect and proximate causation through expert testimony. *See Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 287–88, 112 P.3d 1093, 1100 (2005) (“[G]enerally, ‘[b]ecause an injury is a subjective condition, an expert opinion is required to establish a causal connection between the incident or injury and disability.’” (quoting *Truck Ins. Exch. v. CNA*, 2001 S.D. 46, ¶ 14, 624 N.W.2d 705, 709)). Plaintiff cannot do so here.

C. Plaintiffs’ Failure to Warn Theory Likewise Fails.

To the extent Plaintiffs predicate their negligence claim on allegations that PM USA failed to warn Mrs. Camacho about certain health risks of smoking, *see* Am. Compl. at ¶¶ 93, that theory also fails under federal law and Nevada law.

Plaintiffs’ negligence claim based on an alleged failure-to-warn fails under Nevada law because there is no “special relationship” between PM USA and Mrs. Camacho. Under Nevada law, a plaintiff may recover under a failure-to-warn theory of negligence “only where there is a special relationship between the parties and the danger is foreseeable.” *Wiley v. Redd*, 110 Nev. 1310, 1316, 885 P.2d 592, 596 (1994). However, numerous appellate courts have found that no “special relationship” (*e.g.*, fiduciary, confidential, or otherwise) exists between a cigarette manufacturer (like PM USA) and a consumer (like Mrs. Camacho) as a matter of law. *See, e.g., Prentice v. R.J. Reynolds Tobacco Co.*, SC20-291, 2022 WL 805951, at *6 (Fla. Mar. 17, 2022)



(holding that a plaintiff in a smoking-and-health case must prove detrimental reliance on a defendant's false statement and not reliance on "silence," in part, because tobacco companies have no "free standing disclosure obligation" including a "confidential or fiduciary relationship" to a plaintiff); *Burton v. R.J. Reynolds Tobacco Co.*, 397 F.3d 906, 911–12 (10th Cir. 2005) (holding that "a buyer/seller relationship does not create a fiduciary duty" and "we do not believe that Kansas would extend . . . fraudulent concealment claims against a manufacturer of cigarettes"); *Jeter v. Brown & Williamson Tobacco Corp.*, 113 F. App'x 465, 469 (3rd Cir. 2004) (stating that "no fiduciary relationship or confidential relationship exists between a manufacturer of cigarettes and consumers of cigarettes, which gives rise to a duty to speak or disclose information"). This smoking-and-health case is no exception, as the record contains no factual justification for concluding otherwise here.

But even if there were a special relationship between PM USA and Mrs. Camacho, PM USA is still entitled to summary judgment on Plaintiffs' negligence claim predicated on a failure to warn theory because there is no evidence that any failure to warn harmed Mrs. Camacho. "In Nevada, it is well-established law that in strict product liability failure-to-warn cases, the plaintiff bears the burden of production and must prove, among other elements, that the inadequate warning caused his injuries." *Rivera v. Philip Morris, Inc.*, 125 Nev. 185, 187, 209 P.3d 271, 273 (2009). A plaintiff likewise has a burden to prove that a defendant's breach of duty (*i.e.*, failure to warn) was the proximate cause of his or her injury. *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 4, 805 P.2d 589, 590–91 (1991). In other words, Plaintiffs must prove that but for PM USA's failure to warn Mrs. Camacho of a danger of smoking cigarettes, she would not have suffered harm.

Moreover, because any claim that PM USA failed to warn Mrs. Camacho about the health risks of smoking after July 1, 1969 is expressly preempted by the Federal Cigarette Labeling and Advertising Act, *see* 15 U.S.C. §§ 1331, *et. seq.*, Plaintiffs must show that a failure to warn by PM USA *before* July 1, 1969 caused Mrs. Camacho's injuries. Plaintiffs cannot do so here since it is undisputed that Mrs. Camacho did not smoke a cigarette manufactured by PM USA until **1990**—decades after July 1, 1969. As a matter of law, any alleged failure to warn by PM USA could not have harmed Mrs. Camacho, and Plaintiffs' claim is necessarily federally preempted. In other

words, absent evidence that Mrs. Camacho actually used PM USA’s product (*i.e.*, cigarettes) before July 1, 1969, Plaintiffs’ failure to warn theory fails for lack of a nexus between PM USA’s product and Mrs. Camacho’s alleged harm. *See Allison v. Merck & Co.*, 878 P. 2d 948, 952 (1994) (a plaintiff may only recover against the manufacturer of the product that caused the alleged injury in a product liability lawsuit); *Moretti v. Wyeth, Inc.*, No. 2:08-CV-00396-JCMGWF, 2009 WL 749532, at *3–4 (D. Nev. Mar. 20, 2009) (“[a]mong manufacturers of products, liability rests only with the manufacturer of the product that actually caused the alleged injury because that manufacturer profited from sales of the product and controlled its safety.”) (citing *Allison*, 878 P.2d at 952); *see also Baymiller v. Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302, 1309–11 (D. Nev. 2012) (relying on *Moretti* and granting summary judgment in defendant’s favor on plaintiff’s fraud and negligent misrepresentation claims because plaintiff “did not purchase or ingest a Glaxo product.”).¹¹

Accordingly, PM USA is entitled to summary judgment on Plaintiffs’ negligence claim to the extent it is based on any failure to warn.

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¹¹ Even if Plaintiffs’ failure to warn theory were not federally preempted, it would substantively fail for want of causation as the undisputed record evidence makes clear that warnings had been on every pack of cigarettes Mrs. Camacho bought and smoked for **24 years** as of 1990 (when she smoked her first PM USA brand cigarette) and PM USA publicly admitted in 2000 that cigarettes are addictive and cause cancer and other diseases. Yet, Mrs. Camacho chose to smoke anyway in the face of these warnings.



CONCLUSION

Because Plaintiffs cannot prove the essential elements of their negligence claims against PM USA, this Court should grant summary judgment and enter judgment in favor of PM USA on those claims.

Dated this 25th day of May, 2022.

/s/ Howard J. Russell

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2022, a true and correct copy of the foregoing
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' NEGLIGENCE CLAIM was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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An employee of WEINBERG, WHEELER,
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Exhibit A

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 SANDRA CAMACHO, individually, and)
 4 ANTHONY CAMACHO, individually,)

5 vs. Plaintiffs,)

) Case No.
) A-19-807650-C

6 PHILIP MORRIS USA INC., a foreign)
 7 corporation; R. J. REYNOLDS TOBACCO)
 8 COMPANY, a foreign corporation,)
 9 individually, and as successor-by-)
 10 merger to LORILLARD TOBACCO COMPANY)
 11 and as successor-in-interest to the)
 12 United States tobacco business of)
 13 BROWN & WILLIAMSON TOBACCO)
 14 CORPORATION, which is the)
 15 successor-by-merger to THE AMERICAN)
 16 TOBACCO COMPANY; LIGGETT GROUP,)
 LLC, a foreign corporation; ASM)
 NATIONWIDE CORPORATION d/b/a)
 SILVERADO SMOKES & CIGARS, a)
 domestic corporation; and LV SINGHS)
 INC. d/b/a SMOKES & VAPORS, a)
 domestic corporation; DOES I-X; and)
 ROE BUSINESS ENTITIES XI-XX,)
 inclusive,)
 Defendants.)

17 VIDEOTAPED DEPOSITION OF SANDRA CAMACHO

18 VOLUME II

19 Taken on Wednesday, November 3, 2021

20 Through a translator

21 By a Certified Stenographer and Legal Videographer

22 At 9:04 a.m.

23 At 531 Morning Mauve Avenue

24 Las Vegas, Nevada

25 Reported by: HOLLY LARSEN, CCR 680, CA CSR 12170

<p>74</p> <p>1 APPEARANCES:</p> <p>2 For the Plaintiffs:</p> <p>3 KELLEY UUSTAL</p> <p>4 BY: KIMBERLY L. WALD, ESQ.</p> <p>5 500 North Federal Highway, Suite 200</p> <p>6 Fort Lauderdale, Florida 33301</p> <p>7 954.522.6601</p> <p>8 For Philip Morris USA Inc.:</p> <p>9 SHOOK, HARDY & BACON L.L.P.</p> <p>10 BY: JENNIFER KENYON, ESQ.</p> <p>11 BY: BRIAN A. JACKSON, ESQ.</p> <p>12 2555 Grand Boulevard</p> <p>13 Kansas City, Missouri 64108</p> <p>14 816.474.6550</p> <p>15 For Liggett Group, LLC:</p> <p>16 KASOWITZ BENSON TORRES LLC</p> <p>17 BY: KELLY ANNE LUTHER, ESQ.</p> <p>18 1441 Brickell Avenue, Suite 1420</p> <p>19 Miami, Florida 33131</p> <p>20 786.587.1045</p> <p>21 For R. J. Reynolds Tobacco Company:</p> <p>22 KING & SPALDING</p> <p>23 BY: URSULA M. HENNINGER, ESQ.</p> <p>24 300 South Tryon Street, Suite 1700</p> <p>25 Charlotte, North Carolina 28202</p> <p>704.503.2631</p> <p>Also Present:</p> <p>GIAN SAPIENZA, Legal Videographer</p> <p>DWAYNE PARRETTE, Translator/Reader</p> <p>ANTHONY CAMACHO</p>	<p>76</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: This begins the</p> <p>4 video-recorded deposition of Sandra Camacho taken on</p> <p>5 Wednesday, November 3, 2021, at 9:04 a.m. This</p> <p>6 deposition is being held at 531 Morning Mauve</p> <p>7 Avenue, Las Vegas, Nevada 89183, entitled Sandra and</p> <p>8 Anthony Camacho versus Philip Morris USA Inc., et</p> <p>9 al., in the District Court, Clark County, Nevada.</p> <p>10 Case Number A-19-807650-C.</p> <p>11 My name is Gian Sapienza with Certified</p> <p>12 Legal Videography. The court reporter is Holly</p> <p>13 Larsen with Oasis Reporting Services.</p> <p>14 Will the attorneys please state your name</p> <p>15 and affiliation for the record.</p> <p>16 MS. WALD: Kimberly Wald from Kelley Uustal</p> <p>17 on behalf of the plaintiff.</p> <p>18 MS. KENYON: Jennifer Kenyon on behalf of</p> <p>19 Philip Morris USA.</p> <p>20 MR. JACKSON: Brian Jackson on behalf of</p> <p>21 Philip Morris USA.</p> <p>22 MS. LUTHER: Kelly Luther on behalf of</p> <p>23 Liggett Group, LLC.</p> <p>24 MS. HENNINGER: Ursula Henninger on behalf</p> <p>25 of R. J. Reynolds Tobacco Company.</p>
<p>75</p> <p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 SANDRA CAMACHO</p> <p>4 Examination by Ms. Kenyon 77</p> <p>5</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 NUMBER PAGE</p> <p>10 Exhibit 6 December 7, 2015, medical 89</p> <p>11 record</p> <p>12 Exhibit 7 December 30, 2008, medical 132</p> <p>13 record</p> <p>14 Exhibit 8 March 29, 2013, medical 135</p> <p>15 record</p> <p>16 Exhibit 9 April 4, 2018, medical 162</p> <p>17 record</p> <p>18 Exhibit 10 Photographs 171</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>77</p> <p>1 THE VIDEOGRAPHER: Thank you. The court</p> <p>2 reporter will now administer the oath.</p> <p>3 (The witness and translator previously.</p> <p>4 sworn.)</p> <p>5</p> <p>6 EXAMINATION (Continued)</p> <p>7 BY MS. KENYON:</p> <p>8 Q. Good morning, Mrs. Camacho. How are you?</p> <p>9 Are you doing okay?</p> <p>10 A. Yes.</p> <p>11 Q. So same procedures as yesterday. You've</p> <p>12 got your answer sheets in front of you. Dwayne over</p> <p>13 here is going to read your answers if you point to</p> <p>14 it, and if you need to explain more, you have the</p> <p>15 whiteboard. Sound good?</p> <p>16 A. Yes.</p> <p>17 Q. Do you feel rested and ready to go today?</p> <p>18 A. Yes.</p> <p>19 Q. Yesterday we were talking a little bit</p> <p>20 about your two sisters. They're both living; right?</p> <p>21 A. Yes.</p> <p>22 Q. So we'll start with Donna. Does that sound</p> <p>23 good?</p> <p>24 A. Okay.</p> <p>25 Q. She was born in 1944. Does that sound</p>

<p>82</p> <p>1 not to smoke?</p> <p>2 A. No.</p> <p>3 Q. Did John ever talk with you about your</p> <p>4 smoking?</p> <p>5 A. No.</p> <p>6 Q. Did he ever ask you to quit smoking?</p> <p>7 A. No.</p> <p>8 Q. Did he ever tell you anything about the</p> <p>9 health risks of smoking?</p> <p>10 A. No.</p> <p>11 Q. Does John have any health issues?</p> <p>12 A. No.</p> <p>13 Q. What does he do for a living?</p> <p>14 A. Work at Supreme for his father.</p> <p>15 Q. If I'm recalling correctly, is that Supreme</p> <p>16 Lobster or Seafood?</p> <p>17 A. Yes.</p> <p>18 Q. Does John have any children?</p> <p>19 A. Yes.</p> <p>20 Q. How many?</p> <p>21 A. One.</p> <p>22 Q. What is his or her name?</p> <p>23 A. I do not remember.</p> <p>24 Q. Are you doing okay? Do you need to take a</p> <p>25 minute? It's okay. We can take a minute if you</p>	<p>84</p> <p>1 Q. Did you tell her that she should not smoke?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. Please repeat the question.</p> <p>5 Q. I'll ask a little bit different question.</p> <p>6 When Laura was a child, when she was growing up, did</p> <p>7 you ever tell her not to smoke?</p> <p>8 A. No.</p> <p>9 Q. When she was in school, did she ever learn</p> <p>10 about the health risks of smoking?</p> <p>11 MS. WALD: Object to form.</p> <p>12 You can answer.</p> <p>13 THE WITNESS: I do not remember.</p> <p>14 BY MS. KENYON:</p> <p>15 Q. Did she ever talk to you about the health</p> <p>16 risks of smoking?</p> <p>17 A. No.</p> <p>18 Q. Do you know -- strike that.</p> <p>19 What brand of cigarette did Laura smoke?</p> <p>20 A. Marlboro Light.</p> <p>21 Q. Did you ever share cigarettes with your</p> <p>22 daughter Laura?</p> <p>23 A. Yes.</p> <p>24 Q. How often?</p> <p>25 A. Often.</p>
<p>83</p> <p>1 want.</p> <p>2 MS. WALD: You're okay to keep going?</p> <p>3 You're okay?</p> <p>4 THE WITNESS: (Inaudible response.)</p> <p>5 MS. WALD: You're okay?</p> <p>6 THE WITNESS: (Inaudible response.)</p> <p>7 MS. KENYON: Just for the record she said</p> <p>8 that she was okay to proceed.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MS. KENYON:</p> <p>11 Q. We'll talk about your daughter Laura.</p> <p>12 Sound good?</p> <p>13 A. Yes.</p> <p>14 Q. She was your second child. She was born in</p> <p>15 1969; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Has your daughter Laura ever been a smoker?</p> <p>18 A. Yes.</p> <p>19 Q. When did she start smoking?</p> <p>20 A. I do not remember.</p> <p>21 Q. How did you find out she was smoking?</p> <p>22 A. I do not remember. I do not know.</p> <p>23 Q. What did you do when you found out that</p> <p>24 Laura was smoking?</p> <p>25 A. Nothing.</p>	<p>85</p> <p>1 Q. Was Marlboro Light always her -- strike</p> <p>2 that.</p> <p>3 Was Marlboro Light the only brand you</p> <p>4 recall her smoking?</p> <p>5 A. Yes.</p> <p>6 Q. Has she quit smoking?</p> <p>7 A. No.</p> <p>8 Q. Have you ever discussed quitting smoking</p> <p>9 with your daughter Laura?</p> <p>10 MS. WALD: Form.</p> <p>11 THE WITNESS: Maybe once.</p> <p>12 BY MS. KENYON:</p> <p>13 Q. Can you tell me what you recall?</p> <p>14 A. Please repeat the question.</p> <p>15 Q. You said that you discussed quitting</p> <p>16 smoking with your daughter Laura. You discussed it</p> <p>17 with her. Is that what you're saying?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me what you -- did you tell</p> <p>20 her something?</p> <p>21 A. I told her I want to quit smoking. Don't</p> <p>22 like smell and expensive.</p> <p>23 MS. WALD: Sandra, make sure you're</p> <p>24 listening to the question. I think she's asking you</p> <p>25 something different. Just make sure you listen to</p>

<p style="text-align: right;">142</p> <p>1 correct.</p> <p>2 MS. WALD: Don't ask Tony. It's okay.</p> <p>3 THE WITNESS: I don't remember when I</p> <p>4 retired.</p> <p>5 BY MS. KENYON:</p> <p>6 Q. That's not a problem. We've gone over now</p> <p>7 a couple of dates in your interrogatory responses.</p> <p>8 And so I guess I'm just trying to figure out a</p> <p>9 couple things, where this information even came from</p> <p>10 and then what information is actually correct.</p> <p>11 MS. WALD: Is there a question?</p> <p>12 MS. KENYON: Yeah. There's two.</p> <p>13 BY MS. KENYON:</p> <p>14 Q. Where did this information come from?</p> <p>15 A. Me and Tony.</p> <p>16 Q. And you provided us with the second amended</p> <p>17 interrogatory responses on Monday of this week, so</p> <p>18 November 1st, so two days ago. And are you telling</p> <p>19 me now that you don't remember where this</p> <p>20 information came from?</p> <p>21 MS. WALD: Object to form. Asked and</p> <p>22 answered. She just answered that it came from her</p> <p>23 and Tony. And she just mouthed her husband. She</p> <p>24 mouthed "me and Tony."</p> <p>25 THE WITNESS: Me and Tony.</p>	<p style="text-align: right;">144</p> <p>1 BY MS. KENYON:</p> <p>2 Q. Is that correct?</p> <p>3 A. Correct. Only surgery.</p> <p>4 Q. Does it still bother you today?</p> <p>5 A. No.</p> <p>6 Q. Did your doctor ever tell you the cause of</p> <p>7 your foot spur?</p> <p>8 A. No.</p> <p>9 Q. Did a doctor ever tell you to lose weight</p> <p>10 or to increase your exercise to try to eliminate</p> <p>11 some of the pain from the foot spur?</p> <p>12 A. No.</p> <p>13 Q. Going back to what we were just talking</p> <p>14 about a moment ago, do you remember the tobacco</p> <p>15 companies on the news before the late '80s or early</p> <p>16 '90s?</p> <p>17 MS. WALD: Object to form.</p> <p>18 BY MS. KENYON:</p> <p>19 Q. Do you recall the tobacco companies on the</p> <p>20 news before the late '80s or early '90s?</p> <p>21 MS. WALD: Write it down.</p> <p>22 THE WITNESS: Billboard, magazine.</p> <p>23 BY MS. KENYON:</p> <p>24 Q. What does that mean?</p> <p>25 A. I saw cigarette advertising.</p>
<p style="text-align: right;">143</p> <p>1 BY MS. KENYON:</p> <p>2 Q. But you don't know when you retired then?</p> <p>3 MS. WALD: Form. Asked and answered.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MS. KENYON:</p> <p>6 Q. Why did you stop working?</p> <p>7 A. Had spur on foot.</p> <p>8 Q. Did you see a doctor for that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall who you saw?</p> <p>11 A. No. Foot doctor.</p> <p>12 Q. Do you know what treatment the doctor</p> <p>13 recommended?</p> <p>14 A. Got shot in foot.</p> <p>15 Q. Like a cortisone shot?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever try to go back to work at any</p> <p>18 point?</p> <p>19 A. No.</p> <p>20 Q. Did the spur in your foot heal?</p> <p>21 A. It never goes away, a spur.</p> <p>22 Q. So you're saying a foot spur never goes</p> <p>23 away?</p> <p>24 MS. WALD: Can you point?</p> <p>25 ///</p>	<p style="text-align: right;">145</p> <p>1 Q. That's not what I'm asking you. I'm asking</p> <p>2 you if you ever saw the tobacco companies on the</p> <p>3 news before the late '80s or early '90s.</p> <p>4 A. I do not remember.</p> <p>5 Q. Are you done?</p> <p>6 A. Yes.</p> <p>7 Q. Have you ever filed a workers' compensation</p> <p>8 claim?</p> <p>9 A. No.</p> <p>10 Q. Have you otherwise been injured at work?</p> <p>11 A. No.</p> <p>12 Q. Are you doing okay?</p> <p>13 A. (Inaudible response.)</p> <p>14 Q. You told us you first smoked in 1964 when</p> <p>15 you were 18 years old. How did you get that first</p> <p>16 cigarette?</p> <p>17 MS. WALD: Don't scratch. It's bad. I</p> <p>18 know it's itchy, but don't scratch. Try not to</p> <p>19 scratch. He's getting medicine. Why don't you</p> <p>20 repeat the question.</p> <p>21 MS. KENYON: Can we go off the record?</p> <p>22 THE VIDEOGRAPHER: The time is 12:23. We</p> <p>23 are going off the record.</p> <p>24 (A break was taken.)</p> <p>25 THE VIDEOGRAPHER: The time is 12:35. We</p>

<p style="text-align: right;">146</p> <p>1 are going back on the record. 2 BY MS. KENYON: 3 Q. Mrs. Camacho, we're back. Are you ready to 4 go? 5 A. Yes. 6 Q. Are you feeling okay? 7 A. Yes. 8 Q. So right before we took a break, I'd asked 9 you to -- how did you get your first cigarette? 10 A. My girlfriend. 11 Q. Do you recall her name? 12 A. No. 13 Q. Do you know what brand the first cigarette 14 was? 15 A. L&M. 16 Q. Why did you choose that brand? 17 A. Because I thought they were safe. 18 Q. Where did you get that information? 19 A. I saw billboards, magazines, and I wanted 20 filter cigarettes. I thought they were safer than 21 nonfilter I thought it was. 22 Q. And I'm asking about the very first 23 cigarette you smoked. So did you ever -- so the 24 very first cigarette you smoked was a filtered 25 cigarette; is that right?</p>	<p style="text-align: right;">148</p> <p>1 MS. WALD: Erase the whiteboards. 2 BY MS. KENYON: 3 Q. You said that you did not like the 4 unfiltered cigarette because you got tobacco on your 5 lips; is that right? 6 MS. WALD: Object to form. 7 Mischaracterizes the testimony. She said "mouth." 8 THE WITNESS: Yes. 9 BY MS. KENYON: 10 Q. And because you did not like the tobacco 11 from the unfiltered cigarette on your mouth, you 12 smoked a filtered cigarette. 13 A. (Inaudible response.) 14 MS. WALD: Wait for the question. 15 BY MS. KENYON: 16 Q. You're mouthing "taste"? 17 MS. WALD: Write it down. Write it down. 18 THE WITNESS: Didn't like the taste. 19 Nonfilter. 20 BY MS. KENYON: 21 Q. So is the very first cigarette you smoked, 22 was it an unfiltered cigarette? 23 A. No. 24 Q. So where did you get the first cigarette 25 that you smoked?</p>
<p style="text-align: right;">147</p> <p>1 A. Yes. 2 Q. Did you ever smoke an unfiltered cigarette? 3 A. Tried it. Didn't like. 4 Q. What did you not like about an unfiltered 5 cigarette? 6 A. The tobacco stuck in my mouth. 7 Q. Do you remember the brand of unfiltered 8 cigarette you smoked? 9 A. No. 10 Q. Do you recall when you tried an unfiltered 11 cigarette? 12 A. The other girl smoked, and I took a puff of 13 hers. Nonfilter. 14 Q. Is this the same girl you were referring to 15 earlier? Is this the girlfriend that you had your 16 first cigarette with? 17 A. There were three or four girls. 18 Q. Three or four girls when you had your very 19 first cigarette? 20 MS. WALD: Point. 21 THE WITNESS: Yes. 22 BY MS. KENYON: 23 Q. I want to go back to that, but I want to 24 ask you some questions about what you just said 25 about L&M. You said that --</p>	<p style="text-align: right;">149</p> <p>1 MS. WALD: Form. Asked and answered. 2 MS. KENYON: Just so the record is clear, 3 she's changing her testimony. 4 MS. WALD: The record is perfectly clear, 5 and she has not changed her testimony. 6 THE WITNESS: From my girlfriend. 7 BY MS. KENYON: 8 Q. And what brand did your girlfriend give 9 you? 10 MS. WALD: Object to form. Asked and 11 answered. 12 THE WITNESS: L&M. 13 BY MS. KENYON: 14 Q. What was your reaction to smoking the first 15 cigarette? 16 A. I cough. 17 Q. Did you like it? 18 MS. WALD: Form. 19 THE WITNESS: No. 20 BY MS. KENYON: 21 Q. So you said you smoked L&M because you 22 thought it was safer? 23 A. Yes. 24 Q. Safer in what way? 25 A. Less nicotine.</p>

<p>158</p> <p>1 A. I do not remember.</p> <p>2 Q. Did they allow smoking inside their home?</p> <p>3 A. I don't know.</p> <p>4 Q. Did you ever smoke in their home?</p> <p>5 MS. WALD: Object to form. Asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: I do not remember.</p> <p>8 BY MS. KENYON:</p> <p>9 Q. You mentioned that your father smoked Lucky</p> <p>10 Strikes. Were those filtered or unfiltered?</p> <p>11 A. Unfilter.</p> <p>12 Q. Did you ever smoke one of his Lucky</p> <p>13 Strikes?</p> <p>14 A. No.</p> <p>15 Q. Did your father always smoke an unfiltered</p> <p>16 Lucky Strike?</p> <p>17 A. Yes.</p> <p>18 Q. Your mother smoked Pall Mall. Was it</p> <p>19 filtered or unfiltered?</p> <p>20 A. Unfilter.</p> <p>21 Q. Did you ever smoke one of her Pall Mall</p> <p>22 cigarettes?</p> <p>23 A. No.</p> <p>24 Q. You said that the first brand that you</p> <p>25 smoked was L&M. You said you started smoking L&M in</p>	<p>160</p> <p>1 hard to find. Can you tell me what the pack of</p> <p>2 Marlboro looked like?</p> <p>3 A. Red and white I think.</p> <p>4 Q. Do you recall any markings or any words or</p> <p>5 anything on the Marlboro cigarette pack?</p> <p>6 A. No.</p> <p>7 Q. Were they menthol or regular?</p> <p>8 A. Regular.</p> <p>9 Q. And can you describe for me what the</p> <p>10 cigarette, what the Marlboro cigarette looked like?</p> <p>11 A. White.</p> <p>12 Q. The whole cigarette, you just recall it</p> <p>13 being white?</p> <p>14 A. I do not remember.</p> <p>15 Q. How long did you smoke Marlboro?</p> <p>16 A. Until they got expensive.</p> <p>17 Q. And then what did you switch to? What</p> <p>18 brand did you switch to?</p> <p>19 A. Basic.</p> <p>20 Q. So at some point when the Marlboro got too</p> <p>21 expensive, you switched to Basic cigarettes; is that</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. That's the -- strike that.</p> <p>25 On the Marlboro, I think you already told</p>
<p>159</p> <p>1 1964. How long did you smoke L&M for?</p> <p>2 A. Till I moved here. Hard to find L&M.</p> <p>3 Q. Can you -- did you smoke any other brands</p> <p>4 from 1964 until you moved to Vegas in 1990?</p> <p>5 A. No.</p> <p>6 Q. Can you describe what the pack of L&Ms</p> <p>7 looks like?</p> <p>8 A. Red and white.</p> <p>9 Q. Do you recall any writing or pictures on</p> <p>10 the pack of the L&M?</p> <p>11 A. I do not remember.</p> <p>12 Q. Was it menthol or regular?</p> <p>13 A. Regular.</p> <p>14 Q. Were they regular length, or were they</p> <p>15 longer cigarettes?</p> <p>16 A. Regular length.</p> <p>17 Q. Can you describe what the actual cigarette</p> <p>18 looks like? The actual L&M cigarette, can you</p> <p>19 describe what it looked like?</p> <p>20 A. White.</p> <p>21 Q. And if you ran out of an L&M, would you</p> <p>22 smoke someone else's cigarette?</p> <p>23 A. Never ran out.</p> <p>24 Q. You told us earlier that you switched to</p> <p>25 Marlboro when you moved to Vegas because the L&M was</p>	<p>161</p> <p>1 us you only smoked it filtered. So was the Marlboro</p> <p>2 a filtered cigarette?</p> <p>3 A. Yes.</p> <p>4 Q. Why did you smoke the Marlboro filtered</p> <p>5 cigarette?</p> <p>6 A. Couldn't find L&M.</p> <p>7 MS. WALD: We're not cold. It's okay. Are</p> <p>8 you cold? You have a jacket.</p> <p>9 BY MS. KENYON:</p> <p>10 Q. Besides being less expensive, is there any</p> <p>11 other reason you switched from Marlboro to Basic?</p> <p>12 A. No.</p> <p>13 Q. So I want to talk about the Basic</p> <p>14 cigarettes a little bit as well. How long did you</p> <p>15 smoke Basic cigarettes?</p> <p>16 A. Till I was told I had cancer.</p> <p>17 Q. Just so I'm clear, the information we</p> <p>18 have -- the information that you provided us shows</p> <p>19 that you quit in 2017 and that you were diagnosed</p> <p>20 with cancer in 2018.</p> <p>21 MS. WALD: Write it down. Write it down.</p> <p>22 THE WITNESS: Had no choice. I had to stop</p> <p>23 after biopsy showed cancer.</p> <p>24 BY MS. KENYON:</p> <p>25 Q. Do you know when that was?</p>

1

DISTRICT COURT

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CLARK COUNTY, NEVADA

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SANDRA CAMACHO,)
individually, and ANTHONY)

4

CAMACHO, individually,) CASE NO.:
A-19-807650-C

5

Plaintiffs,)

6

vs.)

7

PHILIP MORRIS USA INC., a)
foreign corporation; R.)

8

J. REYNOLDS TOBACCO)

9

COMPANY, a foreign) DEPOSITION OF
corporation,) SANDRA CAMACHO
individually, and as) VOL. III

10

successor-by-merger to)

LORILLARD TOBACCO COMPANY)

11

and as)

successor-in-interest to)

12

the United States tobacco)

business of BROWN &)

13

WILLIAMSON TOBACCO)

CORPORATION, which is the)

14

successor-by-merger to)

THE AMERICAN TOBACCO)

15

COMPANY; LIGGETT GROUP,)

LLC, a foreign)

16

corporation; ASM)

NATIONWIDE CORPORATION)

17

d/b/a SILVERADO SMOKES &)

CIGARS, a domestic)

18

corporation; and LV)

SINGHS INC. d/b/a SMOKES)

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& VAPORS, a domestic) DEPOSITION OF

corporation; DOES I-X;)

20

and ROE BUSINESS ENTITIES) SANDRA CAMACHO

XI-XX, inclusive,)

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Defendants.) VOLUME III

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Taken on Tuesday, December 7, 2021

At 9:06 a.m.

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Las Vegas, Nevada

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Reported By: Karen L. Jones, CCR NO. 694

<p>176</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 VIDEOTAPED DEPOSITION OF SANDRA CAMACHO</p> <p>8 VOLUME III</p> <p>9 Taken on Tuesday, December 7, 2021</p> <p>10 Through a translator</p> <p>11 By a Certified Stenographer</p> <p>12 At 9:06 a.m.</p> <p>13 At 531 Morning Mauve Avenue</p> <p>14 Las Vegas, Nevada</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Reported By: Karen L. Jones, CCR NO. 694</p> <p>25</p>	<p>178</p> <p>1 I N D E X</p> <p>2 WITNESS: SANDRA CAMACHO</p> <p>3 EXAMINATION PAGE</p> <p>4 BY: Ms. Kenyon 190</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit 11 Medical Record 219</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>177</p> <p>1 APPEARANCES:</p> <p>2 For the Plaintiffs:</p> <p>3 KELLEY UUSTAL</p> <p>4 BY: KIMBERLY L. WALD, ESQ.</p> <p>5 500 North Federal Highway, Suite 200</p> <p>6 Fort Lauderdale, Florida 33301</p> <p>7 954.522.6601</p> <p>8 For Philip Morris USA Inc.:</p> <p>9 SHOOK, HARDY & BACON L.L.P.</p> <p>10 BY: JENNIFER KENYON, ESQ.</p> <p>11 2555 Grand Boulevard</p> <p>12 Kansas City, Missouri 64108</p> <p>13 816.474.6550</p> <p>14 For Liggett Group, LLC:</p> <p>15 KASOWITZ BENSON TORRES LLP</p> <p>16 BY: KELLY ANNE LUTHER, ESQ.</p> <p>17 1441 Brickell Avenue, Suite 1420</p> <p>18 Miami, Florida 33131</p> <p>19 786.587.1045</p> <p>20 For R. J. Reynolds Tobacco Company:</p> <p>21 KING & SPALDING</p> <p>22 BY: URSULA M. HENNINGER, ESQ.</p> <p>23 300 South Tryon Street, Suite 1700</p> <p>24 Charlotte, North Carolina 28202</p> <p>25 704.503.2631</p> <p>Also Present:</p> <p>Gian Sapienza, Legal Videographer</p> <p>Dwayne Parrette, Translator/Reader</p> <p>Anthony Camacho</p>	<p>179</p> <p>1 P R O C E E D I N G S</p> <p>2 *****</p> <p>3 THE VIDEOGRAPHER: This begins the video</p> <p>4 recorded deposition of Sandra Camacho Volume III</p> <p>5 taken Tuesday, December 7th, 2021, at 9:06 a.m. The</p> <p>6 deposition is being held at 531 Morning Mauve</p> <p>7 Avenue, Las Vegas, Nevada 89183, titled Sandra</p> <p>8 Camacho and Anthony Camacho versus Philip Morris et</p> <p>9 al., in the District Court, Clark County, Nevada,</p> <p>10 Case Number A-19-807650-C.</p> <p>11 My name is Gian Sapienza with Certified</p> <p>12 Legal Videography. The court reporter is Karen</p> <p>13 Jones with Oasis Reporting Services.</p> <p>14 Will the attorneys please state your</p> <p>15 name and affiliation for the record.</p> <p>16 MS. WALD: Kimberly Wald from Kelley</p> <p>17 Uustal on behalf of the Plaintiff Sandra Camacho.</p> <p>18 MS. KENYON: Jennifer Kenyon on behalf</p> <p>19 of Philip Morris USA.</p> <p>20 MS. HENNINGER: Ursula Henninger on</p> <p>21 behalf of R. J. Reynolds Tobacco Company.</p> <p>22 MS. LUTHER: Kelly Luther on behalf of</p> <p>23 Liggett Group, LLC.</p> <p>24 THE VIDEOGRAPHER: Thank you. The court</p> <p>25 reporter will now administer the oath.</p>

<p style="text-align: right;">192</p> <p>1 BY MS. KENYON:</p> <p>2 Q. How many cigarettes a day did you smoke</p> <p>3 when you lived in the Chicago area?</p> <p>4 A. I do not know. A lot. Don't know how</p> <p>5 many.</p> <p>6 Q. What does "a lot" mean?</p> <p>7 A. Every half-hour.</p> <p>8 Q. Do you know how many cigarettes a day</p> <p>9 that would be?</p> <p>10 A. I do not know.</p> <p>11 Q. Do you know how many cigarettes are in a</p> <p>12 pack of cigarettes?</p> <p>13 A. I do not remember.</p> <p>14 Q. How many cigarettes a day did you smoke</p> <p>15 when you moved to Las Vegas?</p> <p>16 A. I worked -- I worked up to two packs a</p> <p>17 day.</p> <p>18 Q. When you lived in Las Vegas, were you</p> <p>19 still smoking one cigarette every half-hour?</p> <p>20 A. Yes.</p> <p>21 Q. What time did you typically wake up in</p> <p>22 the morning?</p> <p>23 MS. WALD: Form. Asked and answered.</p> <p>24 THE WITNESS: 5:00, sometime 4:00.</p> <p>25 ///</p>	<p style="text-align: right;">194</p> <p>1 and -- did your friends also smoke?</p> <p>2 A. Chicago.</p> <p>3 Q. Right. Did your friends also smoke?</p> <p>4 Yeah.</p> <p>5 A. Here (indicating)?</p> <p>6 Q. You said with friends in Chicago?</p> <p>7 A. I do not remember. School friends.</p> <p>8 Q. So how old were you?</p> <p>9 A. 17 or 18, and don't remember how long.</p> <p>10 Q. Well, we know from your interrogatory</p> <p>11 responses and your prior testimony that you did not</p> <p>12 start smoking until you were 18; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. So did you actually ever light one</p> <p>15 cigarette off of another?</p> <p>16 MS. WALD: Form. Asked and answered.</p> <p>17 BY MS. KENYON:</p> <p>18 Q. Go ahead and answer.</p> <p>19 A. Yes.</p> <p>20 Q. Do you know whether it was one time that</p> <p>21 you did that?</p> <p>22 A. Few times.</p> <p>23 Q. What does a "few times" mean?</p> <p>24 A. More than ten or more.</p> <p>25 Q. Would you just do that when you were</p>
<p style="text-align: right;">193</p> <p>1 BY MS. KENYON:</p> <p>2 Q. And what time would you typically go to</p> <p>3 bed at night?</p> <p>4 A. 12:00 or 1:00.</p> <p>5 Q. How many cigarettes a day were you</p> <p>6 smoking when you quit?</p> <p>7 MS. WALD: Form.</p> <p>8 THE WITNESS: Two packs.</p> <p>9 BY MS. KENYON:</p> <p>10 Q. Are you familiar with the term "chain</p> <p>11 smoker"?</p> <p>12 A. Yes.</p> <p>13 Q. How would you define "chain smoker"?</p> <p>14 A. Light one after another.</p> <p>15 Q. Did you consider yourself a chain smoker</p> <p>16 at any point?</p> <p>17 A. Yes.</p> <p>18 Q. When?</p> <p>19 A. With friends.</p> <p>20 Q. What friends?</p> <p>21 A. I do not remember. Chicago.</p> <p>22 Q. Did you ever chain smoke once you moved</p> <p>23 to Las Vegas?</p> <p>24 A. Not really.</p> <p>25 Q. So would you get together with friends</p>	<p style="text-align: right;">195</p> <p>1 with your girlfriends?</p> <p>2 A. Yes.</p> <p>3 Q. Did you enjoy socializing and smoking</p> <p>4 with your girlfriends?</p> <p>5 MS. WALD: Form.</p> <p>6 THE WITNESS: My first cig I did because</p> <p>7 it was the cool thing to do then.</p> <p>8 BY MS. KENYON:</p> <p>9 Q. My question is a little bit different.</p> <p>10 Did you enjoy socializing and smoking</p> <p>11 with your girlfriends?</p> <p>12 A. No.</p> <p>13 Q. Then why did you do it?</p> <p>14 A. Because I was addicted to them.</p> <p>15 Q. When do you think you were first</p> <p>16 addicted to cigarettes?</p> <p>17 A. After the first hour. Because I wanted</p> <p>18 more.</p> <p>19 Q. Are you saying you were addicted after</p> <p>20 your first cigarette?</p> <p>21 MS. WALD: Form. Asked and answered.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MS. KENYON:</p> <p>24 Q. When did you first learn that cigarette</p> <p>25 smoking could be addictive?</p>

<p style="text-align: right;">196</p> <p>1 A. I do not remember.</p> <p>2 Q. What does it mean to you to be addicted</p> <p>3 to cigarettes?</p> <p>4 A. To want one after another.</p> <p>5 Q. Being addicted doesn't mean that a</p> <p>6 smoker cannot quit, correct?</p> <p>7 MS. WALD: Form.</p> <p>8 THE WITNESS: I tried many times to</p> <p>9 quit.</p> <p>10 BY MS. KENYON:</p> <p>11 Q. And you did, in fact, permanently quit</p> <p>12 over four years ago, correct? And you did, in fact,</p> <p>13 quit permanently over four years ago, correct?</p> <p>14 A. Yes. It will be four years ago I quit</p> <p>15 because of cancer.</p> <p>16 Q. Regardless, you did permanently quit,</p> <p>17 correct?</p> <p>18 MS. WALD: Object to form. Asked and</p> <p>19 answered.</p> <p>20 It's okay, Sandra. Sandra, relax. It's</p> <p>21 okay. It's okay. Calm down. Just answer the</p> <p>22 question.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MS. KENYON:</p> <p>25 Q. Even though you believed you were</p>	<p style="text-align: right;">198</p> <p>1 Can you please read back my question.</p> <p>2 (The record is read by the reporter.)</p> <p>3 MS. KENYON: Off the record.</p> <p>4 (A recess is taken.)</p> <p>5 MS. KENYON: We can go back on the</p> <p>6 record.</p> <p>7 THE VIDEOGRAPHER: I'm sorry. We didn't</p> <p>8 leave record on video.</p> <p>9 MS. WALD: It's fine. We can stay on</p> <p>10 the video.</p> <p>11 BY MS. KENYON:</p> <p>12 Q. Even though you believe you were</p> <p>13 addicted, you did permanently quit smoking, correct?</p> <p>14 MS. WALD: Write it down or just point.</p> <p>15 She's just asking if you quit smoking. So point.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MS. KENYON:</p> <p>18 Q. You told us that your sister Donna quit</p> <p>19 smoking. Do you recall that?</p> <p>20 MS. WALD: Form. Asked and answered.</p> <p>21 BY MS. KENYON:</p> <p>22 Q. Do you think Donna was addicted when she</p> <p>23 quit smoking?</p> <p>24 A. I do not know. I do not remember.</p> <p>25 MS. LUTHER: She has to go to the</p>
<p style="text-align: right;">197</p> <p>1 addicted, you quit?</p> <p>2 MS. WALD: Form. Argumentative. Asked</p> <p>3 and answered. We're not going to keep going down</p> <p>4 this line. We know she quit.</p> <p>5 BY MS. KENYON:</p> <p>6 Q. You can go ahead and answer.</p> <p>7 Even though you believed you were</p> <p>8 addicted, you did quit, correct?</p> <p>9 A. Tried.</p> <p>10 Q. You're not currently smoking.</p> <p>11 MS. WALD: And now you're just being</p> <p>12 argumentative and harassing this witness. We know</p> <p>13 she quit. She has cancer. That's clear in the</p> <p>14 testimony. You can't keep harassing the client</p> <p>15 right now. So I ask you to move on.</p> <p>16 MS. KENYON: I just want an answer to my</p> <p>17 question. And you know the case law as well as I</p> <p>18 do. Please just object to form and stop trying to</p> <p>19 coach your witness.</p> <p>20 MS. WALD: I'm not trying to coach my</p> <p>21 witness. You're harassing her right now by</p> <p>22 beleaguering her with the same questions over and</p> <p>23 over. We know she is not smoking.</p> <p>24 BY MS. KENYON:</p> <p>25 Q. You can go ahead and answer my question.</p>	<p style="text-align: right;">199</p> <p>1 bathroom.</p> <p>2 MS. WALD: You have to go bathroom? We</p> <p>3 can take a break. You can go off the video.</p> <p>4 THE VIDEOGRAPHER: The time is 9:52. We</p> <p>5 are going off the record.</p> <p>6 (A recess is taken.)</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 10:00 o'clock a.m. We are back on the record.</p> <p>9 BY MS. KENYON:</p> <p>10 Q. Are you ready to go?</p> <p>11 A. Yes.</p> <p>12 Q. Have you heard of people being addicted</p> <p>13 to other things?</p> <p>14 MS. WALD: Form.</p> <p>15 BY MS. KENYON:</p> <p>16 Q. Like food or gambling?</p> <p>17 A. I do not know.</p> <p>18 Q. Do you believe that you were addicted to</p> <p>19 anything other than smoking?</p> <p>20 A. No.</p> <p>21 Q. What did you enjoy about smoking over</p> <p>22 the years?</p> <p>23 MS. WALD: Form. Mischaracterizes</p> <p>24 testimony.</p> <p>25 THE WITNESS: Did not enjoy smoking.</p>

204	<p>1 A. I do not remember.</p> <p>2 Q. When's the last time you went on a</p> <p>3 plane ride?</p> <p>4 A. Almost four years ago.</p> <p>5 Q. Where was the last flight you took?</p> <p>6 Where did you go?</p> <p>7 A. L.A.</p> <p>8 Q. Who did you go with?</p> <p>9 You can erase that.</p> <p>10 A. Tony, daughter.</p> <p>11 Q. What did you go to L.A. for?</p> <p>12 A. Surgery.</p> <p>13 Q. Did you smoke on that flight?</p> <p>14 A. No.</p> <p>15 Q. Prior to that, what is the last flight</p> <p>16 you took?</p> <p>17 A. I do not remember.</p> <p>18 Q. Did you and Tony ever go on vacation</p> <p>19 together?</p> <p>20 A. I do not remember.</p> <p>21 Q. Besides the flight four years ago, has</p> <p>22 there been any other times where you've taken a</p> <p>23 plane somewhere?</p> <p>24 MS. WALD: Form.</p> <p>25 THE WITNESS: Home to see family.</p>	206	<p>1 Q. Why not?</p> <p>2 A. For a man.</p> <p>3 Q. Did you ever try a cigar?</p> <p>4 A. No.</p> <p>5 Q. Have you ever used any other form of</p> <p>6 tobacco?</p> <p>7 A. What form?</p> <p>8 Q. Have you ever used any other types of</p> <p>9 tobacco or form of tobacco like a pipe or chew?</p> <p>10 A. No.</p> <p>11 Q. Have you ever used an e-cigarette?</p> <p>12 A. Yes.</p> <p>13 Q. When?</p> <p>14 A. The times I tried to quit.</p> <p>15 MS. KENYON: Off the record.</p> <p>16 (A recess is taken.)</p> <p>17 BY MS. KENYON:</p> <p>18 Q. Are you ready to go?</p> <p>19 A. Yes.</p> <p>20 Q. How many times have you used</p> <p>21 e-cigarettes in an effort to quit?</p> <p>22 A. I do not remember. A lot.</p> <p>23 Q. What does a lot mean?</p> <p>24 A. Every time I tried to quit.</p> <p>25 Q. When is the first time you used an</p>
205	<p>1 BY MS. KENYON:</p> <p>2 Q. To the Chicago area?</p> <p>3 A. Yes.</p> <p>4 Q. When's the last time you flew home to</p> <p>5 see family?</p> <p>6 A. I do not remember.</p> <p>7 Q. How many times have you flown home to</p> <p>8 see family?</p> <p>9 A. I do not remember.</p> <p>10 Q. Was it one time?</p> <p>11 A. I do not know. I do not remember.</p> <p>12 Q. Switching gears a little bit. Did you</p> <p>13 ever try a low-nicotine cigarette?</p> <p>14 A. No.</p> <p>15 Q. Did you ever try a denicotinized</p> <p>16 cigarette? Have you ever tried a denicotinized or</p> <p>17 nicotine-free cigarette?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. Never heard of that.</p> <p>21 Q. Why did you not try a low-nicotine</p> <p>22 cigarette?</p> <p>23 A. I do not remember. I do not know.</p> <p>24 Q. Did you ever smoke cigars?</p> <p>25 A. No.</p>	207	<p>1 e-cigarette to try to quit?</p> <p>2 A. I do not remember.</p> <p>3 Q. Why did you decide to use an</p> <p>4 e-cigarette?</p> <p>5 A. I tried everything.</p> <p>6 Q. But sticking with the e-cigarettes, why</p> <p>7 did you decide to use e-cigarettes to quit?</p> <p>8 A. I do not remember.</p> <p>9 Q. What brand did you use? What brand of</p> <p>10 e-cigarette did you use?</p> <p>11 A. I do not remember.</p> <p>12 Q. How often did you use it?</p> <p>13 MS. WALD: Write it down.</p> <p>14 THE WITNESS: Every time I tried to</p> <p>15 quit.</p> <p>16 BY MS. KENYON:</p> <p>17 Q. When is the first time you tried to quit</p> <p>18 smoking?</p> <p>19 A. Sometime in the '90s.</p> <p>20 Q. Why did you try to quit sometime in the</p> <p>21 '90s?</p> <p>22 A. It was a habit and cigs were getting</p> <p>23 expensive.</p> <p>24 Q. What brand were you smoking the first</p> <p>25 time you tried to quit?</p>

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

SANDRA CAMACHO,)
individually, and ANTHONY)

4

CAMACHO, individually,) CASE NO.:
) A-19-807650-C

5

Plaintiffs,)

6

vs.)

7

PHILIP MORRIS USA INC., a)
foreign corporation; R.)

8

J. REYNOLDS TOBACCO)
COMPANY, a foreign)

9

corporation,)
individually, and as)

10

successor-by-merger to)
LORILLARD TOBACCO COMPANY)

11

and as)
successor-in-interest to)

12

the United States tobacco)
business of BROWN &)

13

WILLIAMSON TOBACCO)
CORPORATION, which is the)

14

successor-by-merger to)
THE AMERICAN TOBACCO)

15

COMPANY; LIGGETT GROUP,)
LLC, a foreign)

16

corporation; ASM)
NATIONWIDE CORPORATION)

17

d/b/a SILVERADO SMOKES &)
CIGARS, a domestic)

18

corporation; and LV)
SINGHS INC. d/b/a SMOKES)

19

& VAPORS, a domestic) VIDEOTAPED DEPOSITION OF
corporation; DOES I-X;)

20

and ROE BUSINESS ENTITIES) SANDRA CAMACHO
XI-XX, inclusive,)

21

Defendants.)

22

VOLUME IV)

23

Taken on Wednesday, December 8, 2021

At 9:04 a.m.

24

Las Vegas, Nevada

25

Reported By: Karen L. Jones, CCR NO. 694

<p>246</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>DEPOSITION OF SANDRA CAMACHO</p> <p>VOLUME IV</p> <p>Taken on Wednesday, December 8, 2021</p> <p>Through a translator</p> <p>By a Certified Stenographer</p> <p>At 9:04 a.m.</p> <p>At 531 Morning Mauve Avenue</p> <p>Las Vegas, Nevada</p> <p>Reported By: Karen L. Jones, CCR NO. 694</p>	<p>248</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>I N D E X</p> <p>WITNESS: SANDRA CAMACHO</p> <p>EXAMINATION</p> <p>BY: Ms. Kenyon 250, 348</p> <p>BY: Ms. Luther 296, 355</p> <p>BY: Ms. Henninger 316, 361</p> <p>BY: Ms. Wald 322</p> <p>E X H I B I T S</p> <p>NUMBER DESCRIPTION PAGE</p> <p>Exhibit 12 8/22/16 Letter to Dr. Wikler 268</p> <p>from Dr. Weingarten</p> <p>P L A I N T I F F S' E X H I B I T S</p> <p>NUMBER DESCRIPTION PAGE</p> <p>Exhibit 1 L&M Advertisements 324</p> <p>Exhibit 2 Marlboro Advertisements 326</p> <p>Exhibit 3 Basic Cigarette Advertisement 328</p> <p>Exhibit 4 Video Clip of Commercial 362</p>
<p>247</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>APPEARANCES:</p> <p>For the Plaintiffs:</p> <p>KELLEY UUSTAL</p> <p>BY: KIMBERLY L. WALD, ESQ.</p> <p>500 North Federal Highway, Suite 200</p> <p>Fort Lauderdale, Florida 33301</p> <p>954.522.6601</p> <p>For Philip Morris USA Inc.:</p> <p>SHOOK, HARDY & BACON L.L.P.</p> <p>BY: JENNIFER KENYON, ESQ.</p> <p>2555 Grand Boulevard</p> <p>Kansas City, Missouri 64108</p> <p>816.474.6550</p> <p>For Liggett Group, LLC:</p> <p>KASOWITZ BENSON TORRES LLP</p> <p>BY: KELLY ANNE LUTHER, ESQ.</p> <p>1441 Brickell Avenue, Suite 1420</p> <p>Miami, Florida 33131</p> <p>786.587.1045</p> <p>For R. J. Reynolds Tobacco Company:</p> <p>KING & SPALDING</p> <p>BY: URSULA M. HENNINGER, ESQ.</p> <p>300 South Tryon Street, Suite 1700</p> <p>Charlotte, North Carolina 28202</p> <p>704.503.2631</p> <p>Also Present:</p> <p>Gian Sapienza, Legal Videographer</p> <p>Dwayne Parrette, Translator/Reader</p> <p>Anthony Camacho</p>	<p>249</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>P R O C E E D I N G S</p> <p>*****</p> <p>THE VIDEOGRAPHER: This begins the video</p> <p>recorded deposition of Sandra Camacho, Volume IV,</p> <p>Wednesday, December 8th, 2021, at 9:04 a.m.</p> <p>This deposition is being held at 531</p> <p>Morning Mauve Avenue, Las Vegas, Nevada 89183,</p> <p>entitled Sandra and Anthony Camacho versus Philip</p> <p>Morris, et al., in the District Court, Clark County,</p> <p>Nevada, Case Number A-19-807650-C.</p> <p>My name is Gian Sapienza with Certified</p> <p>Legal Videography. The court reporter is Karen</p> <p>Jones with Oasis Reporting Services.</p> <p>Will the attorneys please state your</p> <p>name and affiliation for the record.</p> <p>MS. WALD: Kimberly Wald from Kelley</p> <p>Uustal on behalf of the Plaintiff Sandra Camacho.</p> <p>MS. KENYON: Jennifer Kenyon on behalf</p> <p>of Philip Morris USA.</p> <p>MS. HENNINGER: Ursula Henninger on</p> <p>behalf R. J. Reynolds Tobacco Company.</p> <p>MS. LUTHER: And Kelly Luther on behalf</p> <p>of Defendant Liggett Group, LLC.</p> <p>THE VIDEOGRAPHER: Thank you.</p> <p>The court reporter will now administer</p>

<p style="text-align: right;">330</p> <p>1 MS. KENYON: Form. 2 THE WITNESS: Magazine. 3 BY MS. WALD: 4 Q. How many times did you see 5 advertisements for Basic cigarettes? 6 MS. KENYON: Form. 7 THE WITNESS: Lots of times. 8 BY MS. WALD: 9 Q. Does that mean you've seen this more 10 than ten times? 11 MS. KENYON: Form. 12 THE WITNESS: Yes. 13 BY MS. WALD: 14 Q. Were there times growing up in River 15 Grove, Illinois where you saw commercials on 16 television for cigarettes? 17 A. Yes. 18 Q. Would it help you if I showed you a 19 video to see if you remembered? Can you point to an 20 answer? 21 A. Yes. Show me then I probably could 22 remember if you show me. 23 MS. WALD: I'm going to mark this as 24 Plaintiffs' Exhibit 4. I'll send it to you somehow 25 electronically. It's just the very end for "The</p>	<p style="text-align: right;">332</p> <p>1 smoking? 2 MS. HENNINGER: Objection. 3 THE WITNESS: 17 or 18. 4 BY MS. WALD: 5 Q. Would that have -- would that have been 6 around 1964? 7 A. Yes. 8 Q. What brand of cigarette did you first 9 smoke? 10 A. L&M. 11 Q. Why did you smoke an L&M cigarette? 12 A. Because I thought they were safer. 13 Q. How long after you smoked your first 14 cigarette did it take you to become a regular daily 15 smoker? 16 A. Soon. 17 Q. How many packs of cigarettes per day did 18 you smoke throughout your lifetime? 19 MS. KENYON: Form. 20 THE WITNESS: Two packs. 21 BY MS. WALD: 22 Q. When you were in Chicago, how many packs 23 of cigarettes per day did you smoke? 24 MS. KENYON: Form. 25 THE WITNESS: One.</p>
<p style="text-align: right;">331</p> <p>1 Call For Philip Morris." 2 MS. KENYON: Can you play it. 3 (Video played.) 4 BY MS. WALD: 5 Q. Okay, Sandra, I'm going to show you a 6 video, okay? Okay. Wait for me to show you the 7 video. 8 (Video played.) 9 A. Yes. 10 Q. She pointed to yes? 11 A. Yes. 12 Q. Seeing this video, do you remember 13 hearing "Call for Philip Morris" on a television 14 growing up? 15 MS. KENYON: Form. 16 THE WITNESS: Yes. 17 BY MS. WALD: 18 Q. Are these commercials from over 50 years 19 ago that you're remembering? 20 MS. KENYON: Objection. 21 MS. LUTHER: Object to the form. 22 THE WITNESS: Yes. 23 BY MS. WALD: 24 Q. I don't have a question, Sandra. 25 How old were you when you first started</p>	<p style="text-align: right;">333</p> <p>1 BY MS. WALD: 2 Q. When you moved to Las Vegas, how many 3 packs of cigarettes per day did you smoke? 4 MS. KENYON: Form. 5 THE WITNESS: Two. 6 BY MS. WALD: 7 Q. How many years did you smoke L&M 8 cigarettes? 9 A. When I was 17 or 18 till 1990. 10 Q. What brand of cigarette did you switch 11 to in 1990? 12 A. Marlboro. 13 Q. How many years did you smoke Marlboro? 14 A. Ten years. Ten years to 15 years. 15 Q. You seem to get a little confused during 16 that last question. It took you a while to answer. 17 MS. HENNINGER: Objection. 18 MS. KENYON: Form. 19 BY MS. WALD: 20 Q. What brand did you smoke after Marlboro? 21 A. Could not find L&M when I moved here. 22 Then Marlboro was getting expensive. Switched to 23 Basic. 24 Q. Did you smoke Basic cigarettes for a 25 longer period of time than Marlboro cigarettes?</p>

<p>334</p> <p>1 A. No.</p> <p>2 Q. How long did you smoke Basic cigarettes?</p> <p>3 A. I do not remember.</p> <p>4 Q. Can you write that down, what you just</p> <p>5 mouthed?</p> <p>6 A. Smoked Basic till cancer.</p> <p>7 Q. So I just want to make sure I'm</p> <p>8 understanding you. When you moved to Vegas, you</p> <p>9 smoked Marlboro for a few years and then you</p> <p>10 switched to Basic until you got sick?</p> <p>11 MS. KENYON: Form.</p> <p>12 MS. LUTHER: Form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. WALD:</p> <p>15 Q. When you used to smoke when you woke up</p> <p>16 in the morning, what was the first thing you would</p> <p>17 do?</p> <p>18 A. Light a cigarette.</p> <p>19 Q. How many minutes between waking up until</p> <p>20 you would light a cigarette?</p> <p>21 MS. KENYON: Form.</p> <p>22 THE WITNESS: One hour, maybe sooner.</p> <p>23 BY MS. WALD:</p> <p>24 Q. When you woke up in the morning, how</p> <p>25 long did it take you until you smoked your first</p>	<p>336</p> <p>1 MS. KENYON: Form.</p> <p>2 BY MS. WALD:</p> <p>3 Q. -- to smoke?</p> <p>4 A. No. One hour between cigarettes to</p> <p>5 smoke another.</p> <p>6 Q. Okay. So if I'm understanding you, you</p> <p>7 would have a cigarette every hour throughout the</p> <p>8 day?</p> <p>9 A. Yes.</p> <p>10 Q. That's why you wrote 'one hour' on the</p> <p>11 board?</p> <p>12 MS. LUTHER: Form.</p> <p>13 MS. HENNINGER: Form.</p> <p>14 MS. KENYON: Form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MS. WALD:</p> <p>17 Q. Before you went to work in the morning,</p> <p>18 how many cigarettes would you have?</p> <p>19 A. Three.</p> <p>20 Q. On your drive to work, would you smoke?</p> <p>21 A. Yes.</p> <p>22 Q. While you were at work, would you take</p> <p>23 breaks to smoke?</p> <p>24 A. Yes.</p> <p>25 Q. Would you -- strike that.</p>
<p>335</p> <p>1 cigarette?</p> <p>2 MS. KENYON: Form.</p> <p>3 MS. LUTHER: Objection.</p> <p>4 MS. HENNINGER: Objection.</p> <p>5 THE WITNESS: One minute to walk to</p> <p>6 kitchen.</p> <p>7 BY MS. WALD:</p> <p>8 Q. You had just written down one hour?</p> <p>9 MS. KENYON: Form.</p> <p>10 BY MS. WALD:</p> <p>11 Q. Right? Can you point?</p> <p>12 A. THE WITNESS: No.</p> <p>13 Q. So just so we're clear -- Sandra, it's</p> <p>14 okay. It's okay. Just look at me, okay. It's been</p> <p>15 a long day. Okay.</p> <p>16 MS. KENYON: Form.</p> <p>17 BY MS. WALD:</p> <p>18 Q. When you woke up in the morning before</p> <p>19 you did anything else, what would you do?</p> <p>20 MS. LUTHER: Form.</p> <p>21 MS. KENYON: Form.</p> <p>22 BY MS. WALD:</p> <p>23 Q. Can you show him?</p> <p>24 A. Smoke.</p> <p>25 Q. So it wouldn't take you one hour --</p>	<p>337</p> <p>1 How often would you take breaks at work</p> <p>2 to smoke?</p> <p>3 A. Every chance I get. After taking</p> <p>4 customer order, went back.</p> <p>5 Q. Did you smoke while you cooked dinner?</p> <p>6 A. Yes.</p> <p>7 Q. If you went to a movie theater, could</p> <p>8 you sit through the entire movie without smoking?</p> <p>9 A. No.</p> <p>10 Q. What would you do?</p> <p>11 A. Go outside and have one.</p> <p>12 Q. Did you ever burn your clothing with</p> <p>13 cigarettes?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ever burn the car seat with</p> <p>16 cigarettes?</p> <p>17 A. Yes.</p> <p>18 Q. Did you smoke while you were pregnant</p> <p>19 with John?</p> <p>20 A. Yes.</p> <p>21 Q. Did you smoke while you were pregnant</p> <p>22 with Laura?</p> <p>23 A. Yes.</p> <p>24 Q. Did you smoke around Laura when she was</p> <p>25 pregnant with her children?</p>

Exhibit B

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 SANDRA CAMACHO, individually, and)
 4 ANTHONY CAMACHO, individually,)

5 vs. Plaintiffs,)

6 Case No.)
 7 A-19-807650-C)

8 PHILIP MORRIS USA INC., a foreign)
 9 corporation; R. J. REYNOLDS TOBACCO)
 10 COMPANY, a foreign corporation,)
 11 individually, and as successor-by-)
 12 merger to LORILLARD TOBACCO COMPANY)
 13 and as successor-in-interest to the)
 14 United States tobacco business of)
 15 BROWN & WILLIAMSON TOBACCO)
 16 CORPORATION, which is the)
 17 successor-by-merger to THE AMERICAN)
 18 TOBACCO COMPANY; LIGGETT GROUP,)
 19 LLC, a foreign corporation; ASM)
 20 NATIONWIDE CORPORATION d/b/a)
 21 SILVERADO SMOKES & CIGARS, a)
 22 domestic corporation; and LV SINGHS)
 23 INC. d/b/a SMOKES & VAPORS, a)
 24 domestic corporation; DOES I-X; and)
 25 ROE BUSINESS ENTITIES XI-XX,)
 inclusive,)
 Defendants.)

17

18 DEPOSITION OF ANTHONY CAMACHO

19 VOLUME I

20 Taken on Thursday, November 4, 2021

21 By a Certified Stenographer

22 At 9:00 a.m.

23 At 531 Morning Mauve Avenue

24 Las Vegas, Nevada

25 Reported by: HOLLY LARSEN, CCR 680, CA CSR 12170

<p>1 APPEARANCES: 2 For the Plaintiffs: 3 KELLEY UUSTAL 4 BY: KIMBERLY L. WALD, ESQ. 5 500 North Federal Highway, Suite 200 6 Fort Lauderdale, Florida 33301 7 954.522.6601</p> <p>8 For Philip Morris USA Inc.: 9 SHOOK, HARDY & BACON L.L.P. 10 BY: JENNIFER KENYON, ESQ. 11 2555 Grand Boulevard 12 Kansas City, Missouri 64108 13 816.474.6550</p> <p>14 For Liggett Group, LLC: 15 KASOWITZ BENSON TORRES LLP 16 BY: KELLY ANNE LUTHER, ESQ. 17 1441 Brickell Avenue, Suite 1420 18 Miami, Florida 33131 19 786.587.1045</p> <p>20 For R. J. Reynolds Tobacco Company: 21 KING & SPALDING 22 BY: URSULA M. HENNINGER, ESQ. 23 300 South Tryon Street, Suite 1700 24 Charlotte, North Carolina 28202 25 704.503.2631</p> <p>Also Present: SANDRA CAMACHO</p>	2	<p>1 PROCEEDINGS 2 Whereupon, 3 ANTHONY CAMACHO, 4 having been first duly sworn to testify to the 5 truth, was examined, and testified as follows: 6</p> <p>7 EXAMINATION 8 BY MS. KENYON: 9 Q. Good morning, Mr. Camacho. I'm Jennifer 10 Kenyon. I'm representing Philip Morris in this 11 case. I've spent the past few days with you here in 12 your home. 13 How are you feeling this morning? 14 A. Okay, I guess. 15 Q. Can you please state your full name for the 16 record. 17 A. Anthony J. Camacho. 18 Q. I am wearing a mask. Are you able to hear 19 me okay? 20 A. Yes. 21 Q. Able to understand me? 22 A. Yes. 23 Q. Off the record you mentioned -- are you 24 vaccinated? 25 A. Yes. But not the booster. Just the two.</p>
<p>1 INDEX 2 WITNESS PAGE 3 ANTHONY CAMACHO 4 Examination by Ms. Kenyon 4 5 6 7 8 EXHIBITS 9 NUMBER PAGE 10 Exhibit 1 Notice of Deposition Duces 10 11 Tecum of Plaintiff Anthony 12 Camacho 13 Exhibit 2 Plaintiff's Responses to 25 14 Defendant ASM Nationwide 15 Corporation's First 16 Interrogatories to Loss of 17 Consortium Plaintiff 18 Anthony Camacho 19 Exhibit 3 Plaintiff's Amended 28 20 Responses to Defendant ASM 21 Nationwide Corporation's 22 First Interrogatories to 23 Loss of Consortium 24 Plaintiff Anthony Camacho 25</p>	3	<p>1 Q. So you've gotten two COVID-19 vaccinations? 2 A. Yes. 3 Q. When did you get those? 4 MS. WALD: Object to form. Relevance. 5 THE WITNESS: Do I answer? 6 MS. WALD: You can answer. 7 THE WITNESS: Two months ago. 8 BY MS. KENYON: 9 Q. Do you know whether your wife, 10 Mrs. Camacho, has been vaccinated? 11 A. No. 12 MS. WALD: Object to form. 13 BY MS. KENYON: 14 Q. No, she has not been vaccinated? 15 THE WITNESS: Do I answer? 16 MS. WALD: You can answer. 17 THE WITNESS: No, she's not, because of her 18 cancer. 19 BY MS. KENYON: 20 Q. Can you explain that? 21 A. Yeah. Her cancer doctor says that she 22 would be at risk of not being able to survive if she 23 gets the injections. And so he said, "It's your 24 body. I can't tell you what to do. But if it was 25 mine, I wouldn't do it."</p>

<p>114</p> <p>1 everybody started to freak out.</p> <p>2 Q. Did Mrs. Camacho see that?</p> <p>3 A. Probably she saw it. We were watching the</p> <p>4 same news channels all the time.</p> <p>5 Q. Did you talk to her about it?</p> <p>6 A. Not really. We just made comments like,</p> <p>7 "Look, Sandra." But by then we were already so far</p> <p>8 into the cigarettes and addicted to them that it</p> <p>9 didn't matter much. Because we were already smoking</p> <p>10 and hooked, how we gonna kick this habit?</p> <p>11 Q. Did you try to quit at that time?</p> <p>12 A. I never did. I was smoking. Somewhere in</p> <p>13 the middle of 2000 she started doing goofy stuff</p> <p>14 like throwing cigarettes away or hiding them or --</p> <p>15 you see, like, Nicorettes.</p> <p>16 Q. So I'm just trying to ask about you right</p> <p>17 now.</p> <p>18 A. Me? I just kept smoking.</p> <p>19 Q. So you did not try to quit at that time?</p> <p>20 A. No, ma'am.</p> <p>21 Q. How do you know you weren't able to quit?</p> <p>22 A. There were signs there. I was a pretty</p> <p>23 strong person. Then I thought about it. I kept</p> <p>24 lighting up.</p> <p>25 Q. You didn't want to quit?</p>	<p>116</p> <p>1 just saw it, and we just went on smoking, I guess.</p> <p>2 But like, you know, I don't know what to tell you</p> <p>3 there, ma'am.</p> <p>4 BY MS. KENYON:</p> <p>5 Q. Did you ever smoke a different brand from</p> <p>6 Mrs. Camacho?</p> <p>7 A. Yeah. When I could afford it, I'd get a</p> <p>8 pack of Marlboro Lights. They were easier on my</p> <p>9 throat. But that came to a halt pretty quick</p> <p>10 because I couldn't afford the money it cost for</p> <p>11 Marlboro Light. She told me no, too expensive for</p> <p>12 that. So that was it.</p> <p>13 Q. Did Mrs. Camacho ever smoke Marlboro Light?</p> <p>14 A. No. She liked the Marlboro red. She</p> <p>15 didn't like that smooth inhaling, whatever we were</p> <p>16 doing at the time.</p> <p>17 Q. How many packs of Marlboro Lights did you</p> <p>18 purchase?</p> <p>19 A. One. One Light. But like I said, it came</p> <p>20 to a very quick -- I couldn't afford it no more. I</p> <p>21 tried to buy them, but then I noticed the prices on</p> <p>22 them, and I stuck with Basic with Sandra.</p> <p>23 Q. So you only smoked one pack of Marlboro</p> <p>24 Lights?</p> <p>25 A. Not in one day. I smoked them, but</p>
<p>115</p> <p>1 A. I didn't want to quit. You're right.</p> <p>2 Q. In 2000 did you talk to Sandra about her</p> <p>3 needing to quit smoking?</p> <p>4 MS. WALD: Form.</p> <p>5 THE WITNESS: Not really. We just kept</p> <p>6 smoking until this happened. Then we knew we were</p> <p>7 in trouble.</p> <p>8 BY MS. KENYON:</p> <p>9 Q. In 2000 did Mrs. Camacho try to quit</p> <p>10 smoking?</p> <p>11 MS. WALD: Form.</p> <p>12 THE WITNESS: In the middle, multiple times</p> <p>13 she tried to quit.</p> <p>14 BY MS. KENYON:</p> <p>15 Q. Do you recall her quitting when you saw</p> <p>16 this news story in 2000?</p> <p>17 A. She never stopped smoking when she saw</p> <p>18 that. She saw the congressional hearings, but she</p> <p>19 was already addicted to whatever was in the</p> <p>20 cigarette. She tried, but she couldn't do it.</p> <p>21 Q. Did she actually try to quit smoking when</p> <p>22 you saw this news story in 2000?</p> <p>23 MS. WALD: Form.</p> <p>24 THE WITNESS: I don't know that. I can't</p> <p>25 answer yes or no on that. I don't really know. We</p>	<p>117</p> <p>1 whenever I ran out, I'd get another pack. Then she</p> <p>2 said, "No, no. No more Lights. That's too</p> <p>3 expensive."</p> <p>4 Q. So my question then, how many packs of</p> <p>5 Marlboro Lights did you purchase?</p> <p>6 A. Well, be specific. In a week, in a day, or</p> <p>7 a month? And then I can answer. I'm sorry.</p> <p>8 Q. When you were smoke -- when were you</p> <p>9 smoking Marlboro Lights?</p> <p>10 A. Once in a while I would sneak a pack when I</p> <p>11 could afford to buy one, because they were expensive</p> <p>12 and she didn't want to see me buying expensive</p> <p>13 smokes.</p> <p>14 Q. Was it after you and Mrs. Camacho had</p> <p>15 switched to Basic?</p> <p>16 A. Yeah, we were on Basic. But my daughter,</p> <p>17 Laura, she'd been smoking those Lights, and I used</p> <p>18 to mooch off of her. When I didn't have my Basics,</p> <p>19 I used to mooch a few Lights. So then that's when I</p> <p>20 got to buy them. That's when she put a stop to it.</p> <p>21 Because Laura smokes Lights.</p> <p>22 Q. Why did you smoke Marlboro Lights?</p> <p>23 A. They were easier on my throat.</p> <p>24 Q. Is that the only reason that you --</p> <p>25 A. Yeah. I liked the Lights. The Marlboros</p>

<p style="text-align: right;">118</p> <p>1 were kind of strong for me. I don't know. Maybe I 2 was weak or something. 3 But I noticed when Laura smoked them, like 4 I said, I used to mooch off of her. Then I started. 5 Then again, she put the stop to that. It 6 didn't last very long. 7 Q. Do you know when you and Mrs. Camacho 8 switched from Marlboro to Basic? 9 A. Probably in the middle of 2000 sometime. 10 Because we were going by the not being able to get 11 L&M and then the prices on the Marlboro. Yeah, they 12 didn't last too long. We went right to Basics. It 13 was cheaper, and everybody sold them. 14 Q. How many cigarettes per day were you 15 smoking when you used Marlboro? 16 A. Marlboros? Well, if I had a pack in home 17 here, probably about five a day. But if we went to 18 the casino, kiss that pack goodbye. The excitement 19 of the noises and machines and playing, you know, 20 you get carried away. And then when the pack was 21 gone, I couldn't believe that I went through a pack 22 of smokes. I knew I'd better chill and be careful 23 with all the smoking. But I just kept doing it. 24 Q. Did you enjoy smoking when you were at the 25 casino?</p>	<p style="text-align: right;">120</p> <p>1 lighter for some reason, and I did increase it. Go 2 in the yard, in the garage. I said, Uh-oh, these 3 are nice. 4 But like I told you over and over, Sandra 5 said, "No, you can't afford to be buying a pack for 6 yourself too." 7 Q. And you listen to your wife? 8 A. Yeah, 41 years. 9 Q. Did you and Mrs. Camacho like smoking 10 together? 11 A. Yeah. 12 MS. WALD: Form. 13 THE WITNESS: Yeah, we enjoyed it. We'd 14 drink our coffee at the kitchen table and exchange 15 war stories like we always did and -- you know, 16 husband and wife sharing, you know, a moment 17 smoking. That was our way of life. We used to 18 smoke on the table right there (indicating). 19 BY MS. KENYON: 20 Q. So you enjoyed getting up in the mornings, 21 having coffee and smoking a cigarette with 22 Mrs. Camacho? 23 MS. WALD: Form. 24 BY MS. KENYON: 25 Q. You can answer.</p>
<p style="text-align: right;">119</p> <p>1 A. Casino, yeah. It was like all the glitter 2 and the machines and everybody smoking. You know, 3 we thought -- it didn't bother us. We were smokers, 4 and we were okay with it. We didn't know we were 5 going to wind up like we did now with all this stuff 6 that went on. 7 Q. Do you have any smoking-related illness? 8 A. Knock on wood, so far I believe I pass all 9 my physicals. I can't walk, like, to get the mail. 10 Just my legs, from the sciatica. 11 Q. But do you have any smoking-related 12 illnesses? 13 A. Not that I know of. I'm not aware of any. 14 Thank God. I don't know. It could change by 15 tomorrow. 16 Q. How many cigarettes a day were you smoking 17 while using Basic? 18 A. Probably about five a day or something like 19 that. 20 Q. When you would smoke Marlboro Lights, did 21 the amount that you smoked in a day change? 22 A. Yeah. The Lights were easier to smoke, so 23 I did increase my smoking. Yeah, that I knew right 24 away. I didn't even want to use Basics. But like I 25 said, again, I couldn't afford it. They were</p>	<p style="text-align: right;">121</p> <p>1 A. I didn't really enjoy it. I got up and I 2 had a cigarette. I don't know if it was a habit, if 3 I enjoyed it or not. I got up and I smoked, and I 4 smoked and started feeling good in the morning with 5 my coffee. The next morning I'd repeat the same 6 thing. But I don't know if I enjoyed it. I can't 7 say that I did, and I can't say that I didn't. I 8 kept smoking. 9 BY MS. KENYON: 10 Q. Did you enjoy sitting there with your wife, 11 having your coffee and having your cigarette in the 12 morning? 13 MS. WALD: Form. Asked and answered. 14 You can answer. 15 THE WITNESS: Yeah, we'd sit there and talk 16 and smoke. That was nice. I think I enjoyed the 17 togetherness with her, that we were sharing 18 something. 19 BY MS. KENYON: 20 Q. You mentioned the casinos. Mrs. Camacho 21 told us yesterday you and her would go play penny 22 slots? 23 A. South Point. 24 Q. Is that a "yes," you would go to the 25 casinos and play penny slots?</p>

<p style="text-align: right;">146</p> <p>1 A. No vacations.</p> <p>2 Q. Are there any other activities that you</p> <p>3 liked to do together?</p> <p>4 A. Let's see. No, ma'am. Probably just going</p> <p>5 to South Point when we're together all the time. We</p> <p>6 enjoyed that.</p> <p>7 Q. You were here yesterday when I was talking</p> <p>8 with your wife about her employment history; right?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. She worked at Denny's as a waitress and</p> <p>11 IHOP as a waitress?</p> <p>12 A. Yes.</p> <p>13 Q. She worked at 7-Eleven and Texaco as a</p> <p>14 cashier?</p> <p>15 A. Yes.</p> <p>16 Q. And then she worked as a beautician?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what year she retired?</p> <p>19 A. No, I don't know that.</p> <p>20 Q. Do you know how long after moving to</p> <p>21 Las Vegas she -- how many years after you moved to</p> <p>22 Las Vegas she continued to work?</p> <p>23 A. Probably -- I don't want to guess. I don't</p> <p>24 know, ma'am. I'm sorry.</p> <p>25 Q. You mentioned a close friend of</p>	<p style="text-align: right;">148</p> <p>1 Q. Right. So are you recalling one instance</p> <p>2 where you saw this?</p> <p>3 A. That was in Chicago or here. I don't</p> <p>4 recall. But we did see stuff in the '80s in Chicago</p> <p>5 on our news cable about smoking and how it was okay</p> <p>6 with the filters and all.</p> <p>7 And then over here, I think it was in</p> <p>8 2000-something with that congressional hearing when</p> <p>9 we found out that it was bad for your health.</p> <p>10 Q. I thought you said in the '90s you recall a</p> <p>11 congressional hearing.</p> <p>12 A. There was a congressional hearing, I guess,</p> <p>13 where they drilled the tobacco company executives,</p> <p>14 and there was all kind of questions. I just changed</p> <p>15 it. It was too technical for me to listen to so I</p> <p>16 changed it. I saw part of it. Not all of it.</p> <p>17 Q. Was Mrs. Camacho there when you saw that</p> <p>18 story?</p> <p>19 A. Yeah. I think we watched it together. I</p> <p>20 don't recall, but we always watched the news</p> <p>21 together at that time.</p> <p>22 Q. Did she say, Hey, go back; I want to hear</p> <p>23 that story?</p> <p>24 A. No, not that I recall.</p> <p>25 Q. Did you guys discuss anything after you saw</p>
<p style="text-align: right;">147</p> <p>1 Mrs. Camacho's. I believe her name was Jan?</p> <p>2 A. Jan Puccio. Lifelong friend.</p> <p>3 Q. Does she still live in the Chicago area?</p> <p>4 A. Melrose Park, Illinois.</p> <p>5 Q. Earlier you were talking about a</p> <p>6 congressional hearing that you recall seeing a news</p> <p>7 story on in the '90s sometime?</p> <p>8 A. '80s and '90s. '80s was in Chicago, WGN</p> <p>9 News, Channel 9. Then the '90s was here, on our</p> <p>10 system here.</p> <p>11 Q. So when you were living in Chicago, did you</p> <p>12 recall seeing congressional hearings on the news?</p> <p>13 A. We just saw news clippings of certain stuff</p> <p>14 that was going on pertaining to smoking. I don't</p> <p>15 know if they were congressional hearings or not.</p> <p>16 Q. What did you see on the news in the '80s?</p> <p>17 A. There was no scientific data about these</p> <p>18 cigarettes being harmful to your health.</p> <p>19 Q. Who was saying that in the '80s?</p> <p>20 A. I guess the officials from the tobacco</p> <p>21 companies.</p> <p>22 Q. Are you guessing, or do you --</p> <p>23 A. No, I know, because they were interviewing</p> <p>24 some of them. Like I said, I watched a little bit</p> <p>25 of it, and then I turned the TV off.</p>	<p style="text-align: right;">149</p> <p>1 that story?</p> <p>2 A. Not really. Just comments, you know,</p> <p>3 little comments. What do you think and --</p> <p>4 Q. What were the little comments?</p> <p>5 A. I don't recall. Just, you know ...</p> <p>6 Q. And then in the '80s in Chicago, was</p> <p>7 Mrs. Camacho present for the news stories on smoking</p> <p>8 that you saw?</p> <p>9 A. I don't know that, because we -- that was</p> <p>10 in the '80s, and we were just married. I could have</p> <p>11 saw it by myself and just brushed it off. I don't</p> <p>12 know if she was with me or not.</p> <p>13 Q. Do you know if she saw any news stories on</p> <p>14 smoking and health in the '80s?</p> <p>15 A. I don't know. You would have to ask her.</p> <p>16 Q. Do you recall any news stories in the 1980s</p> <p>17 that said smoking is bad for your health?</p> <p>18 A. Only news clippings that it was safe, and</p> <p>19 there was no scientific data to prove otherwise.</p> <p>20 Q. Did Mrs. Camacho ever smoke a light</p> <p>21 cigarette?</p> <p>22 A. No. She stuck with those harder ones like</p> <p>23 L&M with filters and the red package for Marlboro.</p> <p>24 Q. You both smoked filtered cigarettes because</p> <p>25 you thought they were safer?</p>

<p style="text-align: right;">186</p> <p>1 A. No, ma'am.</p> <p>2 Q. Why did you keep all the Marlboro gear</p> <p>3 after you and Sandra quit smoking?</p> <p>4 A. I have more, but some of them weren't as</p> <p>5 good as the bags and the lanterns. So I kept those.</p> <p>6 Because the lanterns, I always wanted the railroad</p> <p>7 lanterns, and I kept them. So that. And the bags</p> <p>8 for traveling, and they're handy for that.</p> <p>9 Q. So even though you blame Philip Morris for</p> <p>10 your wife's injuries, you kept the bags and the</p> <p>11 lantern?</p> <p>12 A. Yeah.</p> <p>13 MS. WALD: Object to form.</p> <p>14 THE WITNESS: Yeah, I kept them. I don't</p> <p>15 know -- I just kept them. I earned them, and I kept</p> <p>16 them. I didn't want to get rid of them.</p> <p>17 BY MS. KENYON:</p> <p>18 Q. Do you still use the bags today?</p> <p>19 A. Yeah. Sometimes I use -- yes, I do.</p> <p>20 Q. Do you still use the lantern and the knife?</p> <p>21 A. At nighttime, yes.</p> <p>22 Q. Did Mrs. Camacho ever look through the</p> <p>23 Marlboro catalog?</p> <p>24 A. Yeah, she would look through it, but she</p> <p>25 wasn't interested or nothing. I was more interested</p>	<p style="text-align: right;">188</p> <p>1 when it terminated.</p> <p>2 Q. Did Mrs. Camacho ever sign up to receive</p> <p>3 any coupons or promotions from a tobacco company?</p> <p>4 A. Not that I know of, ma'am.</p> <p>5 Q. Did she ever try a new brand solely because</p> <p>6 of the coupon or promotion?</p> <p>7 A. No.</p> <p>8 Q. Did you ever try a new brand solely because</p> <p>9 of the coupon or promotion?</p> <p>10 A. No, ma'am.</p> <p>11 Q. Did you ever receive coupons for a brand in</p> <p>12 the mail?</p> <p>13 A. Not that I remember, no.</p> <p>14 Q. Did Mrs. Camacho?</p> <p>15 A. I don't know that, ma'am.</p> <p>16 Q. The order forms you would fill out for the</p> <p>17 Marlboro merchandise, do you recall anything on the</p> <p>18 order form?</p> <p>19 A. Like items?</p> <p>20 Q. Do you recall what the order form said?</p> <p>21 A. No. I never paid attention to that. I</p> <p>22 just pay attention to filling in my information for</p> <p>23 mailing, checking off on the miles that I'm sending</p> <p>24 in and the special envelope that I had, and that's</p> <p>25 all I remember about it. I don't know nothing about</p>
<p style="text-align: right;">187</p> <p>1 in the catalogs.</p> <p>2 Q. When you would have to fill out the order</p> <p>3 form, was it you that filled them out, or did your</p> <p>4 wife fill them out?</p> <p>5 A. I did, ma'am.</p> <p>6 Q. Did you ever fill out an order form on</p> <p>7 behalf of Mrs. Camacho?</p> <p>8 A. No. I would fill out with my information.</p> <p>9 Q. Did you continue collecting Marlboro Miles</p> <p>10 after you switched to Basic?</p> <p>11 A. No. We stopped altogether.</p> <p>12 Q. So you didn't continue smoking Marlboro</p> <p>13 because of the promotional program?</p> <p>14 A. I couldn't get no more miles and no more</p> <p>15 jobs where I knew people, so I just gave up on it.</p> <p>16 Q. Do you recall there ever being a time where</p> <p>17 the Marlboro Miles stopped, or the program stopped?</p> <p>18 A. I don't know when they stopped, ma'am. I</p> <p>19 don't know when they stopped.</p> <p>20 Q. Were you still smoking Marlboro at that</p> <p>21 time, or had you switched?</p> <p>22 A. Basics.</p> <p>23 Q. Do you remember the Marlboro Miles</p> <p>24 promotion ending?</p> <p>25 A. No, I don't know that at all. I don't know</p>	<p style="text-align: right;">189</p> <p>1 it. Just from my experience filling it out and</p> <p>2 making sure they got the right miles.</p> <p>3 Q. So you were primarily focused on what you</p> <p>4 were getting back?</p> <p>5 A. Exactly.</p> <p>6 Q. You weren't paying attention to what was</p> <p>7 written on the order form?</p> <p>8 A. No, ma'am.</p> <p>9 Q. To your knowledge, did Mrs. Camacho ever</p> <p>10 complete any surveys or sweepstake entries with</p> <p>11 tobacco companies?</p> <p>12 A. No, ma'am.</p> <p>13 Q. Have you ever completed any cigarette</p> <p>14 surveys or sweepstake entries?</p> <p>15 A. No, ma'am.</p> <p>16 Q. Did you ever complete any cigarette surveys</p> <p>17 or sweepstake entries on behalf of Mrs. Camacho?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Did she ever complete any cigarette surveys</p> <p>20 or sweepstake entries on behalf of you?</p> <p>21 A. I don't know that, ma'am.</p> <p>22 Q. Did Mrs. Camacho ever try a low-nicotine</p> <p>23 cigarette?</p> <p>24 A. Not that I know of.</p> <p>25 Q. Or a de-nicotized cigarette?</p>

Exhibit C

Page 1

DISTRICT COURT
CLARK COUNTY, NEVADA

SANDRA CAMACHO,)
individually, and ANTHONY)
CAMACHO, individually,)
) CASE NO: A-19-807650-C
Plaintiffs,)
) DEPT NO: IV
vs.)
)

PHILIP MORRIS USA, INC., a)
foreign corporation; RJ)
REYNOLDS TOBACCO COMPANY, a)
foreign corporation,)
individually, and as) DEPOSITION OF
successor-by-merger to) LAURA PURKETT
LORILLARD TOBACCO COMPANY)
and as) LAS VEGAS, NEVADA
successor-in-interest to)
the United States tobacco) WEDNESDAY,
business of BROWN &) FEBRUARY 16, 2022
WILLIAMSON TOBACCO)
CORPORATION, which is the)
successor-by-merger to THE)
AMERICAN TOBACCO COMPANY;)
LIGGETT GROUP, LLC, a)
foreign corporation; ASM)
NATIONWIDE CORPORATION)
d/b/a SILVERADO SMOKES &)
CIGARS, a domestic)
corporation; and LV SINGHS)
INC., d/b/a SMOKES &)
VAPORS, a domestic)
corporation; DOES EX; and)
ROE BUSINESS ENTITIES)
XI-XX, inclusive,)
Defendants.)

REPORTED BY: BRITTANY CASTREJON, RPR, CRR, NV CCR #926
JOB NO. 834115

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1 DEPOSITION OF LAURA PURKETT, held at Litigation
2 Services, located at 3960 Howard Hughes Parkway,
3 Suite 700, Las Vegas, Nevada 89169, on WEDNESDAY,
4 FEBRUARY 16, 2022, at 8:53 a.m., before
5 Brittany Castrejon, Certified Court Reporter, in and for
6 the State of Nevada.
7
8
9
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1 (Pages 1 to 4)

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1 Q. Where did you get that information?
 2 A. I think it would just be common sense if
 3 something is not filtered -- non-filtered versus
 4 filtered, you would just think it's safer; that it's
 5 filtering out things.
 6 Q. So at the time that you started smoking, did you
 7 know that unfiltered cigarettes were not safe?
 8 A. No. I just wouldn't want tobacco in my mouth
 9 because they were not filtered. But I would say
 10 filtered would just be better for you. You're not
 11 getting the tobacco. You would think you're not getting
 12 as many chemicals or chemicals with you. I just don't
 13 think I could ever smoke a non-filtered. My grandpa
 14 smoked non-filtered.
 15 Q. Is that because the unfiltered is too strong or
 16 you don't like the tobacco on the lips?
 17 A. Both.
 18 Q. Why did you smoke Marlboro Light and not
 19 another -- a different light brand?
 20 A. I think that's the one I started with, and I just
 21 stuck with it. I just never -- I've tried, like, a
 22 friend's here and there. I just didn't like it.
 23 Q. What did light mean to you?
 24 A. I would say not as strong.
 25 Q. Did you think that a filtered cigarette versus an

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1 unfiltered cigarette would be completely safe?
 2 A. Safer, yes. Yes, I would say. Anything -- I
 3 mean, when you look at filtered water, you think
 4 anything filtered would be safer, in my opinion.
 5 Q. But did you think that a filtered cigarette would
 6 be completely safe?
 7 A. Yes. Probably. Yeah, I would have to say. It
 8 was filtered, so you would think safe. I -- I -- I
 9 would say yes. But you can't say completely because you
 10 drink non filtered water. But is that safe? No. So,
 11 yes, I would think they were safer. Yes.
 12 Q. So at the time that you started smoking a
 13 filtered cigarette, you were smoking that, you knew
 14 that --
 15 A. I thought they were safer than a non-filtered,
 16 yes, than Camel or Pall Mall.
 17 Q. So you knew that an unfiltered at that time was
 18 not safe?
 19 A. No. I wouldn't say not safe. Just better for
 20 you because it was filtered. I wouldn't say -- could I
 21 have tried a non-filtered? Yes. But I wouldn't want
 22 the tobacco in my mouth. So you think filtered, and you
 23 just think safer.
 24 Q. Did you ever think smoking was good for you?
 25 MS. WALD: Form.

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1 THE WITNESS: No, I never thought of bad or
 2 good when I started.
 3 BY MS. KENYON:
 4 Q. At any point, did you think smoking was good for
 5 you?
 6 A. I never -- it never really occurred to me that it
 7 was good or bad. It was just something that I just got
 8 addicted to. I mean, I never thought of it as being
 9 good or bad. I mean, if I can quit today, trust me, I
 10 would quit today. I want to quit so bad.
 11 Q. Have you smoked a cigarette since we've been
 12 here?
 13 A. Yes.
 14 Q. How many?
 15 A. From the time we pulled up, or from the time --
 16 just in here?
 17 Q. From 8:30 to 11:30?
 18 A. Two.
 19 Q. Did your mother ever smoke Marlboro Light?
 20 A. Yes. If she ran out of a cigarette and I had to
 21 go get them, she would go out of mine. She didn't like
 22 them because they were too light.
 23 Q. How often would that occur?
 24 A. Not that often. She always had cigarettes.
 25 Q. Would you say that happened less than five times?

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1 A. Yeah. Minimum -- yeah, maximum five times. They
 2 were too light for her, my Marlboros.
 3 Q. So at most your mom has only ever smoked five
 4 Marlboro Light cigarettes?
 5 A. Yes. She always either had to go get her brand,
 6 or she just wouldn't take one of mine. She had to go
 7 get them.
 8 Q. Did she ever smoke any light cigarette?
 9 A. No.
 10 Q. Why not?
 11 A. I don't know.
 12 Q. Did you ever encourage your mother to smoke a
 13 light cigarette?
 14 A. No.
 15 Sorry. My contacts are cloudy from crying.
 16 Q. That's all right.
 17 How many cigarettes do you smoke a day?
 18 A. Well, it's increased. So I'm going to say a
 19 pack, pack and a quarter.
 20 Q. How long has that been the case?
 21 A. Probably more so in the last -- since probably
 22 2019. Yeah, probably 2018, '19.
 23 Q. How many packs per day were you smoking prior to
 24 2018 or 2019?
 25 A. Not even a pack.

25 (Pages 97 to 100)

<p style="text-align: right;">Page 113</p> <p>1 Q. When did she start smoking Basic cigarettes?</p> <p>2 A. It was off and on. She switched both. It wasn't</p> <p>3 just, like, she smoked Basic for ten years. She would</p> <p>4 smoke both, Marlboro and Basic Full Flavor around the</p> <p>5 same times. It wasn't like it was specific. It was off</p> <p>6 and on for both.</p> <p>7 Q. How did she decide which brand she was going to</p> <p>8 smoke at any given time?</p> <p>9 A. I think at -- I think as the prices got higher,</p> <p>10 she may have switched to Basic Full Flavor, but then she</p> <p>11 went back to Marlboro. I mean, it was just whatever was</p> <p>12 available out of the two. If she couldn't find Marlboro</p> <p>13 at a store, if they were out, she would get the Basic</p> <p>14 Full Flavor. If they didn't have the Basic, she would</p> <p>15 go with the Marlboro.</p> <p>16 Q. What did the pack of Marlboro look like?</p> <p>17 A. Red and white.</p> <p>18 Q. Do you recall what the cigarette itself looked</p> <p>19 like?</p> <p>20 A. No.</p> <p>21 Q. Did she ever tell you why she smoked Marlboro?</p> <p>22 A. No.</p> <p>23 Q. Was the Marlboro filtered?</p> <p>24 A. Yes.</p> <p>25 Q. Did she ever tell you why she smoked a filtered</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Did you ever ask her?</p> <p>2 A. No.</p> <p>3 Q. Did your mom ever smoke a menthol cigarette?</p> <p>4 A. Not that I know of. I don't know.</p> <p>5 Q. Did your mother ever tell you why she smoked</p> <p>6 Basic?</p> <p>7 A. No.</p> <p>8 Q. Did your mother ever smoke a low-tar or</p> <p>9 low-nicotine cigarette?</p> <p>10 A. If a light is low tar, just mine. I don't even</p> <p>11 know if it's a low tar.</p> <p>12 Q. But were any -- none of her brands, her regular</p> <p>13 brands, the L&M, the basic and the Marlboro --</p> <p>14 A. They were all the full. They weren't lights or</p> <p>15 anything. They were just full strength.</p> <p>16 Q. You already told us, I believe, Marlboro Light</p> <p>17 was never her -- your mother's regular brand?</p> <p>18 A. No.</p> <p>19 Q. She only smoked --</p> <p>20 A. The Marlboro Red.</p> <p>21 Q. -- maybe five at most?</p> <p>22 A. Yes.</p> <p>23 Q. I should say she never smoked more than five</p> <p>24 cigarettes of Marlboros Lights?</p> <p>25 A. Yes. She didn't -- they were too light for her.</p>
<p style="text-align: right;">Page 114</p> <p>1 Marlboro?</p> <p>2 A. No.</p> <p>3 Q. Did you ever ask her?</p> <p>4 A. No.</p> <p>5 Q. Did she tell you that she liked the flavor of L&M</p> <p>6 cigarettes?</p> <p>7 MS. WALD: Form.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MS. KENYON:</p> <p>10 Q. Did she ever tell you that she liked the flavor</p> <p>11 of the Marlboro cigarettes?</p> <p>12 MS. WALD: Form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. KENYON:</p> <p>15 Q. And then the Basic that she smoked, what did the</p> <p>16 pack of Basic cigarettes look like?</p> <p>17 A. Red and white.</p> <p>18 Q. Do you recall what the cigarette itself looked</p> <p>19 like?</p> <p>20 A. No.</p> <p>21 Q. Was the Basic also filtered?</p> <p>22 A. Yes.</p> <p>23 Q. Did she tell you why she smoked a filtered Basic</p> <p>24 cigarette?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. And you're not aware of any low-tar or</p> <p>2 low-nicotine cigarette that your mom tried?</p> <p>3 A. No.</p> <p>4 Q. Growing up, do you know how many cigarettes a day</p> <p>5 your mom would smoke?</p> <p>6 A. About a pack. I don't know how many exactly, but</p> <p>7 I know she would smoke about a pack like me.</p> <p>8 Q. How do you know it was about a pack?</p> <p>9 A. Because she would buy a carton and by the end of</p> <p>10 the week -- next week it was gone. I would say about a</p> <p>11 pack. She was -- I don't think no more than a pack at</p> <p>12 the time.</p> <p>13 Q. Did that amount change at any time?</p> <p>14 A. It increased. I noticed her smoking more, yes.</p> <p>15 Q. What did it increase to?</p> <p>16 A. Probably one to two.</p> <p>17 Q. When did it increase?</p> <p>18 A. In Vegas. Maybe the last ten years. Maybe eight</p> <p>19 years, ten years.</p> <p>20 Q. Did she typically buy her cigarettes by the</p> <p>21 carton or the pack?</p> <p>22 A. Usually by the pack. Sometimes by the carton. I</p> <p>23 think -- I don't -- sometimes it was a pack. Sometimes</p> <p>24 it was a carton. So I would say mostly pack versus</p> <p>25 carton.</p>

29 (Pages 113 to 116)

Exhibit D

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 SANDRA CAMACHO,)
4 individually, and ANTHONY)
5 CAMACHO, individually,)
6 Plaintiffs,) Case A-19-807650-C
7 vs.)
8 PHILIP MORRIS USA INC.,)
9 a foreign corporation;)
10 R.J.REYNOLDS TOBACCO)
11 COMPANY, a foreign)
12 corporation,)
13 individually, and as)
14 successor-by-merger to)
15 LORILLARD TOBACCO COMPANY)
16 and as)
17 successor-in-interest to)
18 the United States tobacco)
19 business of BROWN &)
20 WILLIAMSON TOBACCO)
21 CORPORATION, which is the)
22 successor-by-merger to)
23 THE AMERICAN TOBACCO)
24 COMPANY; LIGGETT GROUP,)
25 LLC, a foreign)
corporation; ASM)
NATIONWIDE CORPORATION)
d/b/a SILVERADO SMOKES &)
CIGARS, a domestic)
corporation; and LV)
SINGHS INC. D/b/a SMOKES)
& VAPORS, a domestic)
corporation; DOES I-X;)
and ROE BUSINESS ENTITIES)
XI-X, inclusive,)
Defendants.)
REMOTE DEPOSITION OF DONNA KINSELLA
February 10, 2022

<p style="text-align: right;">Page 2</p> <p>1 The remote deposition of DONNA KINSELLA, 2 called by the Defendants for examination, taken 3 pursuant to the Code of Civil Procedure and the 4 Rules of the Supreme Court of the State of Illinois 5 pertaining to the taking of depositions for the 6 purposes of evidence, taken before Sheri E. Liss, 7 CSR NO. 084-002600, a Certified Shorthand Reporter 8 within and for the State of Illinois, Registered 9 Professional Reporter, Certified Realtime Reporter, 10 on February 10, 2022 at the hour 8:58 o'clock a.m. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (CONTINUED): 2 KING & SPALDING, LLP 3 1180 Peachtree Street NE, Suite 16090 4 Atlanta, GA 30309 5 BY: ALEXANDER GALVAN, ESQ., 6 agalvan@kslaw.com 7 404.572.4600 8 Appeared on behalf of the Defendant R. J. 9 Reynolds Tobacco Company 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (ALL COUNSEL APPEARING REMOTELY): 2 ON BEHALF OF THE PLAINTIFFS: 3 KELLEY UUSTAL, 4 500 North Federal Highway, Suite 200 5 Fort Lauderdale, FL 33301 6 BY: FAN LI, ESQ., 7 fli@kulaw.com; 8 954.287.3092 9 10 ON BEHALF OF THE DEFENDANT PHILIP MORRIS USA INC.: 11 SHOOK, HARDY & BACON, LLP, 12 2555 Grand Blvd. 13 Kansas City, MO 64108 14 BY: ALEXANDRA SORENSON, ESQ., 15 asorensen@shb.com 16 816.474.6550 17 18 ON BEHALF OF THE DEFENDANT LIGGETT GROUP, LLC: 19 KASOWITZ BENSON TORRES, LLP, 20 1441 Brickell Avenue, Suite 1420 21 Miami, FL 33131 22 BY: GISELLE GONZALEZ MANSEUR, ESQ., 23 gmanseur@kasowitz.com 24 786.587.1045 25</p>	<p style="text-align: right;">Page 5</p> <p>1 I N D E X 2 3 DONNA KINSELLA 4 EXAMINATION PAGE 5 Ms. Sorenson 6 6 Mr. Galvan 267 7 Ms. Manseur 278 8 Mr. Li 279 9 Ms. Sorenson 291 10 Mr. Galvan 297 11 12 E X H I B I T S 13 NO. DESCRIPTION MARKED/REFERRED TO 14 Exhibit 1 Notice of Deposition 39 15 16 **Exhibits Retained** 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 166</p> <p>1 smoked her first ever cigarette?</p> <p>2 A. No.</p> <p>3 Q. Do you know which brand of cigarette</p> <p>4 Mrs. Camacho's first ever cigarette was?</p> <p>5 A. I'm thinking L&M. But that's just my</p> <p>6 recollection. I can't be certain.</p> <p>7 Q. Did Mrs. Camacho ever tell you that her</p> <p>8 first ever cigarette was an L&M?</p> <p>9 A. No.</p> <p>10 Q. So your — just to make sure I</p> <p>11 understand. Your testimony that her first ever</p> <p>12 cigarette was an L&M, that's just based on your</p> <p>13 recollection and nothing more; is that right?</p> <p>14 A. That's right.</p> <p>15 Q. Do you know where Mrs. Camacho obtained</p> <p>16 her first ever cigarette?</p> <p>17 A. You know, the dates are really killing</p> <p>18 me. I didn't realize that I'm that lost in my head</p> <p>19 with dates.</p> <p>20 Where? No, I don't know where she</p> <p>21 smoked her first. She graduated in '64. I was in</p> <p>22 '62 and smoking, so I'm trying to think while I'm</p> <p>23 smoking in 1962, I'm away at school, Sandra is still</p> <p>24 in high school.</p> <p>25 No, I don't remember. No, she was</p>	<p style="text-align: right;">Page 168</p> <p>1 cigarette pack looked like?</p> <p>2 A. Could it be red and white? I don't know</p> <p>3 why I'm thinking it. Maybe red and white. I can't</p> <p>4 be certain.</p> <p>5 Q. Do you remember any words on that</p> <p>6 cigarette pack that you think may have been L&M?</p> <p>7 A. I don't.</p> <p>8 Q. Do you remember when you may have seen</p> <p>9 that cigarette pack that may have been L&M?</p> <p>10 A. No. I would say after she was out of</p> <p>11 the house or married. That wasn't too long after</p> <p>12 she graduated.</p> <p>13 Q. And then other than possibly L&M, are</p> <p>14 you aware of any other specific brands of cigarettes</p> <p>15 that Mrs. Camacho smoked over the years?</p> <p>16 A. I'm really not, no.</p> <p>17 Q. Do you know why Mrs. Camacho chose to</p> <p>18 smoke L&M cigarettes?</p> <p>19 A. No, I don't.</p> <p>20 Q. Do you remember anything about the</p> <p>21 actual cigarettes that you believe may have been L&M</p> <p>22 cigarettes?</p> <p>23 A. I do not.</p> <p>24 Q. To your knowledge, did Mrs. Camacho ever</p> <p>25 smoke a low tar or low nicotine cigarette?</p>
<p style="text-align: right;">Page 167</p> <p>1 not smoking that I knew of when she was in high</p> <p>2 school. I am just reaffirming the dates to my own</p> <p>3 self.</p> <p>4 Q. Do you know why Mrs. Camacho smoked her</p> <p>5 first ever cigarette?</p> <p>6 A. Oh, no, I wouldn't know why.</p> <p>7 Q. Do you know when Mrs. Camacho smoked her</p> <p>8 second cigarette?</p> <p>9 A. No, I wouldn't.</p> <p>10 Q. Do you know when Mrs. Camacho became a</p> <p>11 regular daily smoker?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you recall any of the brands of</p> <p>14 cigarettes that Mrs. Camacho smoked over the years?</p> <p>15 A. No. The only one that came to mind was</p> <p>16 L&M, and I have no idea if she stayed with it or</p> <p>17 not. But that came to mind.</p> <p>18 Q. Do you have a specific memory of seeing</p> <p>19 Mrs. Camacho smoking an L&M cigarette?</p> <p>20 A. Maybe that's why I'm thinking L&M. I</p> <p>21 can't remember seeing it. I would see a pack and it</p> <p>22 may have been L&M, that's how I know, but nothing is</p> <p>23 certain about that.</p> <p>24 Q. And that package of cigarettes that you</p> <p>25 think may have been L&M, do you remember what that</p>	<p style="text-align: right;">Page 169</p> <p>1 A. I don't remember that.</p> <p>2 Q. To your knowledge, did Mrs. Camacho ever</p> <p>3 smoke a light cigarette?</p> <p>4 A. I don't remember that.</p> <p>5 Q. Over the years, did you have any idea</p> <p>6 regarding how many cigarettes Mrs. Camacho would</p> <p>7 smoke in one day?</p> <p>8 A. I don't know, but I'm thinking a pack a</p> <p>9 day.</p> <p>10 Q. And what makes you think that</p> <p>11 Mrs. Camacho smoked a pack of cigarettes a day?</p> <p>12 A. I cannot even tell you that. Maybe when</p> <p>13 we visited, she seemed to light up enough to smoke a</p> <p>14 pack a day. I don't remember why I would think</p> <p>15 that.</p> <p>16 Q. At any point did you specifically count</p> <p>17 the number of cigarettes Mrs. Camacho smoked per</p> <p>18 day?</p> <p>19 A. No, I did not count them.</p> <p>20 Q. At any point did Mrs. Camacho tell you</p> <p>21 how many cigarettes she smoked per day?</p> <p>22 A. She may have said she's smoking a pack a</p> <p>23 day, maybe that's where my recollection comes from.</p> <p>24 I don't know why I say that.</p> <p>25 Q. So is it fair to say you don't have a</p>

Exhibit E

1 IN THE CIRCUIT COURT, FOURTH
2 JUDICIAL CIRCUIT, IN AND FOR
3 DUVAL COUNTY, FLORIDA
4 VOLUME 27 (Pages 2025-2103)

5 IN RE: ENGLE PROGENY CASES CASE NO.: 2008-CA-15000
6 TOBACCO LITIGATION DIVISION: Tobacco

7 Pertains To: Elaine Jordan
8 Case No. 2013-CA-8903-XXXX-MA

9 Jury Trial before The Honorable Virginia Norton,
10 Circuit Court Judge, in the above-entitled action,
11 Courtroom 601, at the Duval County Courthouse, 501 West
12 Adams Street, Jacksonville, Florida, on Tuesday, July
13 21, 2015, at 3:00 p.m., before Terry T. Hurley,
14 Registered Professional Reporter, and Notary Public in
15 and for the State of Florida at Large.

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Hedquist & Associates Reporters, Inc.

<p style="text-align: right;">Page 2026</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 LAURA SHAMP, ESQUIRE LAURIE SPEED, ESQUIRE Shamp Speed Jordan Woodward 1718 Peachtree Street, South Tower Atlanta, Georgia 30309</p> <p>5</p> <p>6 LESLIE BRYAN, ESQUIRE Doffenmyer Shields Canfield & Knowles 1355 Peachtree Street, Suite 1600 Atlanta, Georgia 30309</p> <p>8</p> <p>9 JOHN KALIL, ESQUIRE MICHAEL KALIL, ESQUIRE 6817 Southpoint Parkway, Suite 1402 Jacksonville, Florida 32216</p> <p>11</p> <p>12 Attorneys for Elaine Jordan</p> <p>13</p> <p>14 WALTER COFER, ESQUIRE DAVID THORNE, ESQUIRE Shook Hardy & Bacon 2555 Grand Boulevard Kansas City, Missouri 64108-2613</p> <p>16</p> <p>17 BONNIE DABOLL, ESQUIRE Shook Hardy & Bacon 100 N. Tampa Street, Suite 2900 Tampa, Florida 33602</p> <p>19</p> <p>20 Attorneys for Defendant Philip Morris</p> <p>21</p> <p>22 ---</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 2028</p> <p>1 PROCEEDINGS</p> <p>2 July 21, 2015 3:00 p.m.</p> <p>3 ---</p> <p>4 (The trial continues from Volume 26.)</p> <p>5 THE COURT: Thank you very much.</p> <p>6 We're still waiting for the rest of our group.</p> <p>7 MR. THORNE: Your Honor, Mr. Cofer will be back</p> <p>8 in a second.</p> <p>9 THE COURT: That's fine. We're not going</p> <p>10 anywhere.</p> <p>11 MR. COFER: Your Honor, just a brief sidebar,</p> <p>12 since Dr. Proctor is already on the stand. I want</p> <p>13 to address one thing real quickly.</p> <p>14 THE COURT: Sure.</p> <p>15 (The following sidebar was had outside the</p> <p>16 hearing of the witness.)</p> <p>17 MR. COFER: I don't agree with presumptive list</p> <p>18 argument, but Dr. Proctor is familiar with the</p> <p>19 document, so I think I can do it without, you know,</p> <p>20 putting the document up.</p> <p>21 One source of where the confusion may be that I</p> <p>22 gave her the wrong number. It's actually AN002830.</p> <p>23 The PMU608 is from a different case. This was</p> <p>24 originally on the Reynolds' list, which we adopted,</p> <p>25 so I don't think this was the right number, and that</p>
<p style="text-align: right;">Page 2027</p> <p>1 INDEX</p> <p>2 ROBERT PROCTOR, Ph.D.</p> <p>3 Cross Examination (cont.)</p> <p>4 By Mr. Cofer-----2032</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 ---</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 2029</p> <p>1 may have been part of the confusion.</p> <p>2 MS. SHAMP: Okay.</p> <p>3 THE COURT: I'm not trying to be difficult</p> <p>4 about this. I just don't know. Since it's</p> <p>5 impeachment and it's cross, unless there is an</p> <p>6 order, which what I'm having Mr. Wooded do right</p> <p>7 now, because I'm not familiar with an all-cases</p> <p>8 order on this, but I'm not all-knowing, I've asked</p> <p>9 him and he's going to go through all the all-cases</p> <p>10 orders, so if I've missed something, because I have</p> <p>11 missed things before. But what I can do, unless</p> <p>12 there's an all-cases order saying that about the</p> <p>13 presumptive exhibits I don't know how I can't tell</p> <p>14 them to put something on for impeachment.</p> <p>15 Now that being said, that's why I said because</p> <p>16 I had this happen in Ellis -- I forgot what issue it</p> <p>17 was on, but someone said, oh, but when everyone was</p> <p>18 in the room we all knew what meant so-and-so.</p> <p>19 So I'm happy, like I did in Ellis, to call</p> <p>20 Judge Arnold or Judge Mitchell, and I got something</p> <p>21 clarified one time, with everyone in the room. So</p> <p>22 I'm happy to do that at any time. I don't want</p> <p>23 anyone to think I am being difficult. I just wasn't</p> <p>24 there, and I -- you know, there are a lot of these</p> <p>25 orders, and I just need to be able to know which</p>

<p style="text-align: right;">Page 2086</p> <p>1 field and took a leaf and you ran some chemical analysis 2 on it it would have hundreds of chemicals; right? 3 A Sure. Just like any other plant. 4 Q And if you burned it it would produce hundreds 5 of carcinogens; right? 6 A That's right. 7 Q If you dried it and cured it and rolled it and 8 smoked enough of it you could get cancer; right? 9 A Of course. 10 Q If you took just leaves out of the field and 11 you dried it, cured it, and smoked enough of them you 12 could become addicted; right? 13 A Sure, as long as it contained nicotine. If it 14 was a super low nicotine leaf that might not be true, 15 but in most cases it would be true. 16 Q Okay. And you agree, Doctor, there's no such 17 thing as a safe cigarette; right? 18 A The only true truly safe cigarette would be one 19 you didn't smoke. 20 Q And you agree that smoke from cigarettes from 21 the 1800's was not profoundly less addictive than smoke 22 from cigarettes today? 23 A In principal, yeah. There are certain respects 24 in which it's become more addictive, but those have 25 mainly to do with availability, attractiveness, vending</p>	<p style="text-align: right;">Page 2088</p> <p>1 specification that includes nicotine control. 2 Q And also the idea is for a consumer product to 3 be successful you want uniformity and consistency; 4 right? 5 A That's right. A Marlboro here should be like a 6 Marlboro elsewhere. 7 Q Sure. And a Coca-Cola here should be like a 8 Coca-Cola elsewhere; right? 9 A Sure. 10 Q So in terms of consumer products, successful 11 manufacturers do try to make sure they have consistency 12 and uniformity and predictability; right? 13 A They do. 14 Q Okay. So let's talk a little bit about 15 selective reduction. Just to set it up, we talked with 16 the jury about this some. 17 So there came a time when smoking is indicted 18 it was causing cancer and the companies said things like 19 if we can find out what's causing it we'll take it out, 20 and, you know, we'll make it safe? 21 A Yeah. I don't think of it as an indictment. I 22 think of it as just evidence. 23 Q Thank you. I probably misspoke. 24 And you talked about the single-factor theory; 25 right?</p>
<p style="text-align: right;">Page 2087</p> <p>1 machines, things like that. Basically anything that 2 makes the cigarette more attractive, available, 3 indirectly makes it more addictive. 4 Q But the bottom line, as long as cigarettes have 5 nicotine in them, they have enough nicotine in them they 6 can be addictive; right? 7 A That's true. It's basically about if they have 8 about 1 milligram of nicotine in the rod they are most 9 likely going to be able to create and sustain addiction. 10 Q And as long as they have tobacco in them, if 11 you burn it they create carcinogens that can cause 12 cancer and other diseases; right? 13 A That's true. 14 Q You told the jury that nicotine occurs 15 naturally in the tobacco plant? 16 A Yeah, naturally and artificially. 17 Q You talked about, you know, it's an 18 agricultural product, so it changes over time, you know, 19 each year depending on weather and other things; right? 20 A That's right. 21 Q You talked about the companies controlling 22 nicotine and controlling -- 23 A Calibrating. 24 Q -- calibrating cigarettes; right? 25 A Yeah, because each cigarette has a brand</p>	<p style="text-align: right;">Page 2089</p> <p>1 A Yes. 2 Q And there were efforts to try to selectively 3 remove things from tobacco; right? 4 A That's right. There was an effort to remove 5 the arsenic, and that's one reason DDT replaced the lead 6 arsenate and the lead arsenite that were used as 7 pesticides on tobacco. There was an effort to digest or 8 destroy the polycyclics, which is one reason they put 9 catalysts and platinum and various other things. 10 So you're right. There was an effort to try to 11 destroy or eliminate the suspected hazardous element. 12 Q But the problem was the single-factor theory 13 was in fact what was happening? 14 A False. Yeah, the single-factor theory is 15 false. Smoke is complex, and irremediably complex. 16 Q So even though you could reduce some 17 components, maybe you could eliminate some components, 18 the bottom line is it wasn't making cigarettes safer? 19 A That's right. You can't make clean smoke. 20 It's all dirty. 21 Q So you can't selectively remove the compounds 22 from the smoke. So the other thing that was done was 23 something called general reduction? 24 A General reduction I regard as totally 25 fraudulent.</p>

17 (Pages 2086 to 2089)

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Exhibit F

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 07-34267 CA 15

LINDA MARTIN,

Plaintiff,

vs.

PHILIP MORRIS USA, INC., a Virginia corporation,

Defendant.

_____ /

V O L U M E 12

Pages 1307 to 1448

The above-styled cause came on for
trial before the Honorable JOSE RODRIGUEZ,
Judge of the above-styled court, at the
Miami-Dade County Courthouse, 73 West
Flagler Street, Miami, Florida, on Tuesday,
May 9, 2017, commencing at 1:40 p.m.

<p style="text-align: right;">Page 1308</p> <p>1 A P P E A R A N C E S 2 For the Plaintiffs: 3 4 KOCH PARAFINCZUK & WOLF, P.A. 5 110 East Broward Boulevard 6 Suite 1633 7 Fort Lauderdale, Florida 33301 8 BY: AUSTIN CARR, ESQ. and 9 10 JOSE MENENDEZ LAW FIRM 11 6701 Sunset Drive 12 Suite 104 13 Miami, Florida 33143 14 BY: JOSE MENENDEZ, ESQ. 15 16 For the Defendant Philip Morris: 17 WEIL GOTSHAL & MANGES, LLP 18 17 Hulfish Street 19 Suite 201 20 Princeton, New Jersey 08542-3792 21 BY: DIANE SULLIVAN, ESQ. and 22 ADAM S. TOLIN 23 24 SHOOK HARDY & BACON, LLP 25 201 South Biscayne Boulevard Suite 3200 Miami, Florida 33131 BY: FRANK CRUZ-ALVAREZ, ESQ. BRIAN JACKSON, ESQ.</p>	<p style="text-align: right;">Page 1310</p> <p>1 THE COURT: Bring them in. 2 (Jury present in courtroom.) 3 THE COURT: You may be seated. 4 Mr. Carr, you can proceed. 5 CONTINUED DIRECT EXAMINATION 6 BY MR. CARR: 7 Q. Dr. Kyriakoudes, still keeping in mind 8 that the height of cigarette consumption was 9 1980. I would like to direct your attention to 10 Exhibit 1443 which is in evidence. This is a 11 document from the Council for Tobacco Research. 12 What is Council for Tobacco Research? 13 A. That is the successor to the Tobacco 14 Industry Research Committee. Its named changed 15 in 1964. But it was the grant-giving and 16 research division of the tobacco industry's 17 joint actions. 18 Q. Now, the point of this document and 19 question is: How were these two organizations, 20 the Council for Tobacco Research and The Tobacco 21 Institute, how were they funded? 22 A. They were funded by contributions from 23 the member tobacco firms, which included Philip 24 Morris. 25 Q. How did they determine who was going</p>
<p style="text-align: right;">Page 1309</p> <p>1 I N D E X 2 3 W I T N E S S P A G E 4 Louis Kyriakoudes, Ph.D. 5 Continued Direct Examination by Mr. Carr 1310 6 Cross-Examination by Ms. Sullivan 1322 7 Redirect Examination by Mr. Carr 1441 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 1311</p> <p>1 to pay what? 2 A. They base their dues roughly on market 3 share and gross sales and relatively size of the 4 companies. 5 Q. Can we highlight the lower section? 6 So this document is from 1977. What 7 was Philip Morris' market share or share of the 8 payment? 9 A. Yes. So in this case they are funding 10 about 30 percent, just under 2. -- 11 28.88 percent, or just under 29 percent of the 12 cost of the organization. Again, based on their 13 share in the market. 14 Q. How many billions of cigarettes was 15 Philip Morris selling domestically in 1977? 16 A. Well, as that indicates there, 17 160 billion cigarettes. 18 Q. And where were they in the 19 marketplace? 20 A. They were, you know, right with R.J. 21 Reynolds. Those were the two leading firms at 22 the time. 23 Q. Okay. Now, I want to talk to you 24 about advertising in particular. We saw the ads 25 and so on. I want to talk about expenditure.</p>

2 (Pages 1308 to 1311)

<p style="text-align: right;">Page 1424</p> <p>1 Q. Benson & Hedges. Do you know they 2 sold Ms. Martin's brand, De-Nic? 3 A. Yes. 4 Q. And you know that they created a 5 cigarette -- 6 I want to show the witness some of the 7 cigarettes. 8 MR. CARR: It's not on their exhibit 9 list. It wasn't disclosed. Same objection. 10 MS. SULLIVAN: Demonstrative. 11 THE COURT: Overruled. 12 Q. As part of the historical record you 13 didn't talk to your jurors about all the efforts 14 that Philip Morris took. 15 You showed the document which said: 16 If we can make a safer cigarette, we can take 17 over the whole market. 18 Right? You showed them that document? 19 A. That's true. That was something that 20 a tobacco company official said. 21 Q. But you didn't talk about all the 22 efforts that Philip Morris undertook to do just 23 that, to make the safer cigarette and try to 24 take over the market? 25 A. Those are half-hearted efforts. And,</p>	<p style="text-align: right;">Page 1426</p> <p>1 about that? 2 A. No. Because they continued to market 3 and advertise the ones that were not safe. 4 Q. The truth is, notwithstanding all of 5 Philip Morris efforts to make a safer cigarette, 6 the government concluded that there is no such 7 thing as a safer cigarette? 8 A. Because that's true. 9 Q. No one's come up with a way, even 10 today, to make a safer cigarette, no safer 11 cigarette, unfortunately? 12 A. They're too dangerous. 13 Q. Unfortunately, Doctor, we both agree 14 on one thing, no safer cigarette, right? 15 A. A traditional cigarette is just too 16 dangerous for human health. 17 Q. Notwithstanding all of the efforts -- 18 do you know how much -- as part of your 19 historical record, did you research how much 20 money Philip Morris spent trying to make a safer 21 cigarette? 22 A. They spent a considerable amount of 23 money. 24 Q. Billions, right? Did you look? 25 A. Millions. Many millions.</p>
<p style="text-align: right;">Page 1425</p> <p>1 again, keep in mind that Philip Morris continued 2 to manufacture, sell, and heavily market the 3 cigarettes that addicted people and can cause 4 disease. 5 Q. My question, Doctor, is you didn't 6 mention to our jury any of the many efforts that 7 Philip Morris undertook to try to make a safer 8 cigarette? 9 A. We've identified one. There are two 10 really. That's it. So "many" -- I don't know 11 if "many" applies as an adjective to the number 12 two. 13 Q. You know about selective reduction. 14 You know about the De-Nic effort. You know 15 about the effort with the -- Accord, the heat 16 don't smoke. You know about that effort, right? 17 A. Yes. That's the other one I was 18 thinking of. 19 Q. To try to get the smoke to go this way 20 and not out and people didn't have to have it 21 burned, they made this contraption? 22 Unfortunately no customer wanted to smoke it. 23 It doesn't look that great, right? 24 But they tried all kinds of things to 25 make a safer cigarette, and you didn't talk</p>	<p style="text-align: right;">Page 1427</p> <p>1 Q. Billions. Did you not count it up as 2 part of the historical record? 3 A. No. I knew they had these efforts. I 4 haven't sat down and added them up. 5 Q. The government said, Nice try, Philip 6 Morris. There's no way to make this safe. 7 A. That's an accurate judgment. 8 Q. So what the government decided to do 9 is give people the warning and let them make 10 their own decisions? 11 A. Well, now you're getting into politics 12 and the political process, and Philip Morris is 13 deeply involved in every aspect of that. 14 MS. SULLIVAN: Your Honor. 15 Q. The government decided to put warnings 16 on the pack and give people a choice. 17 A. When you say "the government decided," 18 we're talking about federal legislation that 19 comes about in 1965, 1969, and 1984, all of 20 which -- 21 MS. SULLIVAN: Your Honor, move to 22 strike. 23 THE COURT: Overruled. 24 MS. SULLIVAN: This is getting into 25 Noerr-Pennington issues.</p>

31 (Pages 1424 to 1427)

Exhibit G

1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL COURT

2 IN AND FOR BROWARD COUNTY, FLORIDA

3 CASE NO. 08-80000 (19)

4 IN RE: ENGLE PROGENY CASES

5 TOBACCO LITIGATION

6
7 PERTAINS TO:

8 MYRON KAPLAN, AS PERSONAL

9 REPRESENTATIVE OF THE ESTATE

10 OF SHEILA KAPLAN

11 Case No. 08-025823

12
13
14 VIDEOTAPED DEPOSITION OF JUDITH J. PROCHASKA, PH.D., MPH

15 SAN FRANCISCO, CALIFORNIA

16 TUESDAY, DECEMBER 20, 2016

17
18
19
20
21
22 REPORTED BY:

23 MEGAN F. ALVAREZ, RPR, CSR No. 12470

<p style="text-align: right;">Page 2</p> <p>1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL COURT</p> <p>2 IN AND FOR BROWARD COUNTY, FLORIDA</p> <p>3 CASE NO. 08-80000 (19)</p> <p>4 IN RE: ENGLE PROGENY CASES</p> <p>5 TOBACCO LITIGATION</p> <p>6</p> <p>7 PERTAINS TO:</p> <p>8 MYRON KAPLAN, AS PERSONAL</p> <p>9 REPRESENTATIVE OF THE ESTATE</p> <p>10 OF SHEILA KAPLAN</p> <p>11 Case No. 08-025823</p> <p>12 _____</p> <p>13</p> <p>14</p> <p>15</p> <p>16 Videotaped Deposition of JUDITH J. PROCHASKA,</p> <p>17 PH.D., MPH, taken on behalf of Defendants, at Veritext,</p> <p>18 101 Montgomery Street, Suite 450, San Francisco,</p> <p>19 California, beginning at 9:17 a.m. and ending at</p> <p>20 5:48 p.m. on Tuesday, December 20, 2016, before</p> <p>21 Megan F. Alvarez, RPR, Certified Shorthand Reporter</p> <p>22 No. 12470.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (CONTINUED):</p> <p>2</p> <p>3 FOR DEFENDANT PHILIP MORRIS USA:</p> <p>4 BY: MARK J. HEISE, ESQ.</p> <p>5 BOIES, SCHILLER & FLEXNER, LLP</p> <p>6 100 SOUTHEAST 2ND STREET, STE. 2800</p> <p>7 MIAMI, FLORIDA 33131-2144</p> <p>8 305.539.8400</p> <p>9 MHEISE@BSFLLP.COM</p> <p>10</p> <p>11 Videographer:</p> <p>12 MICHAEL BARBER, UNITED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 FOR PLAINTIFF:</p> <p>4 BY: BRITTANY CHAMBERS, ESQ.</p> <p>5 (VIA TELEPHONE)</p> <p>6 SCHLESINGER LAW OFFICES, P.A.</p> <p>7 1212 SOUTHEAST 3RD AVENUE</p> <p>8 FORT LAUDERDALE, FLORIDA 33316</p> <p>9 954.777.1111</p> <p>10 954.320.9509 FAX</p> <p>11 BCHAMBERS@SCHLESINGERLAW.COM</p> <p>12</p> <p>13 FOR DEFENDANT R.J. REYNOLDS:</p> <p>14 BY: FRANK T. BAYUK, ESQ.</p> <p>15 KING & SPALDING</p> <p>16 1180 PEACHTREE STREET, N.E.</p> <p>17 ATLANTA, GEORGIA 30309-3521</p> <p>18 404.572.3552</p> <p>19 404.572.5100 FAX</p> <p>20 FBAYUK@KSLAW.COM</p> <p>21 ///</p> <p>22 ///</p> <p>23 ///</p> <p>24 ///</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX</p> <p>2 WITNESS EXAMINATION</p> <p>3 JUDITH J. PROCHASKA, PH.D., MPH</p> <p>4 Volume I</p> <p>5 BY MR. HEISE9</p> <p>6 BY MR. BAYUK289</p> <p>7 BY MR. HEISE332</p> <p>8 BY MS. CHAMBERS334</p> <p>9</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 NUMBER PAGE</p> <p>13 Exhibit 1 Notice of Taking Deposition Duces30</p> <p>14 Tecum with attached Schedule A</p> <p>15</p> <p>16 Exhibit 2 Detailed notes of Dr. Prochaska32</p> <p>17 entitled "Sheila Kaplan"</p> <p>18</p> <p>19 Exhibit 3 Dr. Prochaska's notes entitled33</p> <p>20 "Nicotine Dependence Criteria:</p> <p>21 Sheila Kaplan"</p> <p>22</p> <p>23 Exhibit 4 Document entitled "Phone call with33</p> <p>24 Myron Kaplan, 12/19/16 11:00 a.m.</p> <p>25 - 11:43 a.m."</p>

2 (Pages 2 - 5)

<p style="text-align: right;">Page 94</p> <p>1 Parliament filtered cigarette?</p> <p>2 A. I would refer to those tables in terms of</p> <p>3 the yields but not about the flow rates.</p> <p>4 Q. Have you ever designed a cigarette?</p> <p>5 A. I have no interest in designing a</p> <p>6 cigarette.</p> <p>7 Q. Have you ever been involved in any sort of</p> <p>8 engineering of a cigarette?</p> <p>9 A. No.</p> <p>10 Q. You said you also may provide information</p> <p>11 about the marketing of filtered cigarettes?</p> <p>12 A. Yes.</p> <p>13 Q. What information is it you intend to</p> <p>14 provide about the marketing of filtered cigarettes?</p> <p>15 A. That it was heavily marketed with</p> <p>16 innovation of having filtration. The Kent</p> <p>17 micronite, that it could be pure as the air that's</p> <p>18 filtered in a hospital; that they had these</p> <p>19 scientific studies and these are the results of</p> <p>20 those studies. I think one of the ads I have</p> <p>21 there...</p> <p>22 I won't talk about asbestos in the Kent</p> <p>23 filter, although that was there too.</p> <p>24 The recessed filter, that it was to keep</p> <p>25 the tobacco out of your lips. It had -- gave you</p>	<p style="text-align: right;">Page 96</p> <p>1 That also was national, was on all the NFL games</p> <p>2 and...</p> <p>3 Q. Can you identify any product marketing</p> <p>4 that you've been involved in?</p> <p>5 A. Product? So Quitline is a product and the</p> <p>6 FitnessGram and -- PE education program. Those were</p> <p>7 both products.</p> <p>8 Q. Somebody would go to the store, what would</p> <p>9 they buy from the FitnessGram?</p> <p>10 A. You have to go to a store to buy a</p> <p>11 product. You can't buy online.</p> <p>12 Q. What online product would be shipped to</p> <p>13 them?</p> <p>14 A. Software.</p> <p>15 Q. Do you know the difference between a</p> <p>16 product and software that gets loaded on your</p> <p>17 computer?</p> <p>18 A. They get FitnessGram reports that they</p> <p>19 take home to their parents that show their fitness</p> <p>20 levels.</p> <p>21 Q. Can you identify any commercial product</p> <p>22 that you've been involved in the marketing of?</p> <p>23 A. Nothing other than that.</p> <p>24 Q. Okay. Do you still agree there's no such</p> <p>25 thing as a safe cigarette?</p>
<p style="text-align: right;">Page 95</p> <p>1 more of a margin to keep tobacco away as well as</p> <p>2 giving you clean, pure taste that's so good.</p> <p>3 Q. Do you have any degree in marketing?</p> <p>4 A. A degree in marketing? No, I don't.</p> <p>5 Q. Have you ever participated in any</p> <p>6 commercial marketing plan?</p> <p>7 A. I have.</p> <p>8 Q. What commercial marketing have you been</p> <p>9 involved in?</p> <p>10 A. Commercial marketing? It was a commercial</p> <p>11 marketing group that developed an ad campaign for</p> <p>12 tips for the Centers for Disease Control, which is a</p> <p>13 major national ad campaign, and I worked on that the</p> <p>14 past year.</p> <p>15 You and I talked about this for about over</p> <p>16 an hour and a half, I think, in one of my</p> <p>17 depositions, and nothing's been added since that</p> <p>18 last hour-and-a-half thorough review that we did of</p> <p>19 my marketing expertise.</p> <p>20 Q. Other than being involved in the CDC ad</p> <p>21 campaign, nothing else that you've done regarding</p> <p>22 marketing?</p> <p>23 A. Well, that same day that we talked about</p> <p>24 that, we also talked about how I worked with the</p> <p>25 Cooper Institute with an NFL Play 360 ad campaign.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Yes.</p> <p>2 Q. The only safe cigarette would be one that</p> <p>3 you haven't smoked, right?</p> <p>4 A. Or that isn't sold, sure.</p> <p>5 Q. Any cigarette that is smoked, regardless</p> <p>6 of its design, is dangerous, right?</p> <p>7 A. Some could be less dangerous if they had</p> <p>8 less nicotine in them.</p> <p>9 Q. Still dangerous, right?</p> <p>10 A. Combustion is dangerous, yes.</p> <p>11 Q. Right. Meaning if you burn tobacco,</p> <p>12 whether it's from a garden in your backyard or it</p> <p>13 comes from a tobacco company, it's going to combust</p> <p>14 and it's going to produce chemicals that are</p> <p>15 dangerous to you, right?</p> <p>16 A. I know that, yes.</p> <p>17 Q. So then you agree as long as cigarettes</p> <p>18 have tobacco in them and you burn them, they're</p> <p>19 going to be dangerous, right?</p> <p>20 A. I do know that.</p> <p>21 Q. When is it that you believe Ms. Kaplan</p> <p>22 made her first effort to quit?</p> <p>23 A. She switched from unfiltered to filtered,</p> <p>24 it sounds like in the '60s as an attempt to do</p> <p>25 something more healthy.</p>

25 (Pages 94 - 97)

Exhibit H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE: SANTA FE
NATURAL TOBACCO COMPANY
MARKETING & SALES
PRACTICES AND PRODUCTS No. 1:16-MD-02695-JB-LF
LIABILITY LITIGATION

DEPOSITION OF ROBERT N. PROCTOR, Ph.D.
Palo Alto, California
Wednesday, July 31, 2019

Reported by:
Natalie Y. Botelho
CSR No. 9897

2	4
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NEW MEXICO</p> <p>3</p> <p>4 IN RE: SANTA FE</p> <p>5 NATURAL TOBACCO COMPANY</p> <p>6 MARKETING & SALES</p> <p>7 PRACTICES AND PRODUCTS No. 1:16-MD-02695-JB-LF</p> <p>8 LIABILITY LITIGATION</p> <p>9 _____/</p>	<p>1 INDEX</p> <p>2 WITNESS EXAMINATION</p> <p>3 ROBERT N. PROCTOR, Ph.D.</p> <p>4</p> <p>5</p> <p>6 By Mr. Belasic 10</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NUMBER DESCRIPTION PAGE</p>
<p>10 Videotaped deposition of ROBERT N.</p> <p>11 PROCTOR, Ph.D., taken on behalf of Defendants, at</p> <p>12 1755 Embarcadero Road, Palo Alto, California,</p> <p>13 beginning at 12:08 p.m. and ending at 5:15 p.m. on</p> <p>14 Wednesday, July 31, 2019, before NATALIE Y. BOTELHO,</p> <p>15 Certified Shorthand Reporter No. 9897.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>10 Exhibit 1 Second Amended Notice of Deposition Duces Tecum: Robert Proctor, Ph.D.</p> <p>11 Exhibit 2 Expert Report by Robert N. Proctor 9</p> <p>12</p> <p>13 Exhibit 3 Curriculum Vitae of Robert N. Proctor 17</p> <p>14 Exhibit 4 An article in Santa Fe Reporter entitled "The Ciggie Different" 9</p> <p>15 Exhibit 5 A group of articles, the first entitled "Restricting 'Natural' and 'Additive-free': Did FDA's Agreement with Santa Fe Natural Tobacco Company Change Advertising for Natural American Spirit?" 13</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Exhibit 6 A Reader's Digest Special Report article entitled "What's Been Added to Your Cigarette?" 42</p> <p>22 Exhibit 7 An article in Health entitled "Low Tar, High Risk" 42</p> <p>23</p> <p>24</p> <p>25</p>
3	5
<p>1 APPEARANCES:</p> <p>2</p> <p>3 For Plaintiffs:</p> <p>4 SCHLESINGER LAW OFFICES, P.A.</p> <p>5 BY: JEFFREY L. HABERMAN, ESQ.</p> <p>6 1212 Southeast Third Avenue</p> <p>7 Fort Lauderdale, FL 33316</p> <p>8 (954)467-8800</p> <p>9 jhaberman@schlesingerlaw.com</p> <p>10</p> <p>11 REESE LLP</p> <p>12 BY: MICHAEL R. REESE, ESQ.</p> <p>13 875 Avenue of the Americas, 18th Floor</p> <p>14 New York, NY 10001</p> <p>15 (212)643-0500</p> <p>16 mreese@reesellp.com</p> <p>17</p> <p>18 For Defendants:</p> <p>19 JONES DAY</p> <p>20 BY: MARK A. BELASIC, ESQ.</p> <p>21 BY: ASHLEY L. McDONOUGH, ESQ.</p> <p>22 (via telephone)</p> <p>23 North Point, 901 Lakeside Avenue</p> <p>24 Cleveland, OH 44114-1190</p> <p>25 (216)58-3939</p> <p>mabelasic@jonesday.com</p> <p>amcdonough@jonesday.com</p> <p>Also Present:</p> <p>DOUG KLOTE, analyst, Jones Day</p> <p>KEIGO PAINTER, Videographer</p>	<p>1 E X H I B I T S (continued)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 8 A document entitled "The Health Consequences of Smoking, the Changing Cigarette, a report of the Surgeon General" 53</p> <p>4</p> <p>5</p> <p>6 Exhibit 9 An article in The Nation entitled "Secret Cigarette Additives, What Goes Up In Smoke?" 53</p> <p>7</p> <p>8 Exhibit 10 A transcript dated April 8, 1994, Time: 6:00 - 8:00 AM (ET), Network: National Public Radio, Program: Morning Edition 56</p> <p>9</p> <p>10</p> <p>11 Exhibit 11 A document entitled "Cigarette Ingredients, A complete list and background" 56</p> <p>12</p> <p>13 Exhibit 12 A document on the letterhead of R.J. Reynolds Tobacco Company dated 04-13-94, Contact: David B. Fisher 56</p> <p>14</p> <p>15</p> <p>16 Exhibit 13 An article in The New York Times Styles Sunday, July 3, 1994, entitled "New Cigarette, but Same Old Problem" 56</p> <p>17</p> <p>18 Exhibit 14 A document entitled "Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine," Bates LP_1977.0001 and LP_1977.0193 67</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Exhibit 15 An article in Public Health Then and Now entitled "The Secret and Soul of Marlboro" 71</p> <p>23</p> <p>24</p> <p>25 Exhibit 16 A document entitled "A Report of the Surgeon General, How Tobacco Smoke Causes Disease, what it means to you" 82</p>

2 (Pages 2 to 5)

1 MR. HABERMAN: Objection.
 2 THE WITNESS: Well, there's multiple
 3 problems with that. I mean, the only coherence to
 4 it is that you're dead either way. If -- the
 5 analogy -- you didn't quite finish it, but they
 6 would say that, you know, light cigarettes are like
 7 jumping off the 40th floor, and regulars are like
 8 jumping off the 45th floor. The better analogy
 9 would be they're both like jumping off the 45th
 10 floor because there's no difference.
 11 MR. BELASIC: Q. So because so much of
 12 your report is about the perception of difference in
 13 additive-free things in general and Natural American
 14 Spirits in particular, I'm trying to focus on what
 15 consumers of Natural American Spirit who say "safer"
 16 mean.
 17 And I guess my first question on that
 18 would be, in all of the studies and surveys that
 19 have been published in peer review journals, none of
 20 those studies actually follow up and interrogate or
 21 ask the people what they meant by "safer," right?
 22 They just ask the question, they record the results?
 23 A. So far as I know. I haven't really probed
 24 that particular issue.
 25 Q. Okay. So you're not aware, then, of a

1 study where they had, like say, extensive follow-up
 2 to see what Mr. Smith meant by "My cigarette's
 3 safer"?
 4 A. For example. Or to give you another
 5 example, I haven't seen surveys that look like --
 6 that say, well, is it safer for heart disease and
 7 lung cancer, or just heart disease, for example.
 8 Q. Right. All right. So let's talk about
 9 these general forces that created what you called
 10 the mythology that added -- that taking additives
 11 out of tobacco or reducing additives could be safer.
 12 A. Well, would make them safer.
 13 Q. Would make them safer.
 14 A. The abstract possibility is not the
 15 mythology. It's the actual conviction.
 16 Q. Right. You call it a mythology --
 17 A. Because it's not true.
 18 Q. -- because no matter how many additives
 19 you remove from a cigarette, it's not going to make
 20 it safer than a cigarette with additives; is that
 21 correct?
 22 A. Unless you took out the tobacco or --
 23 Q. Right.
 24 A. -- something else. A broader definition
 25 of additives. It's not the additives that make a

1 cigarette harmful.
 2 Q. So let's go back. 1962, Rachel Carson
 3 kicks off the environmental movement by publishing a
 4 book called Silent Spring --
 5 A. That's right.
 6 Q. -- right? And Silent Spring was basically
 7 about DDT and deadly pesticides that killed off
 8 birds and other creatures.
 9 A. Right. And she also had some cancer
 10 discussions, as well.
 11 Q. One of the things that Rachel Carson did
 12 was not just draw attention to DDT and pesticides,
 13 but also to draw attention to what she said were the
 14 industry's attempt to cover it up and make false
 15 claims.
 16 A. That's right.
 17 Q. Right? Is -- starting in the 1960s, you
 18 agree there was a growing sense of concern about
 19 things like pesticides or chemical additives?
 20 A. Correct.
 21 Q. So just in general, is the environmental
 22 movement and sort of, you know, no dangerous
 23 chemicals movement is one of the precursors to this
 24 additive-free mythology?
 25 A. It is.

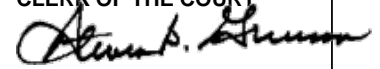
1 Q. Then you identify -- well, I don't know if
 2 it's a movement, but sometimes seems like it -- the
 3 organic food movement?
 4 A. Sure.
 5 Q. And when did that start?
 6 A. Well, you know, all of these things go in
 7 stages. Already at the end of the 19th century,
 8 following the packaged pleasures revolution, you
 9 have people warning about sugar, warning about
 10 additives. There are adulteration laws in England
 11 in the 1840s about people adulterating bread. The
 12 beer gazettes of Germany, you know, requires that
 13 beer be only made from four ingredients.
 14 So there are elements of concern about the
 15 purity of air and water that go back probably
 16 with -- as old as there are humans, right? But the
 17 kind of '60s granola version --
 18 Q. That's what I'm asking about.
 19 A. -- accelerates in the 1960s.
 20 Q. Okay. You say --
 21 A. Mainly in consequence to things like the
 22 Rachel Carson book to the worries about air
 23 pollution, water pollution, adulteration of foods,
 24 chemicalization of our environment.
 25 Q. So organic food becomes a significant

1 MR. HABERMAN: Let's take a quick break.
 2 MR. BELASIC: Yeah. In fact, I was just
 3 going to say on the record -- I haven't told you --
 4 obviously, you can take a -- let me know you want to
 5 take a break at any time, and certainly Plaintiff's
 6 counsel.
 7 THE WITNESS: Well, thank you,
 8 Mr. Pickles. I mean -- sorry -- Mr. Vlasic. I
 9 mean -- sorry -- Mr. Belasic. I appreciate the
 10 break.
 11 THE VIDEOGRAPHER: This is the end of Disk
 12 1. Off the record at 1:30.
 13 (Whereupon Exhibit 16, Exhibit 17, and
 14 Exhibit 18 were marked for
 15 identification.)
 16 THE VIDEOGRAPHER: This is the start of
 17 Disk 2. Back on the record at 1:48.
 18 THE WITNESS: We're on.
 19 MR. BELASIC: Q. Oh. So Dr. Proctor,
 20 public health community criticism of additives in
 21 cigarettes, that didn't stop in 1994 or even in
 22 2001, when Monograph 13 came out?
 23 A. No. I would say, if anything, it probably
 24 accelerated.
 25 Q. So I want -- I gave you what I think is a

1 couple examples of that. If you look at Exhibit 16,
 2 it's a document titled "A Report of the Surgeon
 3 General, How Tobacco Smoke Causes Disease," and this
 4 is the Surgeon General's -- they call it sort of the
 5 consumer summary. It's a short design for
 6 laypeople, sort of highlights of what the Surgeon
 7 General found.
 8 A. It is.
 9 Q. And --
 10 A. Yeah, it's got that phrase "Tobacco smoke
 11 is a deadly mix of more than 7,000 chemicals."
 12 Q. If you could look at page 4, and it talks
 13 about addiction. And so page 4, the 2010 Surgeon
 14 General's report consumer version says, "Cigarettes
 15 designed for addiction." And one of the things they
 16 highlight again is additives. And it says, quote,
 17 "The additives and chemicals that tobacco companies
 18 put in cigarettes may have helped them make" --
 19 "make them more addictive," right?
 20 A. Yes.
 21 MR. HABERMAN: Just going to say the
 22 document speaks for itself.
 23 MR. BELASIC: Q. So in 2010, though, the
 24 Surgeon General's position still is that additives
 25 might be making cigarettes more addictive, and

1 they're telling the public that?
 2 MR. HABERMAN: Objection.
 3 THE WITNESS: Well, that's one thing. I
 4 think by that time, they're also recognizing that
 5 the claim of being additive-free as a safety claim
 6 is also deceptive.
 7 MR. BELASIC: Q. Well, but just in terms
 8 of what they're telling the smokers here, you read
 9 this 2010 consumer version of the report, you're
 10 going to believe that cigarettes may have helped --
 11 additives may have helped cigarettes be more
 12 addictive, right?
 13 A. Well, it depends on how you take it,
 14 right, and what else you know.
 15 Q. If you could look at Exhibit 17, the WHO.
 16 A. Yes.
 17 Q. And the WHO fact sheet on ingredients in
 18 tobacco products also says that ingred- -- they call
 19 them ingredients. Could be -- we call it
 20 additives -- makes cigarettes more dangerous,
 21 correct?
 22 MR. HABERMAN: Objection.
 23 THE WITNESS: Where does it say that?
 24 MR. BELASIC: Q. The "Why are tobacco
 25 ingredients of public health concern?" That's the

1 third subtitle. And they say the answer is,
 2 "Ingredients in tobacco products may affect public
 3 health in several ways such as increasing the
 4 attractiveness, addictiveness, and toxicity of a
 5 well-established harmful drug."
 6 A. Sure, yeah, especially if by "ingredients"
 7 you include the flue-cured tobacco.
 8 Q. I mean, so -- so this is 2014. So the
 9 World Health Organization, they're not saying, as
 10 you've explained, that, look, this is a mountain in
 11 a molehill. The danger comes from setting tobacco
 12 on fire, not from an ingredient or a flavor
 13 additive.
 14 A. Well, that is true, yeah. The additives
 15 are relatively unimportant in terms of the overall
 16 toxicity --
 17 Q. Right.
 18 A. -- and harm potential of a cigarette.
 19 Q. But yet in their World Health Organization
 20 fact sheet just recently from 2014, instead of
 21 saying that, they go out of their way to have a
 22 separate section that says the ingredients they add
 23 make them -- can make them more toxic and more
 24 addictive.
 25 MR. HABERMAN: Objection.



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DISTRICT COURT

CLARK COUNTY, NEVADA

SANDRA CAMACHO, individually, and
ANTHONY CAMACHO, individually,

Plaintiffs,

vs.

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; and ASM NATIONWIDE
CORPORATION d/b/a SILVERADO
SMOKERS & CIGARS, a domestic
corporation, and ROE BUSINESS ENTITIES
XI-XX, inclusive.

Defendants.

Case No. A-19-807650-C

Dept. No. IV

HEARING REQUESTED

**DEFENDANT LIGGETT GROUP LLC'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON PLAINTIFFS'
NEGLIGENCE AND STRICT LIABILITY
CLAIMS**

1 Defendant Liggett Group LLC (“Liggett”), by and through its undersigned counsel of
2 record, files this motion for partial summary judgment on Plaintiffs’ claims for negligence and strict
3 liability.¹ This motion is made and based on the pleadings, evidence, and papers on file here, the
4 following memorandum of points and authorities, and any oral argument allowed at the time of
5 hearing this matter.

6 **I. MEMORANDUM OF POINTS AND AUTHORITIES**

7 The Court should grant summary judgment in Liggett’s favor on Plaintiffs’ claims for
8 negligence and strict products liability because there is no genuine dispute of material fact, and
9 Liggett is entitled to judgment as a matter of law. Sandra Camacho (“Mrs. Camacho”) started
10 smoking Liggett’s L&M cigarettes in 1964, and continued smoking them until 1990, when she
11 switched to another cigarette brand. Plaintiffs’ negligence and strict liability claims proceed under
12 two theories: 1) Liggett’s failure to warn Mrs. Camacho about certain health risks of smoking, and
13 2) design defect claims, *i.e.*, allegations that Liggett’s cigarettes failed to perform in the manner
14 reasonably to be expected in light of their nature and intended function. Both claims fail.

15 Plaintiffs’ post-1969 warning claims are preempted by federal law. Plaintiffs’ warning
16 claims arising before July 1, 1969 also fail because there is no evidence that Mrs. Camacho would
17 not have started smoking or would have quit between 1964 and July 1, 1969 but for Liggett’s failure
18 to provide additional warnings. Moreover, any warning claims after July 1, 1969 fail because they
19 are preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331, *et. seq.*
20 (“FCLAA”).

21 Plaintiffs’ design claims fail because the mere manufacture of cigarettes—commonly
22 known to be an inherently dangerous consumer product—does not constitute a defect. Plaintiffs
23 must instead prove that Liggett made design choices in connection with its L&M brand that
24 increased the danger of cigarettes beyond the expectations of the ordinary consumer and that such
25 increased danger was a legal cause of Mrs. Camacho’s laryngeal cancer. Here, Plaintiffs have no
26

27 ¹ In addition to the Liggett specific arguments made herein, Liggett give notice to the parties and
28 the court of its adoption of and joinder in Philip Morris’ Motion for Partial Summary Judgment
on Plaintiffs’ Negligence Claims and Motion for Partial Summary Judgment on Plaintiffs’ Strict
Liability Claims filed May 25, 2022.

1 evidence of either element. Plaintiffs cannot show that Liggett did something to L&M cigarettes
2 that rendered them *more* dangerous than any other cigarette, beyond the common knowledge of the
3 ordinary consumer, i.e. that cigarettes can cause cancer and death. Nor can Plaintiffs show that but
4 for Liggett’s design choices, Mrs. Camacho would have avoided her laryngeal cancer. Plaintiffs’
5 experts concede that *all* combustible cigarettes are addictive and can cause laryngeal cancer—
6 regardless of any design features.

7 Based on the undisputed material facts in this case, the Court should enter summary
8 judgment in favor of Liggett on Plaintiffs’ claims for negligence and strict liability.

9 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS²**

10 1. Plaintiffs brought this action seeking damages for injuries that Mrs. Camacho
11 allegedly suffered from smoking cigarettes manufactured by Liggett and Philip Morris USA Inc.
12 (“PM USA”), asserting claims for negligence and strict product liability. Am. Compl., Claims I,
13 II and III.

14 2. The 1964 Surgeon General Report found that “cigarette smoking is causally related
15 to lung cancer. . .” and “linked cigarette smoking to health.” *See, e.g.*, Am. Compl. ¶¶ 51, 155(d),
16 212(k).

17 3. The Surgeon General’s Committee issued its Report in January 1964. *See*
18 Deposition of Judith J. Prochaska, April 6, 2022 (**Ex. A**, “Prochaska Dep.”) at 108.) Mrs. Camacho
19 turned 18 on April 28, 1964. (Plaintiff’s Answers to Interrogatories dated December 6, 2020,
20 attached hereto as **Ex. B**).

21 4. Mrs. Camacho started smoking after the issuance of the 1964 Surgeon General’s
22 Report. (**Ex. C**, Sandra Camacho Dep. at 145-46) (Mrs. Camacho smoked her first cigarette when
23 she was 18 years old and that first cigarette was a L&M (a Liggett brand cigarette)).³

24 5. Starting on January 1, 1966, a congressionally mandated health warning label
25 appeared on every cigarette package sold in the United States. (Pub. L. No. 89-92, § 4, 79 Stat.

26 ² Strictly for the purposes of this motion, Liggett sets forth the relevant facts as viewed in the
27 light most favorable to Plaintiffs.

28 ³ All volumes of Sandra Camacho’s deposition are attached to Philip Morris’ Motions for
Partial Summary Judgment on Plaintiff’s Claims for Negligence and Strict Liability.
Accordingly, Liggett attaches here only those excerpts cited herein as **Ex. C**.

1 282, 283 (1965)).

2 6. Mrs. Camacho began smoking—not because of any statement or representation she
3 heard from a Defendant—but because (1) her girlfriend offered her a cigarette and (2) she accepted
4 and smoked it because she wanted to look “cool.” (**Ex. C**, Sandra Camacho Dep. at 240-41) (“Q. Do
5 you recall seeing any advertisements for L&M cigarettes? A. I smoked L&M because a girlfriend
6 gave it to me.”); *Id.* at 194-95 (“Q. Did you enjoy socializing and smoking with your girlfriends? A.
7 My first cig I did because it was the cool thing to do then.”).)

8 7. Mrs. Camacho smoked a filtered cigarette because she believed they would be
9 “safer” than unfiltered cigarettes because she would get less nicotine, but this was a personal belief.
10 (*Id.* at 149-51).

11 8. Mrs. Camacho continued to smoke L&M because “they weren’t strong and they
12 weren’t light.” (**Ex. A**, Prochaska Dep. at 199-200).

13 9. Mrs. Camacho further continued smoking L&M because that is what she was familiar
14 with. (**Ex. C**, Sandra Camacho Dep. at 300 (“Q. And you continued to smoke L&M because it was
15 what you were familiar with, right? A. Yes.”).)

16 10. Every cigarette Mrs. Camacho smoked after 1966 came from a pack bearing a health
17 warning. (**Ex. A**, Prochaska Dep. at 110).

18 11. Mrs. Camacho smoked L&M cigarettes from approximately 1964 to 1990. (**Ex. C**,
19 Sandra Camacho Dep. at 158-59). She smoked L&M until she moved to Las Vegas. (*Id.* at 300).

20 12. Mrs. Camacho smoked Marlboro Red (a PM USA brand cigarette) from
21 approximately 1990 to 2000. (**Ex. C**, Sandra Camacho Dep. at 333).

22 13. Mrs. Camacho smoked Basic (a PM USA brand cigarette) from approximately 2000
23 to 2017. (**Ex. C**, Sandra Camacho Dep. 333-34).

24 14. Mrs. Camacho did not recall ever reading, hearing or seeing a specific statement
25 about smoking and health from Liggett Group. (**Ex. C**, Sandra Camacho Dep. at 287).

26 15. Mrs. Camacho never purchased a brand of cigarettes because of an advertisement.
27 (*Id.* at 237).

28 16. Mrs. Camacho’s risk of developing cancer would have been that of a non-smoker

1 had she quit smoking in 1990 (when she switched to a non-Liggett brand of cigarettes). (*See Ex.*
2 **G**, April 27, 2022 Deposition of John C. Ruckdeschel (“Ruckdeschel Dep.”) at 188 (“Q. If she had
3 quit smoking in 2003, 15 years before her cancer diagnosis, her risk would have gone back to almost
4 that of a never smoker, right? A. I think so, yes.”).

5 17. In 1997, Liggett admitted that smoking causes disease and is addictive and placed a
6 warning label on its cigarette packs, cigarette cartons and point of sale materials stating “Smoking
7 is Addictive”). *See* October 19, 2019 Deposition of Robert Proctor at 345-46, *Principe v. Philip*
8 *Morris USA Inc., et al.*, Case No. 13-25772 (Fla. 11th Cir. Ct.) (**Ex. D**, Proctor Dep.).

9 18. Plaintiffs disclosed three purported expert witnesses to offer opinions about
10 cigarette design: Drs. Robert Proctor (a historian), Louis Kyriakoudes (a historian), and Judith
11 Prochaska (a psychiatrist). (Pls.’ Expert Witness Disclosure (Feb. 10, 2022)).

12 19. None of these witnesses is qualified to testify about cigarette design in terms of
13 specific design features that were a but-for cause or a substantial factor in causing Mrs. Camacho’s
14 cancer. *See* Defendants’ expert motions to be filed on June 17, 2022. All these expert witnesses
15 have previously testified that there is no way to make a cigarette safe for its intended use: smoking.
16 *See* Defendant Philip Morris’ Motion for Partial Summary Judgment on Plaintiffs’ Negligence
17 Claims, ¶ 15.

18 III. LEGAL STANDARD

19 The Court “shall grant summary judgment if the movant shows that there is no genuine
20 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Nev. R.
21 Civ. P. 56; *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030 (2005).⁴ When the movant has made and
22 supported its motion as required, the non-moving party **must**, by affidavit or otherwise, set forth
23 specific facts demonstrating the existence of a genuine factual issue.” *Id.* (emphasis added). The
24 non-movant “may not rest upon general allegations and conclusions” and “is not entitled to build a
25 case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 1031–32.

26
27
28 ⁴ The Nevada Supreme Court has adopted the federal summary judgment standard. *See*,
Wood, 121 Nev. at 731, 121 P.2d at 1031.

IV. ARGUMENT

A. LIGGETT IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' FAILURE TO WARN CLAIMS

1. Plaintiffs' Post-1969 Failure to Warn Claims Are Preempted by Federal Law

As an initial matter, any claim that Liggett failed to warn Mrs. Camacho about the health risks of smoking after July 1, 1969 is expressly preempted by the FCLAA. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 489 n.9 (1996) (finding that Congress deemed the warnings in the Labeling Act “both necessary and sufficient”); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 542 (1992) (holding that any state-tort-law theory based on the supposition that federally mandated cigarette labeling was insufficient after July 1, 1969 is preempted under the Labeling Act, which preempts claims that post-1969 cigarette packaging, advertising, or promotion “should have included additional, or more clearly stated, warnings.”); *accord Altria Grp., Inc. v. Good*, 555 U.S. 70, 76-87 (2008) (approving *Cipollone* analysis).⁵

2. Plaintiffs' Pre-1969 Failure to Warn Claims Fail as a Matter of Law Because There was No Special Relationship Between Liggett and Mrs. Camacho Giving Rise to A Duty to Disclose

Plaintiffs' negligence and strict liability claims based on an alleged failure-to-warn fails under Nevada law because there is no “special relationship” between Liggett and Mrs. Camacho. Under Nevada law, a plaintiff may recover under a failure-to-warn theory “only where there is a special relationship between the parties and the danger is foreseeable.” *Wiley v. Redd*, 110 Nev. 1310, 1316, 885 P.2d 592, 596 (1994); *Bahrampour v. Sierra Nevada Corp.*, 502 P.3d 185 (Nev. App. 2022) (unpublished disposition) (citing *Wiley* and affirming district court's dismissal of the plaintiff's negligent failure to warn claim because the plaintiff failed “to allege any sort of special relationship” between himself and SNC). Significantly, numerous appellate courts have found that no “special relationship” (*e.g.*, fiduciary, confidential, or otherwise) exists between a cigarette manufacturer (like Liggett) and a consumer (like Mrs. Camacho) as a matter of law. *See, e.g.*,

⁵ Plaintiffs concede that they may not maintain a failure to warn claim after July 1, 1969 and affirmatively assert that their only claims for failure to warn pre-date July 1, 1969. *See* Plaintiffs' Opposition to Defendants' Philip Morris USA Inc., Liggett Group LLC, and ASM Nationwide Corporation d/b/a Silverado Smokes and Cigars' Motion to dismiss Plaintiff's Amended Complaint Under NRCP 12(b)(5) at 7, filed April 6, 2020.

Prentice v. R.J. Reynolds Tobacco Co., SC20-291, 2022 WL 805951, at *6 (Fla. Mar. 17, 2022) (plaintiff in a smoking-and-health case must prove detrimental reliance on defendant’s false statement and not reliance on “silence,” in part, because tobacco companies have no “free standing disclosure obligation” including a “confidential or fiduciary relationship” to a plaintiff); *Burton v. R.J. Reynolds Tobacco Co.*, 397 F.3d 906, 911–12 (10th Cir. 2005) (holding that “a buyer/seller relationship does not create a fiduciary duty” and “we do not believe that Kansas would extend . . . fraudulent concealment claims against a manufacturer of cigarettes”); *Jeter v. Brown & Williamson Tobacco Corp.*, 113 F. App’x 465, 469 (3rd Cir. 2004) (stating that “no fiduciary relationship or confidential relationship exists between a manufacturer of cigarettes and consumers of cigarettes, which gives rise to a duty to speak or disclose information”). This smoking-and-health case is no exception, as the record contains no factual justification for concluding otherwise.

3. Plaintiffs’ Failure to Warn Claims Fail Because There is No Evidence that Any Failure to Warn Harmed Mrs. Camacho

Even if there were a special relationship between Liggett and Mrs. Camacho, Liggett is still entitled to summary judgment on Plaintiffs’ negligence and strict liability claims predicated on a failure-to-warn theory because there is no evidence that any failure to warn harmed Mrs. Camacho. “In Nevada, it is well-established law that in strict product liability failure-to-warn cases, the plaintiff bears the burden of production and must prove, among other elements, that the inadequate warning caused his injuries.” *Rivera v. Philip Morris, Inc.*, 125 Nev. 185, 187, 209 P.3d 271, 273 (2009). A plaintiff likewise has a burden to prove that a defendant’s breach of duty (*i.e.*, failure to warn) was the proximate cause of his or her injury. *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 4, 805 P.2d 589, 590–91 (1991).

Accordingly, in that post-1969 failure to warn claims are preempted, Plaintiffs must show that a failure to warn by Liggett *before* July 1, 1969 caused Mrs. Camacho’s injuries. In other words, Plaintiffs must prove that but for Liggett’s failure to warn Mrs. Camacho of a danger of smoking cigarettes, she would not have suffered harm. To successfully prove their failure-to-warn claims, not only do Plaintiffs have the burden of establishing product defect and causation, but they must also show that the allegedly inadequate warning caused Mrs. Camacho’s injuries. *Rivera*, 125

1 Nev. at 187, 209 P.3d at 273. To do so, Plaintiffs must establish that Liggett failed to provide an
2 adequate warning “by demonstrating that a different warning would have altered the way the
3 plaintiff used the product or would have ‘prompted plaintiff to take precautions to avoid the
4 injury.’” *Rivera*, 125 Nev. at 191, 209 P.3d at 275 (citations omitted). Plaintiffs cannot make that
5 showing here.

6 Plaintiffs have no evidence to support the notion that any warning between 1964 and July
7 1, 1969 would have caused Mrs. Camacho to act differently and thereby avoid her injury. *See*
8 *Rivera*, 125 Nev. at 187, 209 P.3d at 273 (2009). The undisputed facts confirm that Mrs. Camacho
9 would not have changed her smoking behavior in response to anything Liggett might have said
10 between 1964 and July 1, 1969.

11 Mrs. Camacho began smoking Liggett’s filtered L&M cigarettes when she was 18 years old
12 because a girlfriend gave her that brand as her first cigarette. (**Ex. C**, Sandra Camacho Dep. at 145-
13 46, 240-41). She smoked L&M because it was filtered and she personally believed a filtered
14 cigarette would be “safer” for her. (*Id.* at 149-51). When asked where she got that information
15 from, she responded: “I thought it.” (*Id.* at 151.) She further conceded that when she smoked her
16 first cigarette given to her by her girlfriend, it was actually **that girlfriend** who told her that L&M
17 cigarettes were “safe.” (*Id.* at 298-99) (“Q. Do you know why your girlfriend chose to smoke L&M?
18 A. Yes. Q. And why was that? A. She said she thought they were safer – or safe. Q. Is it safe or
19 safer? A. Safe.”); (*Id.* at 299) (“Q. But before you had that first cigarette, your girlfriend told you
20 that the L&M was safe; is that right? A. Yes.”).

21 Significantly, Mrs. Camacho first started smoking *after* the issuance of the well-publicized
22 1964 Surgeon General’s Report that linked smoking to health issues. She acknowledged that it was
23 her choice to smoke the very first cigarette. (*Id.* at 306.) She continued to smoke L&M between
24 1964 and 1990 because she was familiar with that brand. (*Id.* at 300). Indeed, had Mrs. Camacho
25 quit smoking in 1990 (when she switched to a non-Liggett brand of cigarettes) her risk of
26 developing cancer would have been that of a non-smoker. (*See Ex. G*, Ruckdeschel Dep. at 188.

27 In 1966, the Congressionally mandated warnings stated, “Caution: Cigarette Smoking May
28 Be Hazardous to Your Health.” (**Ex. A**, Prochaska Dep. at 110). Between 1970 and 1985, the

1 Congressionally mandated warnings stated, “The Surgeon General has determined that cigarette
2 smoking is dangerous to your health.” (*Id.*). In 1985, the warnings changed to rotating warnings
3 that have continued to remain on cigarette packs today. (*Id.*). And in 1997, Liggett publicly
4 admitted that smoking causes disease and is addictive and put a voluntary warning on its packs
5 stating that “Smoking is Addictive.” (**Ex. D**, Proctor Dep. at 345-46). Those actions received
6 widespread publicity and media coverage. (*Id.*). Mrs. Camacho continued smoking at each of these
7 milestones—thereby indicating that she did not care about the label on the cigarettes. She never
8 once tried to quit smoking before she moved to Nevada in 1990. (**Ex. C**, Sandra Camacho Dep. at
9 60, 319-20, 339).

10 Mrs. Camacho did not change her behavior when she was confronted with the numerous
11 warnings, starting in 1966. Plaintiffs therefore cannot prove that Mrs. Camacho would have acted
12 differently had she received different warnings of the risks of smoking in 1964. Even after Liggett
13 expressly admitted that smoking causes certain diseases and is addictive and placed warning labels
14 on its cigarette packs stating “Smoking is Addictive” in 1997, Mrs. Camacho continued smoking.
15 *See, e.g.*, Am. Compl., ¶ 17 (“Sandra Camacho . . . smoked continuously . . . until 2017.”)

16 Because Plaintiffs cannot prove that any warning before July 1, 1969 would have prevented
17 Mrs. Camacho’s injury in 2017, Plaintiffs’ warning defect claims fail. *See Rivera*, 125 Nev. at 187,
18 209 P.3d at 273.

19 **B. LIGGETT IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS’**
20 **DESIGN DEFECT CLAIMS**

21 Plaintiffs’ design defect claims also fail as a matter of law. For a design defect claim,
22 Plaintiffs must “prove that the product failed to perform ‘in the manner reasonably to be expected
23 in the light of its nature and intended function.’” *Ward v. Ford Motor Co.*, 99 Nev. 47, 48, 657
24 P.2d 95, 96 (1983) (citation omitted); *see also Allison v. Merck & Co.*, 110 Nev. 762, 767, 878 P.2d
25 948, 952 (1994); *Michaels v. Pentair Water Pool & Spa*, 131 Nev. 804, 818, 357 P.3d 387, 397
26 (Nev. App. 2015). To that end, Plaintiffs must show that the product’s design rendered it
27 “dangerous to an extent beyond that which would be contemplated by the ordinary consumer who
28 purchases it with the *ordinary knowledge common to the community* as to its characteristics.”

Ward, 99 Nev. at 48, 657 P.2d at 96 (emphasis added). As discussed below, cigarettes are, by their nature, inherently dangerous. But the inherent dangers of cigarettes do not make their design defective. This is particularly true given these inherent dangers are common public knowledge. Plaintiffs must therefore prove that a design choice by Liggett or design feature of Liggett’s L&M cigarettes between 1964 and 1990—something *beyond* the *well-known* inherent dangers of cigarettes—made L&M cigarettes more dangerous than the ordinary consumer would anticipate, and that those design choices or features proximately caused Mrs. Camacho’s injury. Because Plaintiffs have no such evidence, summary judgment is warranted on Plaintiffs’ design defect claims.

1. That Combustible Cigarettes Are Inherently Dangerous Does Not Constitute a Design Defect.

Plaintiffs allege that smoking cigarettes is dangerous and can cause serious diseases. *See, e.g.,* Am. Compl. ¶ 12, 17. While that is true, that does not make Liggett’s cigarettes, an inherently dangerous product, defective under Nevada law.

Nevada courts have adopted the Restatement (Second) of Torts Section 402A in products liability cases. *See Schueler v. Ad Art, Inc.*, 136 Nev. 447, 455, 472 P.3d 686, 693 (Nev. App. 2020) (instructing that “when determining whether an item or instrumentality is a product that falls within the scope of strict products liability, courts *must* apply section 402A of the Second Restatement, including the public policy objectives of the doctrine as well as the relevant precedents interpreting section 402A.”) (emphasis added). Comment i to Section 402A addresses inherently dangerous consumer products and provides specifically that “[g]ood tobacco is not *unreasonably dangerous* merely because the effects of smoking may be harmful.” Restatement (Second) of Torts § 402A cmt. i (1965) (emphasis added);⁶ *see also Batts v. Tow-Motor Forklift*

⁶ The full text of comment i states:
Unreasonably dangerous. The rule stated in this Section applies only where the defective condition of the product makes it unreasonably dangerous to the user or consumer. Many products cannot possibly be made entirely safe for all consumption, and any food or drug necessarily involves some risk of harm, if only from over-consumption. Ordinary sugar is a deadly poison to diabetics, and castor oil found use under Mussolini as an instrument of torture. That is not what is meant by “unreasonably dangerous” in this Section. The article sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics. Good whiskey is not unreasonably dangerous merely because it will make some people drunk, and is especially dangerous to alcoholics; but bad

Co., 978 F.2d 1386, 1397 (5th Cir. 1992) (interpreting Comment i; “It follows that a product with an open and obvious defect is not ‘dangerous to an extent beyond that which would be contemplated by an ordinary consumer,’ and thus cannot be unreasonably dangerous.”); *cf. Parsons v. Colts Mfg. Co. LLC*, 137 Nev. Adv. Op. 72 (2021) (quoting *Cassisi v. Maytag Co.*, 396 So. 2d 1140, 1143 (Fla. 1st Dist. Ct. App. 981) (“[O]ne who is injured while using a perfectly made axe or knife would have no right to a strict liability action against the manufacturer because the product that injured him was not defective.”)).

Comment i clarifies that liability for design defect hinges on a finding that a product must reach the consumer with something wrong **beyond its inherent danger**. For example, whiskey may have deleterious effects on the liver and may be especially dangerous to an alcoholic with addiction; but “good whiskey is not unreasonably dangerous merely because it will make some people drunk.” Restatement (Second) of Torts § 402A cmt. i (1965). Likewise, good tobacco carries inherent dangers that the ordinary consumer is aware of, but those inherent dangers do not give rise to some defect that makes the product unreasonably dangerous. *See e.g., Hon v. Stroh Brewery Co.*, 835 F.2d 510, 516 (3d Cir. 1987) (“Comment i cites alcohol as an example where the exception to liability applies only because the dangers of intoxication and alcoholism are within the contemplation of the ordinary consumer.”). Comment i recognizes that some consumer products, including tobacco, carry inherent dangers even in a “good” state. Such dangers are not defects in such a product with inherent known dangers and cannot create liability.

Indeed, “[t]he requirement that a defect be unreasonably dangerous was added to the section to foreclose the possibility that makers of products having the inherent potentiality for causing harm, such as drugs, whiskey, sugar, butter, etc., would become automatically responsible for all the harm that such things do in the world. Thus, only bad tobacco should be subject to the section 402 A standard.” *Liggett Grp., Inc. v. Davis*, 973 So. 2d 467, 480 (Fla. 4th Dist. Ct. App. 2007)

whiskey, containing a dangerous amount of fuel oil, is unreasonably dangerous. Good tobacco is not unreasonably dangerous merely because the effects of smoking may be harmful; but tobacco containing something like marijuana may be unreasonably dangerous. Good butter is not unreasonably dangerous merely because, if such be the case, it deposits cholesterol in the arteries and leads to heart attacks; but bad butter, contaminated with poisonous fish oil, is unreasonably dangerous. Restatement (Second) of Torts § 402A (1965).

1 (Gross, J. concurring). It is therefore clear that Plaintiffs have to prove more than just that
2 cigarettes are dangerous. They must establish that something was wrong (or “bad”) with the
3 specific design chosen by the manufacturer—something beyond the inherent dangers of any
4 cigarette.

5 Principles of conflict preemption also make clear that Plaintiffs must prove something
6 beyond the well-known fact that cigarettes are dangerous. Congress has demonstrated a federal
7 interest in the continued sale of tobacco products and has

8
9 foreclosed a ban of [tobacco] products [from the market], choosing
10 instead to create a distinct regulatory scheme focusing on the labeling
11 and advertising of cigarettes and smokeless tobacco. Its express policy
12 is to protect commerce and the national economy while informing
13 consumers about any adverse health effects. Thus, [a] ban [on tobacco
14 products] would plainly contradict congressional intent.

15 *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 121–22 (2000).

16 The Court in *Brown & Williamson Tobacco Corp.* based this conclusion on a web of
17 “tobacco-specific legislation that Congress ha[d] enacted” in various federal statutes. *Id.*, 529 U.S.
18 at 143. In enacting these federal statutes, “Congress has been aware of tobacco’s health hazards
19 and its pharmacological effects.” *Id.* at 127 (citation omitted). Congress demonstrated an interest
20 in the tobacco industry by regulating the labeling and advertising of tobacco products with full
21 knowledge of its effects on health. In doing so, it is clear that Congress intended for the sale of
22 tobacco products to remain legal, as the tobacco industry “constitutes one of the greatest basic
23 industries of the United States with ramifying activities which directly affect interstate and foreign
24 commerce at every point.” *Id.* at 139 (citation omitted).

25 Given that Congress has intended for cigarettes to remain on the market despite their
26 inherent dangers, there can be no state tort lawsuit that holds Liggett liable merely because
27 cigarettes are inherently dangerous. Numerous courts around the country have therefore concluded
28 that a tort claim “based on [the] mere continuing to manufacture cigarettes is barred by conflict
preemption.” *Davis*, 973 So. 2d at 472; *Poosh v. Philip Morris USA, Inc.*, 904 F. Supp. 2d 1009,
1025–26 (N.D. Cal. 2012) (“Congress . . . has foreclosed the removal of tobacco products from

1 the market, notwithstanding the general acceptance of the adverse health consequences of using
2 tobacco.”) (internal citation omitted); *Evans v. Lorillard Tobacco Co.*, 990 N.E.2d 997, 1016
3 (Mass. 2013) (“[A] jury may not impose categorical liability on all cigarettes.”) (citation omitted);
4 *Badon v. R.J. Reynolds Tobacco Co.*, 934 So. 2d 927, 934 (La. App. 3d Cir July 12, 2006)
5 (affirming trial court ruling that federal law preempts “a ruling that ha[s] the effect of imposing a
6 ban on the manufacture/sale of cigarettes where Congress has not enacted a ban.”); *Jeter ex rel.*
7 *Smith v. Brown & Williamson Tobacco Corp.*, 294 F. Supp. 2d 681, 685 (W.D. Pa. 2003) (“In
8 response to the health risks of cigarette smoking, Congress chose to regulate the sale of cigarettes
9 instead of completely banning them.”) (citation omitted); *Cruz Vargas v. R.J. Reynolds Tobacco*
10 *Co.*, 218 F.Supp.2d 109, 118 (D.P.R. 2002) (“Congress has foreclosed the removal of tobacco
11 products from the market.”); *Insolia v. Philip Morris Inc.*, 128 F. Supp. 2d 1220, 1224-25 (W.D.
12 Wis. 2000) (“[A]llowing tort actions against cigarette manufacturers and sellers for the allegedly
13 negligent act of continuing to make and sell cigarettes would interfere with Congress's policy in
14 favor of keeping cigarettes on the market.”).

15 In sum, Plaintiffs must prove that Liggett did something or failed to do something *more*
16 than manufacture or sell a product with known and inherent dangers. Any claim based on the
17 inherent dangers of cigarettes runs afoul of the Restatement (Second), and principles of conflict
18 preemption.

19 As such, Plaintiffs must instead prove that Liggett made a design choice or added a design
20 feature that rendered the product *more dangerous* than it inherently would be and that *those design*
21 *choices* created a defect that legally caused Mrs. Camacho to get laryngeal cancer.

22 **2. Plaintiffs Cannot Prove That Any Design Choice Between 1964 and**
23 **1990 by Liggett Rendered its L&M Cigarettes Defective, Let Alone That**
24 **Any Alleged Defect Was a But-For Cause of Mrs. Camacho’s Injury.**

25 Because the inherent dangers of cigarettes cannot constitute a product defect, Plaintiffs must
26 show that Liggett made a design choice that rendered the L&M cigarettes Mrs. Camacho smoked
27 between 1964 and 1990 “dangerous to an extent beyond that which would be contemplated by the
28 *ordinary consumer* who purchases it with the *ordinary knowledge common to the community* as to

1 its characteristics.” *Ward*, 99 Nev. at 48 657 P.2d at 96 (emphases added). *See also* Rest. (2d)
2 Torts § 402A cmt. i (1965). Plaintiffs must also prove that “the design defect in the product was a
3 substantial factor in causing [their] injury.” *Price v. Blaine Kern Artista, Inc.*, 111 Nev. 515, 520,
4 893 P.2d 367, 370 (1995). Thus, Plaintiffs must prove that: (1) Liggett’s design choices rendered
5 its L&M cigarettes defective by failing to perform in a manner expected by the ordinary consumer
6 with ordinary common knowledge of its inherent dangers, and (2) but for the alleged defect in the
7 L&M cigarettes between 1964 and 1990, Mrs. Camacho would not have incurred her injuries.
8 Plaintiffs cannot meet this burden on either element.

9 **i. Plaintiffs Cannot Establish that Liggett Made Design Choices that**
10 **Increased the Risks Beyond What Could Be Reasonably Expected in**
11 **Light of Their Nature and Intended Function.**

12 Plaintiffs cannot dispute that the dangers of smoking cigarettes have been common
13 knowledge to Liggett’s ordinary consumer since before Mrs. Camacho allegedly started smoking
14 cigarettes. Indeed, as Plaintiffs admit, the 1964 Surgeon General’s Report “linked smoking and
15 health.” *See, e.g.*, Am. Compl. ¶ 155(d). And as one of Plaintiffs’ experts, Dr. Proctor, testified,
16 the health risks of smoking, including the risk of contracting cancer, and the risk that smoking can
17 be addictive have long been a matter of common knowledge. *See* Trial Tr. at 2200-2228, *Gentile*
18 *v. Philip Morris USA Inc.*, No. 50 2015 CA (Fla. 15th Cir. Ct. Oct. 4, 2017) (Ex. E) (Dr. Proctor
19 testifying regarding numerous public communications and warnings of the health risks of addictive
20 nature of cigarettes.) He is not alone in that conclusion. In fact, the United States Supreme Court
21 recognized that the health hazards of smoking and the effect of nicotine have been “well known”
22 for some time—since shortly after Mrs. Camacho chose to start smoking Liggett’s brands of
23 cigarettes in 1964. (Ex. C, Sandra Camacho Dep. at 289) (“Q. You chose to smoke your first
24 cigarette? A. Yes. Q. You chose to smoke your second cigarette? A. Yes. Cool thing to do.”)
25 As the Court explained, “Congress has directly addressed the problem of tobacco and health
26 through legislation on six occasions *since 1965*. When Congress enacted these statutes, the adverse
27 health consequences of tobacco use were *well known*, as were nicotine’s pharmacological effects.”
28 *Brown & Williamson Tobacco Corp.*, 529 U.S. at 137–38 (citations omitted) (emphases added).

Other courts have found that “there was . . . *widespread public awareness* of the health risks associated with smoking” by 1969. *Glassner v. R.J. Reynolds Tobacco Co.*, 223 F.3d 343 (6th Cir. 2000) (barring strict liability claims because the decedent began smoking in 1969) (emphasis added). This is because, as other courts around the country have recognized, it has been common knowledge that “cigarette smoking is not healthy” since at least 1964 when the Surgeon General issued his landmark report on this topic. *See Guilbeault v. R.J. Reynolds Tobacco Co.*, 84 F.Supp.2d 263, 273 (D.R.I. 2000) (“[T]he Court is satisfied that it can take judicial notice of the community’s common knowledge of the general disease-related health risks associated with smoking, including the risk of contracting cancer, as of 1964.”); *see also Soliman v. Philip Morris Inc.*, 311 F. 3d 966, 975 (9th Cir. 2002) (“[I]t has been a matter of common knowledge since at least 1965 that cigarette smoking is not healthy” where smoker-plaintiff was “charged with the obvious inferences he should have drawn about the consequences of his conduct”); *Barker v. Brown & Williamson Tobacco Corp.*, 88 Cal. App. 4th 42, 51 (2001) (“[I]t has been a matter of common knowledge since at least 1965 that cigarette smoking is not healthy.”).

Given the wide-spread common knowledge of these dangers, the relevant inquiry is whether Liggett made design choices that made their L&M brand more dangerous than they would otherwise be and whether those design choices rendered those cigarettes unreasonably dangerous under the consumer expectation test during the time Mrs. Camacho allegedly smoked them. Here, Plaintiffs have no evidence that Liggett’s design choices have increased the degree of dangerousness beyond what was expected by the ordinary consumer. Thus, Plaintiffs cannot show that anything about Liggett’s design choices made their cigarettes more dangerous than these expectations. The Court should therefore grant summary judgment in Liggett’s favor on Plaintiffs’ defect claims.

ii. Plaintiffs Cannot Show That But For Liggett’s Design Choices, Mrs. Camacho’s Injuries Would Not Have Occurred.

Plaintiffs must also establish causation by showing that the alleged defect in the design of Liggett’s cigarettes “was a substantial factor in causing [Mrs. Camacho’s] injury.” *Price*, 111 Nev. at 520, 893 P.2d at 370. But Plaintiffs cannot establish that Liggett’s design choices increased the

1 risks inherent to smoking tobacco, much less that Mrs. Camacho would not have been injured if
2 not for that added delta of risk. In fact, the opposite is true: as Plaintiffs’ experts have recognized,
3 “as long as you are combusting tobacco, there cannot be a safe cigarette.”

4 Plaintiffs disclosed three purported expert witnesses to offer opinions about cigarette
5 design: Drs. Robert Proctor (a historian), Louis Kyriakoudes (a historian), and Judith Prochaska (a
6 psychiatrist). (Pls.’ Expert Witness Disclosure (Feb. 10, 2022).) None of these witnesses is
7 qualified to testify about cigarette design in terms of specific design features that were a but-for
8 cause or a substantial factor in causing Mrs. Camacho’s cancer. *See* Defendants’ expert motions
9 to be filed on June 17, 2022. Further, none of these expert witnesses identified in their reports an
10 alleged *specific* defect in any of the cigarettes Mrs. Camacho smoked beyond the inherent
11 characteristics of all cigarettes in the market. Significantly, each of these expert witnesses have
12 previously testified that there is no way to make a cigarette safe for its intended use: smoking. *See*
13 Defendant Philip Morris’ Motion for Partial Summary Judgment on Plaintiffs’ Negligence Claims,
14 ¶ 15.

15 None of Plaintiffs’ expert witnesses can opine that a specific design defect in the L&M
16 cigarettes Mrs. Camacho smoked was a proximate cause of her laryngeal cancer. Put differently,
17 Plaintiffs have no evidence that Mrs. Camacho would not have contracted cancer but for Liggett’s
18 design choices. Plaintiffs’ experts concede that all “conventional commercially successful tobacco-
19 burning cigarettes containing nicotine” were “all equally as dangerous” and “all equally addictive.”
20 November 30, 2021 Deposition of Louis Kyriakoudes at 178-79, *Geist v. Philip Morris USA Inc.,*
21 *et al.*, Case No. A-19-807653-C (District Court, Clark County, Nevada (**Ex. F**)). So, even without
22 any design decisions made by Liggett, Mrs. Camacho would have contracted laryngeal cancer in
23 2017 or 2018.

24 ...

25 ...

26 ...

27 ...

1 **V. CONCLUSION**

2 As set forth herein, the Court should grant Liggett's Motion for Partial Summary Judgment
3 on Plaintiffs' negligence and strict liability claims.

4
5 DATED this 25th day of May, 2022.

6
7 LEWIS ROCA ROTHGERBER CHRISTIE LLP

8
9 /s/ J Christopher Jorgensen

10 J Christopher Jorgensen

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13 Las Vegas, NV 89169-599

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22 Email: kluther@kasowitz.com

23 Email: mruiz@kasowitz.com

24 *Attorneys for Defendant Liggett Group LLC*

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 *Defendant Liggett Group LLC's Motion For Partial Summary Judgment On Plaintiffs' Negligence and Strict Liability Claims* to be served via the Court's EFiling 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 25th day of May, 2022.

/s/ Annette Jaramillo
An employee of Lewis Roca
Rothgerber Christie LLP

EXHIBIT A

DISTRICT COURT

CLARK COUNTY, NEVADA

--oOo--

SANDRA CAMACHO, individually,)
and ANTHONY CAMACHO,)
individually,)
Plaintiffs,)
vs.)
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; ASM NATIONWIDE)
CORPORATION d/b/a SILVERADO)
SMOKES & CIGARS, a domestic)
corporation; and LV SINGHS INC.)
d/b/a SMOKES & VAPORS, a)
domestic corporation; DOES I-X;)
and ROE BUSINESS ENTITIES XI-XX,)
inclusive,)
Defendants.)

Case No.
A-19-807650-C

--oOo--

DEPOSITION OF JUDITH J. PROCHASKA, PhD, MPH

Wednesday, April 6, 2022

Reported by:

HEATHER M. LOFHOLM, CSR #11570

1 A. You memorized it well, so you did make good eye
2 contact, but I'm still not understanding the question, so
3 I need you to rephrase it. That's what I'm asking for.
4 I'm not asking for fluff. I'm just asking for a question
5 that I can understand.

6 Q. Well, let me just ask you. When do you think
7 that all the tobacco companies admitted that smoking
8 caused disease and was addictive?

9 A. So that may be current, and then what I'm
10 recalling is that as late as 2005 not all tobacco
11 companies had admitted that smoking is addictive.

12 Q. Which tobacco companies hadn't admitted by 2005?

13 A. So I think your company had. I have to go back.
14 So I don't recall if it was Reynolds or Liggett or
15 Lorillard, but it was one of those three, but I think
16 Philip Morris had.

17 Q. The first surgeon general report on smoking and
18 health came out in January of 1964 when Mrs. Camacho was a
19 senior in high school, right?

20 A. It did come out in January of '64, and I do
21 believe she was a senior in high school.

22 Q. And that would have been before Mrs. Camacho
23 started smoking, right?

24 A. I would think so. I think so. She started
25 around the summer -- no, I don't think it was the summer.

1 Patty's someone that gave her the cigarette. But in the
2 deposition she recalled that Patty told her that filters
3 were safe? Is that what you said?

4 Q. No. Let me rephrase it. Separate and apart from
5 whether she recalls Patty's name in the deposition, which
6 is just kind of a throwaway, at her deposition she claimed
7 that the girlfriend who gave her the L&M cigarette, which
8 we later found was this woman Patty --

9 A. Okay.

10 Q. -- Patty told her that Patty smoked L&M because
11 they were safe. Do you recall that testimony?

12 A. I do recall the testimony that her friend
13 perceived them to be safe as well.

14 Q. Do you agree that we don't know what Patty relied
15 on in reaching that conclusion?

16 A. I mean, she's growing up in the same time period,
17 same town as Ms. Camacho, so I would anticipate she's
18 exposed to the same advertising, but we don't have Patty
19 to ask her what informed her opinion.

20 Q. And Mrs. Camacho didn't recall what informed
21 Patty's opinion, correct?

22 A. I think that's right.

23 Q. She also told you that she continued to buy L&M
24 because they weren't strong and they weren't light. Do
25 you recall that?

1 A. They weren't strong and they weren't?

2 Q. Light.

3 A. Light? Yeah.

4 Q. She only -- according to what she told you, she
5 only smoked that one cigarette the first day?

6 A. Right, and then she said the next day was -- she
7 had another cigarette.

8 Q. So she had her second cigarette the following
9 day?

10 A. Yes.

11 Q. And it took her two years to work up to one pack
12 per day, assuming she --

13 A. That was from the deposition testimony?

14 Q. Yeah.

15 A. Yeah.

16 Q. Well, assuming -- that's actually from your
17 interview of her, isn't it?

18 A. I recall the smoking a pack a day by 20. Is that
19 what you're saying?

20 Q. Correct.

21 A. And I thought there was a page number next to
22 that, but let me just check. No, this is my interview.
23 That was by my interview, yes.

24 Q. And I think you've already expressed this today,
25 but you believe that her memory of these events were

EXHIBIT B

RSPN

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

SANDRA CAMACHO, individually,
and ANTHONY CAMACHO, individually,

Plaintiffs,

v.

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; and ASM NATIONWIDE

CASE NO.: A-19-807650-C

DEPT. NO.: IV

**PLAINTIFF'S RESPONSES TO
DEFENDANT ASM NATIONWIDE
CORPORATION'S FIRST
INTERROGATORIES TO PLAINTIFF
SANDRA CAMACHO**

1 CORPORATION d/b/a SILVERADO
2 SMOKES & CIGARS, a domestic corporation;
3 DOES I-X; and ROE BUSINESS ENTITIES
4 XI-XX, inclusive,

5
6 Defendants.

7 Plaintiff, SANDRA CAMACHO, by and through her undersigned counsel, hereby serves
8 her Responses to First Set of Interrogatories propounded by Defendant, ASM NATIONWIDE
9 CORPORATION, on October 26, 2020.

10 DATED THIS 9th day of December, 2020.

11
12 CLAGGETT & SYKES LAW FIRM

13 /s/: Sean K. Claggett, Esq.

14 _____
15 Sean K. Claggett, Esq.
16 Nevada Bar No. 008407
17 Matthew S. Granda, Esq.
18 Nevada Bar No. 012753
19 Micah S. Echols, Esq.
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28 500 North Federal Highway, Suite 200
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PLAINTIFF'S RESPONSES TO DEFENDANT
ASM NATIONWIDE CORPORATION'S FIRST SET OF INTERROGATORIES TO
PLAINTIFF SANDRA CAMACHO

INTERROGATORY NO. 1:

State your full name, date and place of birth, Social Security number, Health Insurance Claim Number, if applicable, current address, length of time at current address, and every other address where you have ever lived and the dates you lived there.

RESPONSE:

Sandra Marie Camacho

DOB: April 28, 1946

Place of Birth: Chicago, IL

SSN: Objection invasion of privacy

Current Address: 531 Morning Mauve Avenue, Las Vegas, NV 89183

Length of time at current address: 13 years

Former Addresses: 1166 Stormy Valley Rd., Las Vegas, NV 89123; 2 years
2485 N. Wigwam Ave., Las Vegas, NV 89123; 5 years

INTERROGATORY NO. 2:

State your current marital status, and the name, date of birth, and Social Security number of your spouse, if any; the last known name and address of every former spouse, if any; the date and place of each marriage; and, as to previous marriages, the date, place and manner of termination.

RESPONSE:

Marital Status: Married

Name of Spouse: Anthony J. Camacho

DOB: August 11, 1952

SSN: Objection; confidential

Address: 531 Morning Mauve Avenue, Las Vegas, NV 89183

Date of Marriage: October 16, 1980

Place of Marriage: Court of Cook County

Former Spouse: Dominic Stramaglia

Date of Marriage: September 26, 1966

Place of Marriage: St. Joseph, MI

Divorced in 1970

Address unknown

INTERROGATORY NO. 3:

State the name, gender, date and place of birth, Social Security number, and current address of each of your natural children, adopted children, or step-children (living or deceased). For each child identified as deceased, state the date, place, and cause of death.

RESPONSE:

Name: John Joseph Stramaglia

Gender: Male

Date/Place of Birth: November 28, 1967; Skokie Valley Hospital

SSN: Objection; confidential.

Current Address: 4025 Goss Street, Schiller Park, IL 60176

Name: Laura Lynn Purkett

Gender: Female

Date/Place of Birth: March 6, 1969; Skokie Valley Hospital

SSN: Objection; confidential.

Current Address: 280 Great Duke Avenue, Las Vegas, NV 89183

INTERROGATORY NO. 4:

State the name; current residence address; date and place of birth; date, place and cause of death; and your relationship to each of your relatives including, but not limited to, parents, brothers, sisters, aunts, uncles, cousins, and grandparents; and, for each such relative, state whether the relative currently has or ever had any form of cancer, pulmonary or respiratory disease, or smoking-related illness, injury, disease or medical condition.

RESPONSE:

John J. Mucci; Father

Deceased

DOB: November 1, 1918; Chicago, IL

DOD: October 25, 1990; Chicago, IL

Cause of Death: Stroke

Virginia Ann Mucci; Mother

DOB: February 28, 1926; Chicago, IL

Exact address unknown

Donna R. Kinsella; Sister

DOB: June 11, 1944; Chicago, IL

Exact address unknown

Linda Blake; Sister

DOB: February 18, 1948; Chicago, IL

Exact address unknown

These are all the family members I can recall at this time.

INTERROGATORY NO. 5:

State the name and address of each educational institution including elementary, primary, junior high, high school, vocational or trade school, college, and university you attended; your dates of attendance; course of study pursued; date of graduation; and any degree or certificate received.

RESPONSE:

**River Grove-St. Cyprian; 1st, 2nd, 3rd (1951)
Chicago, IL**

**Santa Maria Del Poplo; 4th and 5th (1955)
Chicago, IL**

**St. Celastine; 6th, 7th, and 8th (1957-1960)
Chicago, IL**

**Notre Dame-High School; 9th through 12th grade (graduated in 1964)
Chicago, IL**

**Beauty School
Oak Park, IL**

INTERROGATORY NO. 6:

State the name and address of each of your employers, and, for each, state your job title and description, salary or rate of payment, and start date and termination date.

RESPONSE:

**Employer: IHop
Address: Oak Park, IL**

**Employer: Denny's
Address: River Road, Schuller Park
Job Title: Waitress
Rate of Pay: Tips
Dates worked: 46 years ago**

**Employer: 7-11
Address: Windmill Lane, Las Vegas, NV
Job Title: Cashier
Rate of Pay: \$4.35 Hr.
Dates worked: 1990-1994**

**Employer: Texaco
Address: Las Vegas Blvd., Las Vegas, NV
Job Title: Cashier
Rate of Pay: \$9.00 Hr.
Dates: 1992-2000**

1 **INTERROGATORY NO. 7:**

2 State whether you have ever served in the military, and, if so, state each branch served; your
3 serial number; the date of commencement and termination of service; each rank attained; each
4 place stationed or served; the inclusive dates of service at each such place; the type of discharge
5 received; and whether you were ever subject to any trial by court-martial, non-judicial
6 punishment, or any other administrative proceeding. If you were the subject of any such
7 proceeding, please state the details of that proceeding, including, but not limited to, the nature of
8 the charges against you and the disposition of the proceedings.

9 **RESPONSE:**

10 **No.**

11 **INTERROGATORY NO. 8:**

12 State the name and the dates you subscribed to, purchased, received, or read any publication,
13 including, but not limited to, newspapers, newsletters, journals, professional journals,
14 periodicals, and magazines.

15 **RESPONSE:**

16 **I do not remember all of the names of magazines or newspapers my family or I have**
17 **subscribed to over my lifetime, but I certainly have seen and read many magazines and**
18 **newspapers. A few I remember are People, Enquire, Star, Chicago Sun-Times, and the**
19 **Review Journal. I also recall seeing many cigarette advertisements over the years in some**
20 **of the publications, including advertisements for Marlboro, L&M, and Basic cigarettes.**
21 **The advertisements portrayed smoking as fun and cool and also portrayed filter cigarettes**
22 **as better and safer because they did not have as much nicotine or tar in them.**

23 **INTERROGATORY NO. 9:**

24 State the name and address of all persons, including, but not limited to, Plaintiff Sandra
25 Camacho's family members, friends, doctors, other medical providers, and business associates,
26 who are believed or known by you, your agents, or your attorneys to have any knowledge of
27 Plaintiff Sandra Camacho's tobacco use, medical condition(s), and/or any other facts relevant to
28 any of the issues in this lawsuit; and specify the subject matter about which the witness has
knowledge.

RESPONSE:

My husband/children and my medical providers can testify about health issues and
smoking history and life in general.

Defendant cigarette manufacturers and representatives.

All of my treating physicians and medical providers.

1
2 **Plaintiff reserves the right to amend this answer as discovery continues.**
3

4 **INTERROGATORY NO. 10:**

5 State all injuries, illnesses, diseases and/or medical conditions you incurred and for which you
6 seek recovery in this lawsuit, and state the name and address; medical specialty; and dates of
7 examination, treatment, evaluation, or consultation for every physician or Health Care Provider
8 who examined, treated, evaluated, or consulted with you and your physicians or Health Care
9 Providers regarding those injuries, illnesses, diseases or medical conditions.

10 **RESPONSE:**

11 **I am seeking damages for my laryngeal cancer. The doctors identified below treated me**
12 **for such conditions. The medical records and/or providers might identify other medical**
13 **providers and facilities that I am unaware of or cannot recall at this time. The date and**
14 **type of treatment would be contained within the records.**

15 **Gulam Kashef, MD**
16 **Comprehensive Cancer Centers of Nevada-Northwest**
17 **7445 Peak Drive**
18 **Las Vegas, NV 89128**

Oncologist

19 **Moniz Dawood**
20 **Heart Center of Nevada**
21 **5380 S. Rainbow Blvd., #226**
22 **Las Vegas, NV 89118**

23 **Randall T. Weingarten, M.D.**
24 **10410 S. Eastern Ave., Ste 110**
25 **Henderson, NV 89052**

ENT

26 **Joan McCulloch, M.D.**
27 **UCLA Health- Speech Pathology Clinic**

28 **Gerald S. Berke, M.D.**
UCLA- Dept. of Head and Neck Surgery
10833 LE Conte Avenue
Los, Angeles, CA 90095

Second Biopsy

St. Rose Dominican Hospital (Siena Campus)
3001 St. Rose Parkway
Henderson, NV 89052

First Biopsy

1 **Las Vegas Gastroenterology**
2 **3910 S. Maryland Parkway**
3 **Suite 9B**
4 **Las Vegas, NV 8911**

5 **Desert Radiology**
6 **4880 S Wynn Road**
7 **Las Vegas, NV 89106**

CT Scan

8 **Eric Wikler, DO**
9 **Wikler Family Practice**
10 **8985 S Pecos Road**
11 **Suite 4A**
12 **Henderson, NV 89074**

PCP

13 **Syed Akbarullah, M.D.**
14 **Pulmonary Associates**
15 **870 Seven Hills Drive**
16 **Henderson, NV 89052**

Pulmonologist

17 **Steinberg Diagnostics Medical Imaging**
18 **800 Shadow Lane**
19 **Las Vegas, NV 89106**

Medical Imaging

20 **INTERROGATORY NO. 11:**

21 State the name and address, dates of care or treatment, and nature of care or treatment received
22 from each Health Care Facility, hospital, clinic, laboratory, or other institution at which you were
23 hospitalized or received care or treatment for the injuries, illnesses, diseases or medical
24 conditions *identified in your response to Interrogatory No. 10.*

25 **RESPONSE:**

26 **Retina Consultants of Nevada**

Eye Doctor

27 **See also response to Interrogatory Number 10.**

28 **INTERROGATORY NO. 12:**

State the name and address, medical specialty, and dates of examination, treatment, evaluation
or consultation for every Health Care Provider who examined, treated, evaluated, or consulted
with you, your physicians, or your Health Care Providers regarding any mental or physical
illness, injury, disease, or medical condition *other than those alleged in response to*
Interrogatory No. 10.

RESPONSE:

See response to Interrogatory Numbers 10 and 11.

INTERROGATORY NO. 13:

State the name and address, dates of care or treatment, and nature of care or treatment received from each Health Care Facility, hospital, clinic, laboratory, or other institution at which you were hospitalized or received care or treatment for any mental or physical illness, injury, disease or medical condition other than those alleged in response to Interrogatory No. 10.

RESPONSE:

See response to Interrogatory Numbers 10 and 11. The date and type of treatment would be contained within the records.

INTERROGATORY NO. 14:

State the name and address of each Health Care Facility, pharmacy, or other establishment where you obtained any prescriptions or medications or someone else did so on your behalf.

RESPONSE:

Walmart

Address: Bermuda and Silverado Ranch

Walgreens

Address: Bermuda and Silverado Ranch

INTERROGATORY NO. 15:

State the name and address of every life, health, accident, or disability insurance company to which you have ever applied for insurance coverage, including any group insurance provided by your employer, and state the name and address of any person, agent, or company through which such application was made, the date of your application, the type of insurance for which you applied, whether a policy was issued or coverage obtained, and every policy number assigned to you.

RESPONSE:

HEALTH INSURANCE:

Medicare

United Healthcare

Aetna

Name and address of agents unknown at this time.

INTERROGATORY NO. 16:

Have you ever been a party to any civil action, including, but not limited to, any bankruptcy action, or any criminal action? If so, state the style, case number, name and address of the court, name and address of counsel for each of the parties, nature of the claims, date filed, and current status or ultimate disposition of every civil or criminal action in which you were or are a named party.

RESPONSE:

No.

INTERROGATORY NO. 17:

State whether you were ever arrested and/or charged and/or convicted of any crime within the last ten (10) years, and, if so, state for each (a) the date of arrest and/or charge and/or conviction; (b) reason for the arrest and/or charge and/or conviction; (c) if applicable, the court in which you were convicted; (d) pleas entered; (e) whether you were convicted; and (f) the names and addresses of the court where the proceedings took place.

RESPONSE:

No.

INTERROGATORY NO. 18:

Have you ever made a claim for benefits under any insurance plan or policy, or governmental program, including Social Security, Medicaid, Medicare, worker's compensation, or unemployment compensation? If so, for each claim, state the date, place, and nature of the claim; the person, firm or corporation to whom the claim was submitted; the claim number; and the ultimate disposition of the claim, including the amount of benefits, if any, you received for each claim. If you made any claim for Medicare benefits, state the date you became eligible to receive Medicare benefits.

RESPONSE:

No.

INTERROGATORY NO. 19:

State your complete history of tobacco use, including the: (a) type of tobacco products you used, (b) brand of all tobacco products you used, (c) dates on which you began using each tobacco product, (d) length of time that you used each brand and tobacco product, (e) dates on which you stopped using each tobacco product, and (f) amount of each tobacco product you consumed on a daily or weekly basis while using the tobacco product.

RESPONSE:

I began smoking in approximately 1964 when I was approximately 18 years old. I smoked approximately 1 – 1.5 cigarettes per day until approximately 2017. I smoked L&Ms from approximately 1964-1990, Marlboro from approximately 1990 – mid-1990s, and Basic cigarettes from approximately 1990 through 2017. I smoked L&M, Marlboro, and Basic because I thought filtered cigarettes were better for me. I also smoked these brands because I saw advertisements for them that made it look glamorous and cool to smoke cigarettes.

INTERROGATORY NO. 20:

Describe any efforts taken by you to quit using tobacco products, including, for each effort state: (a) the date the effort began; (b) the date you stopped using tobacco products; (c) the date you resumed using tobacco products, if applicable; and (d) the methods used, if any, to try and quit using tobacco products.

RESPONSE:

I tried to quit smoking many times over the years using different quitting methods, including using gum and quitting cold turkey. I do not remember specific dates.

INTERROGATORY NO. 21:

State all of the smoking-related illnesses, injuries, diseases or medical conditions from which you have ever suffered; the date that each such alleged smoking-related illness, injury, disease or medical condition was first diagnosed; the name and address of the person(s) who will testify as to such diagnosis; and the physician(s) or Health Care Provider(s) who made such diagnosis.

RESPONSE:

I have laryngeal cancer. See Medical Records for details.

INTERROGATORY NO. 22:

Identify, by name and address, each and every location where Plaintiff Sandra Camacho purchased any and all cigarette brands alleged in the Amended Complaint.

RESPONSE:

**Silverado Smokes & Cigars
430 Silverado Ranch Blvd No. 120
Las Vegas NV 89183**

INTERROGATORY NO. 23:

Did you ever purchase or otherwise obtain cigarettes directly from any Tobacco Manufacturer Defendant instead of through a retailer or other third party? If so, state the brand obtained, the Tobacco Manufacturer Defendant that provided the cigarettes, and the date(s) and the manner in which you obtained such cigarettes.

RESPONSE:

No.

INTERROGATORY NO. 24:

List each and every item of expense and/or damage you seek to recover in this lawsuit, including, but not limited to, (1) medical expenses, (2) pain and suffering, and (3) lost earnings, stating the amount you are claiming for each expense and/or damage; the facts that support each expense and/or damage; and the method you used in computing the amount of each expense and/or damage.

RESPONSE:

I am seeking pain and suffering, together with any and all non-economic damages awardable under applicable law. I have suffered greatly and continue to suffer as a result of the Laryngeal cancer. My understanding is that the jury determines what amount of damages.

I am not making a claim for lost earnings.

Medical expenses currently in Plaintiffs' counsel's possession total \$257,042.33, amounts are itemized below.

Gerald S. Berk, M.D.; UCLA Health – Dept. of Head and Neck- \$57,180.00

Randall Weingarten, M.D. - \$1,157.30

Eric Wikler, DO; Wikler Family Practice - \$680.03

Syed Akbarullah; Pulmonary Associates, Inc. - \$328.00

Gulam Kashef, M.D.; Comprehensive Cancer Centers of Nevada - \$196,689.00

Plaintiff reserves the right to supplement this response in the future as more records are received. Further, Plaintiff reserves the right to supplement this response as Mrs. Camacho's medical treatment is ongoing.

INTERROGATORY NO. 25:

Please identify all mental health conditions from which you have ever suffered and/or been diagnosed with, including, but not limited to, depression, affective disorder, nervous disorder, nervous condition, major depression with psychotic features, bipolar disorder, anxiety, and post-traumatic stress disorder (PTSD); as to each such condition, please identify the date of onset and the date the condition ceased to exist.

RESPONSE:

See Medical Records.

INTERROGATORY NO. 26:

As to each and every condition that you identified in response to Interrogatory No. 25, please identify any instances where you received mental health counseling, religious counseling, psychological and/or psychiatric treatment or care, or any other mental health treatment or care from a Health Care Provider. For each aforementioned condition and instance, please provide the name of the Health Care Provider and Health Care Facility at which treatment was sought, dates and locations of treatment, a description of the nature of the treatment or care provided, all medications you were prescribed or choose to use as a result of that treatment (even if the medications were not prescribed for that purpose), all insurance companies that provided coverage for such treatment, and all pharmacies at which you filled prescriptions. Please also identify any individuals who administered treatment or care along with their medical specialties, if applicable.

RESPONSE:

See Medical Records.

DATED this 9th day of December, 2020.

CLAGGETT & SYKES LAW FIRM

/s/: Sean K. Claggett, Esq.

Sean K. Claggett, Esq.
Nevada Bar No. 008407
Matthew S. Granda, Esq.
Nevada Bar No. 012753
Micah S. Echols, Esq.
Nevada Bar No. 008437
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 9th day of December, 2020, I served a true and correct copy of the foregoing **PLAINTIFF'S RESPONSES TO DEFENDANT ASM NATIONWIDE CORPORATION'S FIRST INTERROGATORIES TO PLAINTIFF SANDRA CAMACHO** is served on the following person(s) by electronic service pursuant to NRCF 5(b) and NEFCR 9:

Dennis L. Kennedy, Esq. Joseph A. Liebman, Esq. BAILEY KENNEDY 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302 Email: DKennedy@BaileyKennedy.com JLiebman@BaileyKennedy.com <i>Attorneys for R.J. Reynolds Tobacco Company</i>	D. Lee Roberts, Jr., Esq. Phillip N. Smith, Jr., Esq. Daniela LaBounty, Esq. WEINBERG WHEELER HUDGINS GUNN & DIAL 6385 South Rainbow Boulevard, Suite 400 Las Vegas, Nevada 89118 Email: lroberts@wwhgd.com psmithjr@wwhgd.com dlabounty@wwhgd.com <i>Attorneys for Philip Morris USA, Inc. and ASM Nationwide Corporation</i>
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/s/ Moises Garcia

An Employee of CLAGGETT & SYKES LAW FIRM

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DECLARATION

I, Sandra Camacho declare under penalty of perjury that the foregoing is true and correct.

Executed on the 6th day of ~~November~~ December, 2020.

Sandra Camacho

SANDRA CAMACHO

EXHIBIT C

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 SANDRA CAMACHO, individually, and)
 4 ANTHONY CAMACHO, individually,)

5 vs. Plaintiffs,)

) Case No.
) A-19-807650-C

6 PHILIP MORRIS USA INC., a foreign)
 7 corporation; R. J. REYNOLDS TOBACCO)
 8 COMPANY, a foreign corporation,)
 9 individually, and as successor-by-)
 10 merger to LORILLARD TOBACCO COMPANY) and as successor-in-interest to the)
 11 United States tobacco business of)
 12 BROWN & WILLIAMSON TOBACCO)
 13 CORPORATION, which is the)
 14 successor-by-merger to THE AMERICAN)
 15 TOBACCO COMPANY; LIGGETT GROUP,)
 16 LLC, a foreign corporation; ASM)
 17 NATIONWIDE CORPORATION d/b/a)
 18 SILVERADO SMOKES & CIGARS, a)
 19 domestic corporation; and LV SINGHS)
 20 INC. d/b/a SMOKES & VAPORS, a)
 21 domestic corporation; DOES I-X; and)
 22 ROE BUSINESS ENTITIES XI-XX,)
 23 inclusive,)
 24 Defendants.)

17 VIDEOTAPED DEPOSITION OF SANDRA CAMACHO

18 VOLUME I

19 Taken on Tuesday, November 2, 2021

20 Through a translator

21 By a Certified Stenographer and Legal Videographer

22 At 9:05 a.m.

23 At 531 Morning Mauve Avenue

24 Las Vegas, Nevada

25 Reported by: HOLLY LARSEN, CCR 680, CA CSR 12170

1 Q. You did not try to quit smoking before
2 1990; correct?

3 A. Correct. It's after my father died I tried
4 to quit.

5 Q. So the first time you ever tried to quit
6 smoking was after your father died on October 25,
7 1990?

8 MS. WALD: Form.

9 THE WITNESS: When I moved to Vegas.

10 BY MS. KENYON:

11 Q. So the first time you ever tried to quit
12 smoking was in 1990 when you moved to Vegas?

13 MS. WALD: Form. Asked and answered.

14 BY MS. KENYON:

15 Q. Is that correct?

16 A. Sometime in the '90.

17 Q. Just so I understand, you never --

18 MS. HENNINGER: She's still writing.

19 MS. WALD: That's okay. Just wait for the
20 question.

21 BY MS. KENYON:

22 Q. Just so I'm clear, so the first time that
23 you ever tried to quit smoking was at some point
24 after moving to Vegas in 1990; correct?

25 MS. WALD: Form. Asked and answered.

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 SANDRA CAMACHO, individually, and)
 4 ANTHONY CAMACHO, individually,)

5 vs. Plaintiffs,)

) Case No.
) A-19-807650-C

6 PHILIP MORRIS USA INC., a foreign)
 7 corporation; R. J. REYNOLDS TOBACCO)
 8 COMPANY, a foreign corporation,)
 9 individually, and as successor-by-)
 10 merger to LORILLARD TOBACCO COMPANY)
 11 and as successor-in-interest to the)
 12 United States tobacco business of)
 13 BROWN & WILLIAMSON TOBACCO)
 14 CORPORATION, which is the)
 15 successor-by-merger to THE AMERICAN)
 16 TOBACCO COMPANY; LIGGETT GROUP,)
 LLC, a foreign corporation; ASM)
 NATIONWIDE CORPORATION d/b/a)
 SILVERADO SMOKES & CIGARS, a)
 domestic corporation; and LV SINGHS)
 INC. d/b/a SMOKES & VAPORS, a)
 domestic corporation; DOES I-X; and)
 ROE BUSINESS ENTITIES XI-XX,)
 inclusive,)
 Defendants.)

17 VIDEOTAPED DEPOSITION OF SANDRA CAMACHO

18 VOLUME II

19 Taken on Wednesday, November 3, 2021

20 Through a translator

21 By a Certified Stenographer and Legal Videographer

22 At 9:04 a.m.

23 At 531 Morning Mauve Avenue

24 Las Vegas, Nevada

25 Reported by: HOLLY LARSEN, CCR 680, CA CSR 12170

1 Q. That's not what I'm asking you. I'm asking
2 you if you ever saw the tobacco companies on the
3 news before the late '80s or early '90s.

4 A. I do not remember.

5 Q. Are you done?

6 A. Yes.

7 Q. Have you ever filed a workers' compensation
8 claim?

9 A. No.

10 Q. Have you otherwise been injured at work?

11 A. No.

12 Q. Are you doing okay?

13 A. (Inaudible response.)

14 Q. You told us you first smoked in 1964 when
15 you were 18 years old. How did you get that first
16 cigarette?

17 MS. WALD: Don't scratch. It's bad. I
18 know it's itchy, but don't scratch. Try not to
19 scratch. He's getting medicine. Why don't you
20 repeat the question.

21 MS. KENYON: Can we go off the record?

22 THE VIDEOGRAPHER: The time is 12:23. We
23 are going off the record.

24 (A break was taken.)

25 THE VIDEOGRAPHER: The time is 12:35. We

1 are going back on the record.

2 BY MS. KENYON:

3 Q. Mrs. Camacho, we're back. Are you ready to
4 go?

5 A. Yes.

6 Q. Are you feeling okay?

7 A. Yes.

8 Q. So right before we took a break, I'd asked
9 you to -- how did you get your first cigarette?

10 A. My girlfriend.

11 Q. Do you recall her name?

12 A. No.

13 Q. Do you know what brand the first cigarette
14 was?

15 A. L&M.

16 Q. Why did you choose that brand?

17 A. Because I thought they were safe.

18 Q. Where did you get that information?

19 A. I saw billboards, magazines, and I wanted
20 filter cigarettes. I thought they were safer than
21 nonfilter I thought it was.

22 Q. And I'm asking about the very first
23 cigarette you smoked. So did you ever -- so the
24 very first cigarette you smoked was a filtered
25 cigarette; is that right?

1 MS. WALD: Form. Asked and answered.

2 MS. KENYON: Just so the record is clear,
3 she's changing her testimony.

4 MS. WALD: The record is perfectly clear,
5 and she has not changed her testimony.

6 THE WITNESS: From my girlfriend.

7 BY MS. KENYON:

8 Q. And what brand did your girlfriend give
9 you?

10 MS. WALD: Object to form. Asked and
11 answered.

12 THE WITNESS: L&M.

13 BY MS. KENYON:

14 Q. What was your reaction to smoking the first
15 cigarette?

16 A. I cough.

17 Q. Did you like it?

18 MS. WALD: Form.

19 THE WITNESS: No.

20 BY MS. KENYON:

21 Q. So you said you smoked L&M because you
22 thought it was safer?

23 A. Yes.

24 Q. Safer in what way?

25 A. Less nicotine.

1 Q. So when you started smoking in 1964, you
2 smoked a filtered L&M cigarette because you thought
3 it would be safer to get less nicotine; is that
4 right?

5 A. Please repeat the question.

6 MS. KENYON: Would you read that back?

7 (The question was read.)

8 THE WITNESS: Did not like open cigarette
9 without filter.

10 BY MS. KENYON:

11 Q. Right. So what I'm trying to understand,
12 did you smoke a filtered cigarette because you
13 thought it was safer or because you didn't like an
14 unfiltered cigarette?

15 MS. WALD: Object to form.

16 Mischaracterizes testimony. Asked and answered.
17 Compound.

18 MS. KENYON: You can just object to form.

19 BY MS. KENYON:

20 Q. You can answer.

21 A. Please repeat the question.

22 MS. KENYON: Can you read back the
23 question?

24 (The question was read.)

25 MS. WALD: Same objection.

1 THE WITNESS: Both.

2 BY MS. KENYON:

3 Q. Why in 1964 did you think it was safer to
4 get less nicotine?

5 A. Because it was filtered.

6 Q. But that's not -- my question is a little
7 bit different.

8 Why did you think it was safer to get less
9 nicotine?

10 A. Because it was filtered. I thought the
11 filtered cigarette was safer for me.

12 Q. You thought that in 1964?

13 MS. WALD: Object to form. Asked and
14 answered.

15 THE WITNESS: (Inaudible response.)

16 BY MS. KENYON:

17 Q. You thought that in 1964?

18 MS. WALD: Same objection.

19 THE WITNESS: When I tried both cigarettes,
20 yes.

21 BY MS. KENYON:

22 Q. Where did you get that information?

23 MS. WALD: Object to form. Asked and
24 answered.

25 THE WITNESS: I thought it.

1 A. I do not remember.

2 Q. Did they allow smoking inside their home?

3 A. I don't know.

4 Q. Did you ever smoke in their home?

5 MS. WALD: Object to form. Asked and
6 answered.

7 THE WITNESS: I do not remember.

8 BY MS. KENYON:

9 Q. You mentioned that your father smoked Lucky
10 Strikes. Were those filtered or unfiltered?

11 A. Unfilter.

12 Q. Did you ever smoke one of his Lucky
13 Strikes?

14 A. No.

15 Q. Did your father always smoke an unfiltered
16 Lucky Strike?

17 A. Yes.

18 Q. Your mother smoked Pall Mall. Was it
19 filtered or unfiltered?

20 A. Unfilter.

21 Q. Did you ever smoke one of her Pall Mall
22 cigarettes?

23 A. No.

24 Q. You said that the first brand that you
25 smoked was L&M. You said you started smoking L&M in

1 1964. How long did you smoke L&M for?

2 A. Till I moved here. Hard to find L&M.

3 Q. Can you -- did you smoke any other brands
4 from 1964 until you moved to Vegas in 1990?

5 A. No.

6 Q. Can you describe what the pack of L&Ms
7 looks like?

8 A. Red and white.

9 Q. Do you recall any writing or pictures on
10 the pack of the L&M?

11 A. I do not remember.

12 Q. Was it menthol or regular?

13 A. Regular.

14 Q. Were they regular length, or were they
15 longer cigarettes?

16 A. Regular length.

17 Q. Can you describe what the actual cigarette
18 looks like? The actual L&M cigarette, can you
19 describe what it looked like?

20 A. White.

21 Q. And if you ran out of an L&M, would you
22 smoke someone else's cigarette?

23 A. Never ran out.

24 Q. You told us earlier that you switched to
25 Marlboro when you moved to Vegas because the L&M was

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 SANDRA CAMACHO,)
 individually, and ANTHONY)
 4 CAMACHO, individually,) CASE NO.:
) A-19-807650-C
 5 Plaintiffs,)
)
 6 vs.)
)
 7 PHILIP MORRIS USA INC., a)
 foreign corporation; R.)
 8 J. REYNOLDS TOBACCO)
 COMPANY, a foreign) DEPOSITION OF
 9 corporation,) SANDRA CAMACHO
 individually, and as) VOL. III
 10 successor-by-merger to)
 LORILLARD TOBACCO COMPANY)
 11 and as)
 successor-in-interest to)
 12 the United States tobacco)
 business of BROWN &)
 13 WILLIAMSON TOBACCO)
 CORPORATION, which is the)
 14 successor-by-merger to)
 THE AMERICAN TOBACCO)
 15 COMPANY; LIGGETT GROUP,)
 LLC, a foreign)
 16 corporation; ASM)
 NATIONWIDE CORPORATION)
 17 d/b/a SILVERADO SMOKES &)
 CIGARS, a domestic)
 18 corporation; and LV)
 SINGHS INC. d/b/a SMOKES)
 19 & VAPORS, a domestic) DEPOSITION OF
 corporation; DOES I-X;)
 20 and ROE BUSINESS ENTITIES) SANDRA CAMACHO
 XI-XX, inclusive,)
 21) VOLUME III
 Defendants.)
 22)

23 Taken on Tuesday, December 7, 2021
 At 9:06 a.m.
 24 Las Vegas, Nevada

25 Reported By: Karen L. Jones, CCR NO. 694

1 and -- did your friends also smoke?

2 A. Chicago.

3 Q. Right. Did your friends also smoke?

4 Yeah.

5 A. Here (indicating)?

6 Q. You said with friends in Chicago?

7 A. I do not remember. School friends.

8 Q. So how old were you?

9 A. 17 or 18, and don't remember how long.

10 Q. Well, we know from your interrogatory
11 responses and your prior testimony that you did not
12 start smoking until you were 18; is that correct?

13 A. Correct.

14 Q. So did you actually ever light one
15 cigarette off of another?

16 MS. WALD: Form. Asked and answered.

17 BY MS. KENYON:

18 Q. Go ahead and answer.

19 A. Yes.

20 Q. Do you know whether it was one time that
21 you did that?

22 A. Few times.

23 Q. What does a "few times" mean?

24 A. More than ten or more.

25 Q. Would you just do that when you were

1 with your girlfriends?

2 A. Yes.

3 Q. Did you enjoy socializing and smoking
4 with your girlfriends?

5 MS. WALD: Form.

6 THE WITNESS: My first cig I did because
7 it was the cool thing to do then.

8 BY MS. KENYON:

9 Q. My question is a little bit different.
10 Did you enjoy socializing and smoking
11 with your girlfriends?

12 A. No.

13 Q. Then why did you do it?

14 A. Because I was addicted to them.

15 Q. When do you think you were first
16 addicted to cigarettes?

17 A. After the first hour. Because I wanted
18 more.

19 Q. Are you saying you were addicted after
20 your first cigarette?

21 MS. WALD: Form. Asked and answered.

22 THE WITNESS: Yes.

23 BY MS. KENYON:

24 Q. When did you first learn that cigarette
25 smoking could be addictive?

1 Q. Do you recall reading, hearing or seeing
2 any statements about smoking and health specifically
3 from R. J. Reynolds?

4 MS. WALD: Form. Asked and answered.

5 THE WITNESS: Just that no proof they
6 were harmful.

7 BY MS. KENYON:

8 Q. Have you ever read or heard anything
9 about the Tobacco Industry Research Committee?

10 A. No.

11 Q. Have you ever heard anything about the
12 Council For Tobacco Research?

13 A. No.

14 Q. Have you ever heard -- read or heard
15 anything about the Tobacco Institute?

16 A. No.

17 Q. Have you ever read or heard anything
18 about Hill and Knowlton?

19 A. No.

20 Q. Have you ever purchased a product
21 because of an advertisement you saw?

22 MS. WALD: Form.

23 THE WITNESS: No.

24 BY MS. KENYON:

25 Q. Do you understand that the purpose of an

1 you?

2 A. No.

3 Q. Did you ever discuss cigarette
4 advertising with anyone?

5 A. No.

6 Q. Did you ever buy a particular brand of
7 cigarette because of an advertisement?

8 A. I smoked filter cigarettes thinking they
9 were safer.

10 Q. My question was different. Did you ever
11 buy a particular brand because of an advertisement?

12 A. I only remember billboard. Nothing
13 else.

14 Q. You never saw an ad that said filtered
15 cigarettes were safer, correct?

16 MS. WALD: Form.

17 BY MS. KENYON:

18 Q. Is that correct?

19 A. I do not remember. I do not remember.

20 Q. Do you recall seeing any advertisements
21 for Marlboro cigarettes?

22 A. I do not remember.

23 Q. Do you recall seeing any advertisements
24 for L&M cigarettes?

25 MS. WALD: Are you doing okay? Are you

1 understanding the questions?

2 THE WITNESS: I smoked L&M because
3 girlfriend gave it to me.

4 BY MS. KENYON:

5 Q. Right. So the only reason that you
6 smoked an L&M cigarette was because a girlfriend
7 gave it to you, correct?

8 A. And it was filter.

9 Q. So my question is, you never saw an ad
10 for L&M cigarettes, correct?

11 A. I do not remember.

12 Q. Did you ever see an ad for Basic
13 cigarettes?

14 A. I do not remember.

15 MS. WALD: Whenever you're at a good
16 stopping point, I think she might be getting
17 confused. By the way you're answering these
18 questions, it seems like you're getting a little
19 confused.

20 MS. HENNINGER: Yep.

21 MS. WALD: We've been going two hours
22 and 30 minutes today, so I think this might be a
23 good stopping point for the day.

24 MS. KENYON: All right. We'll go off
25 the record.

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 SANDRA CAMACHO,)
 individually, and ANTHONY)
 4 CAMACHO, individually,) CASE NO.:
) A-19-807650-C
 5 Plaintiffs,)

6 vs.)

7 PHILIP MORRIS USA INC., a)
 foreign corporation; R.)
 8 J. REYNOLDS TOBACCO)
 COMPANY, a foreign)
 9 corporation,)
 individually, and as)
 10 successor-by-merger to)
 LORILLARD TOBACCO COMPANY)
 11 and as)
 successor-in-interest to)
 12 the United States tobacco)
 business of BROWN &)
 13 WILLIAMSON TOBACCO)
 CORPORATION, which is the)
 14 successor-by-merger to)
 THE AMERICAN TOBACCO)
 15 COMPANY; LIGGETT GROUP,)
 LLC, a foreign)
 16 corporation; ASM)
 NATIONWIDE CORPORATION)
 17 d/b/a SILVERADO SMOKES &)
 CIGARS, a domestic)
 18 corporation; and LV)
 SINGHS INC. d/b/a SMOKES)
 19 & VAPORS, a domestic)
 corporation; DOES I-X;)
 20 and ROE BUSINESS ENTITIES)
 XI-XX, inclusive,)

VIDEOTAPED DEPOSITION OF

SANDRA CAMACHO

VOLUME IV

21 Defendants.)
 22)

23 Taken on Wednesday, December 8, 2021

At 9:04 a.m.

24 Las Vegas, Nevada

25 Reported By: Karen L. Jones, CCR NO. 694

1 not remember.

2 BY MS. KENYON:

3 Q. Do you recall reading, hearing or seeing
4 a specific statement about smoking and health from
5 Brown and Williamson Tobacco Corporation?

6 MS. WALD: Form.

7 THE WITNESS: Like I said, don't
8 remember names, just that no proof cigarettes are
9 harmful, so I smoked believing them liars.

10 BY MS. KENYON:

11 Q. So is the answer to my question that you
12 don't know?

13 A. Don't know who.

14 Q. Do you recall reading, hearing or seeing
15 a specific statement about smoking and health from
16 BAT Industries?

17 A. I do not remember.

18 MS. WALD: Form.

19 BY MS. KENYON:

20 Q. Do you recall reading, hearing or seeing
21 a specific statement about smoking and health from
22 Liggett Group?

23 MS. WALD: Form.

24 THE WITNESS: I do not remember.

25 BY MS. KENYON:

1 that same year, right, in 1964?

2 A. Yes.

3 Q. And you got that first cigarette from
4 your girlfriend, right?

5 A. Yes.

6 Q. And that cigarette was an L&M brand
7 cigarette, right?

8 A. Yes.

9 Q. Do you know why your girlfriend chose to
10 smoke L&M?

11 A. Yes.

12 Q. And why was that?

13 A. She said she thought they were safer --
14 or safe.

15 Q. Is it safe or safer?

16 A. Safe.

17 Q. Safe?

18 A. Safe.

19 Q. Is that a conversation you remember
20 having with your girlfriend, that she told you that
21 L&M were safe?

22 A. Yes.

23 Q. Can you remember any other details about
24 that conversation?

25 A. No.

1 Q. But before you had that first cigarette,
2 your girlfriend told you that the L&M was safe; is
3 that right?

4 A. Yes.

5 Q. That same day that you tried your first
6 cigarette, there were other people with you,
7 correct?

8 A. Yes.

9 Q. And was everybody smoking?

10 A. Yes.

11 Q. There were no holdouts? Nobody who
12 said, "No, I don't want to smoke"?

13 A. There were only four or three. We all
14 smoked.

15 Q. Did you have any friends at that time
16 who were not smokers?

17 A. No.

18 Q. Of the three or four people who were
19 there, was everybody smoking L&M or were they
20 smoking other brands, as well?

21 A. I do not know.

22 Q. Why is it that you took the cigarette
23 from the girlfriend who was smoking the L&M?

24 A. Because it was cool at that time to
25 smoke.

1 Q. If your girlfriend had been smoking a
2 brand other than L&M, would you have smoked that
3 instead?

4 MS. WALD: Form.

5 THE WITNESS: I do not remember. I do
6 not know.

7 BY MS. LUTHER:

8 Q. And then through the years, you
9 continued to smoke L&M until you moved to Nevada,
10 right?

11 A. Yes.

12 Q. And you continued to smoke L&M because
13 it was what you were familiar with, right?

14 MS. WALD: Form.

15 THE WITNESS: Yes.

16 BY MS. LUTHER:

17 Q. I have a vague recollection that at one
18 of your earlier sessions you said that one of the
19 friends who was with you that day smoked an
20 unfiltered cigarette.

21 Do you recall telling us that?

22 A. No.

23 Q. Do you recall telling us that you tried
24 an unfiltered cigarette that day?

25 A. Don't remember when, but took a puff of

1 through the course of your deposition that you did
2 not enjoy smoking.

3 MS. WALD: Form.

4 BY MS. LUTHER:

5 Q. Do you recall that?

6 A. Yes.

7 Q. At what point was it that you realized
8 you did not enjoy smoking?

9 MS. WALD: Form.

10 THE WITNESS: My very first cigarette
11 was my choice. After that downhill, wanted more.

12 BY MS. LUTHER:

13 Q. All right. But I don't think that
14 answers my question. At what point did you realize
15 you didn't enjoy smoking?

16 MS. WALD: Form.

17 THE WITNESS: I was already addicted to
18 ever think about not enjoying a cigarette.

19 BY MS. LUTHER:

20 Q. So you did enjoy smoking?

21 MS. WALD: Form.

22 BY MS. LUTHER:

23 Q. You enjoyed the first one?

24 A. (Nods head in the affirmative.)

25 MS. WALD: Form.

1 Q. You also told Ms. Luther you did not
2 enjoy smoking; is that correct?

3 MS. WALD: Form.

4 THE WITNESS: Correct.

5 BY MS. HENNINGER:

6 Q. My question for you is if you did not
7 like the taste and you did not enjoy cigarettes, why
8 did you keep smoking them in the '60s?

9 MS. WALD: Form.

10 THE WITNESS: Because it was the cool
11 thing to do and everyone was smoking, and I just
12 wanted more.

13 BY MS. HENNINGER:

14 Q. Is that the -- is that true for why you
15 continued to smoke in the '70s?

16 MS. WALD: Form.

17 THE WITNESS: No.

18 BY MS. HENNINGER:

19 Q. Why did you continue to smoke in the
20 '70s?

21 A. I was already addicted to smoking. I
22 tried many times to quit, but no good. Kept wanting
23 one.

24 Q. But you didn't try to quit in the '70s,
25 did you?

1 A. No.

2 Q. And you didn't try to quit in the '80s,
3 did you?

4 A. No.

5 Q. And you didn't try to quit in the '90s,
6 did you?

7 MS. WALD: Form.

8 THE WITNESS: I do not remember.

9 BY MS. HENNINGER:

10 Q. Okay. Give me one second. I think I'm
11 done.

12 MS. WALD: I think she's about to --

13 MS. HENNINGER: Sorry. I didn't realize
14 she was still writing.

15 BY MS. HENNINGER:

16 Q. "It was when I moved to Vegas."

17 A. It was when I moved to Vegas, that I
18 know.

19 Q. I do have a quick question. You told me
20 that your son, John, worked at Supreme Seafood with
21 his father, correct?

22 A. Yes.

23 Q. And you told me -- or you told us on the
24 very first day he had a child. Have you met John's
25 child?

1 BY MS. WALD:

2 Q. When you moved to Las Vegas, how many
3 packs of cigarettes per day did you smoke?

4 MS. KENYON: Form.

5 THE WITNESS: Two.

6 BY MS. WALD:

7 Q. How many years did you smoke L&M
8 cigarettes?

9 A. When I was 17 or 18 till 1990.

10 Q. What brand of cigarette did you switch
11 to in 1990?

12 A. Marlboro.

13 Q. How many years did you smoke Marlboro?

14 A. Ten years. Ten years to 15 years.

15 Q. You seem to get a little confused during
16 that last question. It took you a while to answer.

17 MS. HENNINGER: Objection.

18 MS. KENYON: Form.

19 BY MS. WALD:

20 Q. What brand did you smoke after Marlboro?

21 A. Could not find L&M when I moved here.

22 Then Marlboro was getting expensive. Switched to
23 Basic.

24 Q. Did you smoke Basic cigarettes for a
25 longer period of time than Marlboro cigarettes?

1 A. No.

2 Q. How long did you smoke Basic cigarettes?

3 A. I do not remember.

4 Q. Can you write that down, what you just
5 mouthed?

6 A. Smoked Basic till cancer.

7 Q. So I just want to make sure I'm
8 understanding you. When you moved to Vegas, you
9 smoked Marlboro for a few years and then you
10 switched to Basic until you got sick?

11 MS. KENYON: Form.

12 MS. LUTHER: Form.

13 THE WITNESS: Yes.

14 BY MS. WALD:

15 Q. When you used to smoke when you woke up
16 in the morning, what was the first thing you would
17 do?

18 A. Light a cigarette.

19 Q. How many minutes between waking up until
20 you would light a cigarette?

21 MS. KENYON: Form.

22 THE WITNESS: One hour, maybe sooner.

23 BY MS. WALD:

24 Q. When you woke up in the morning, how
25 long did it take you until you smoked your first

1 A. First one, yes.

2 Q. After the first one, did you enjoy
3 smoking?

4 A. No.

5 Q. Do you think you were addicted to
6 cigarettes?

7 A. Yes.

8 Q. Even now after everything you've been
9 through and the condition you're in, do you still
10 crave cigarettes?

11 MS. KENYON: Form.

12 THE WITNESS: Yes.

13 BY MS. WALD:

14 Q. Were there times in your life when you
15 tried to quit smoking?

16 A. Yes.

17 Q. When did you first try to quit smoking,
18 what year?

19 A. After moving here.

20 Q. And "here," you mean Las Vegas?

21 A. Yes.

22 Q. How many times in your life did you try
23 to quit smoking?

24 A. Many.

25 Q. Can you put any amount of -- strike

EXHIBIT D

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL DISTRICT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

EDWARD F. PRINCIPE,

Plaintiff,

vs.

Case No. 17-25772 CA 25

PHILIP MORRIS USA, INC., a
foreign corporation; R.J.

REYNOLDS TOBACCO COMPANY and
LIGGETT GROUP LLC, a Florida
Limited Liability Company;
and PUBLIX SUPER MARKETS,
INC., a Florida Corporation,
Defendants.

/

DEPOSITION OF ROBERT PROCTOR, PH.D.
Palo Alto, California
Saturday, October 19, 2019

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

1 A. Correct.

2 Q. They stated publicly that smoking caused lung
3 cancer, heart and vascular disease and emphysema;
4 correct?

5 A. Yes.

6 Q. Those statements received a lot of attention in
7 the press; wouldn't you agree?

8 A. They did.

9 Q. Both print and television?

10 A. Yes.

11 Q. It's the first time a tobacco manufacturer made
12 statements like that publicly; right?

13 A. That's true.

14 Q. Since those admissions were made by Liggett in
15 1996 and 1997, you're not aware of any public statements
16 made by Liggett retracting those statements; isn't that
17 right?

18 A. Yes. In fact, I think they're barred from
19 denying the truth in the Master Settlement Agreement.

20 Q. But the statement that I made is correct?

21 A. Yes.

22 Q. You're not aware of anything that Liggett has
23 said publicly retracting those public admissions; right?

24 A. Yes. I think they would be barred by the law
25 from retracting those.

1 Q. You're also aware that in 1997, Liggett
2 voluntarily added a warning to its cigarette packs, its
3 cartons and point-of-sale materials, that smoking is
4 addictive; right?

5 A. Yes. That's the label that was taken off when
6 Philip Morris bought that brand.

7 MR. HENK: Object to the non-responsive part of
8 that answer.

9 Q. BY MS. LUTHER: It remains on all of Liggett's
10 brands to this day; isn't that right?

11 A. I believe so.

12 Q. You're aware that Liggett resigned from the
13 Tobacco Institute around 1996; right?

14 A. Yes.

15 Q. At that time it ceased participation in the
16 Committee of Counsel as well?

17 A. Yes, "it" meaning Liggett?

18 Q. Correct.

19 MR. ALVAREZ: I'm sorry, what year did you say?
20 I didn't pick it up.

21 MS. LUTHER: 1996.

22 MR. ALVAREZ: Thank you.

23 Q. BY MS. LUTHER: To the extent that the Tobacco
24 Institute carried -- to the extent the Tobacco Institute
25 participated in or carried out a conspiracy after that

EXHIBIT E

1 he's going to die from lung cancer, and then
2 it's broadcast after his death.

3 Q. And let's take a look at it. It's
4 PMU 2570.

5 (Video clip was played and taken down
6 to the best of the reporter's ability as
7 follows:)

8 VOICE: Ladies and gentlemen, the late
9 Yul Brynner.

10 VOICE: I really wanted to make a
11 commercial when I discovered that I was
12 that sick and my time was so limited to
13 make a commercial that says simply now
14 that I'm gone I tell you, don't smoke.
15 Whatever you do, just don't smoke.

16 If I could take back that smoking we
17 wouldn't be talking about any cancer; I'm
18 convinced of that.

19 (Video clip concluded.)

20 MS. ARNOLD: And we would move PMU 2516
21 and PMU 2570, that's the last two videos,
22 into evidence.

23 MR. ROSEN: No objection, Your Honor.

24 THE COURT: In evidence.

25 (Exhibit PMU 2516 and PMU 2570 were

1 received in evidence.)

2 BY MS. ARNOLD:

3 Q. In 1985 the rotating warnings came out;
4 is that correct?

5 A. Yes, meaning that instead of just one
6 warning there were four different rotating
7 warnings that would be placed in sequence from
8 time to time on the packs.

9 Q. And the jury is familiar with those.
10 In 1998 some additional restrictions
11 were placed on cigarette advertising as well,
12 correct?

13 A. Yes.

14 Q. So from 1998 forward there have been no
15 cigarette ads or signs at stadiums or sporting
16 events, correct?

17 A. Right.

18 Q. You mentioned, for example, a NASCAR
19 sporting event, right?

20 A. Yes.

21 Q. Or Virginia Slims tennis tournaments,
22 right?

23 A. Yes.

24 Q. Those types of things would not have
25 occurred after 1998.

1 A. Those are no longer allowed after that
2 point.

3 Q. There have been no cigarette ads on
4 billboards since 1998, correct?

5 A. That's right; the closest thing to it
6 would be those placards outside gas stations,
7 but the large highway billboards for cigarettes,
8 those all disappeared.

9 Q. And there have been no cigarette
10 advertisements on transit, like buses or taxis
11 or anything like that.

12 A. Buses, taxis, subways, those are all
13 barred.

14 Q. Since 1998 Philip Morris no longer
15 makes or distributes any of that branded
16 merchandise like we saw on the Marlboro story
17 video, correct?

18 A. Correct.

19 Q. Like jackets or bags --

20 A. Jackets, duffel bags, ball caps,
21 clocks, calculators.

22 Q. Now, you showed a number of magazine
23 advertisements during your direct examination.
24 And in the year 2000, so 17 years ago,
25 Philip Morris stopped advertising on the back of

1 magazines, correct?

2 A. Yes. Unlike the other manufacturers.

3 Q. And then in 2005 Philip Morris stopped
4 advertising in magazines entirely, correct?

5 A. Right, again, unlike some of the other
6 cigarette manufacturers. Philip Morris should
7 be praised for that.

8 Q. Other cigarette manufacturers do
9 advertise in magazines.

10 A. Yes.

11 Q. Philip Morris does not.

12 A. That's correct.

13 Q. All right. So for the past 12 years
14 there hasn't been an advertisement for a Philip
15 Morris branded cigarette in a magazine, on
16 television and radio, on a billboard or a
17 sporting event; is that fair?

18 A. Not in the U.S.

19 Q. You talked about money the tobacco
20 companies spent on advertising, correct?

21 A. Right, the 250 billion.

22 Q. I think you did some math, something
23 about -- you made a joke about how big of a
24 number it is, right?

25 A. Well, I said it was 250 thousand

1 million because a lot of people don't understand
2 the word "billion."

3 Q. Right.

4 A. Just they know it's some mad cheddar.

5 Q. It's what?

6 A. I said, they know it's some mad
7 cheddar.

8 Q. Mad cheddar?

9 A. Yeah.

10 Q. All right.

11 Since 2000 nearly 99 percent of the
12 money that Philip Morris spends on marketing is
13 actually spent on things like coupons, buybacks,
14 two for ones, discounts and direct mail to adult
15 consumers, correct?

16 A. Exactly.

17 Q. All right. On direct examination you
18 talked about the Tobacco Institute, the Council
19 for Tobacco Research; is that correct?

20 A. Yes.

21 Q. And as of 1998 those organizations no
22 longer existed.

23 A. Right, they were all barred as
24 fraudulent.

25 MS. ARNOLD: Move to strike the last

1 comment.

2 THE COURT: Sustained.

3 BY MS. ARNOLD:

4 Q. You talked about Philip Morris'
5 website; is that correct?

6 A. Yes.

7 Q. I'm going to switch to the ELMO here if
8 we can.

9 In the late 1990s, early 2000
10 Philip Morris created a public website; is that
11 correct?

12 A. Yes.

13 Q. And you've seen this before, right,
14 Dr. Proctor?

15 A. Yes, I have.

16 Q. You can see at the top it says
17 "Philip Morris USA, Smoking and Health Issues,"
18 right?

19 A. Yes.

20 Q. And it says, "There is no safe
21 cigarette. Cigarettes are addictive and cause
22 serious diseases in smokers. For those
23 concerned about the health risks of smoking, the
24 best thing to do is to quit."

25 A. Right.

1 Q. Did I read that correctly?

2 A. Yes.

3 Q. "Philip Morris USA agrees with the
4 overwhelming medical and scientific consensus
5 that cigarette smoking causes lung cancer, heart
6 disease, emphysema and other serious diseases in
7 smokers. Smokers are far more likely to develop
8 such diseases than nonsmokers."

9 Did I read that correctly?

10 A. Yes.

11 Q. Then moving over to the right-hand side
12 of the website, "Philip Morris USA agrees with
13 the overwhelming medical and scientific
14 consensus that cigarette smoking is addictive
15 and it can be very difficult to quit smoking,
16 but this should not deter smokers who want to
17 quit from trying to do so." And then it
18 provides the links to some various websites for
19 more information. Is that correct?

20 A. It's correct.

21 MS. ARNOLD: And this is PMU
22 Exhibit 85215, which we would move into
23 evidence.

24 THE COURT: In evidence.

25 MR. ROSEN: No objection, Your Honor.

1 I just ask for rule of completeness there
2 may be other portions of the website I may
3 want to use.

4 THE COURT: Sure. Okay.

5 (Exhibit PMU 85215 was received in
6 evidence.)

7 BY MS. ARNOLD:

8 Q. Now, on the Philip Morris website
9 anyone, including yourself, can actually go to
10 it and get ingredients that are used in
11 different brands of cigarettes, correct?

12 A. Now you can, yes.

13 Q. All right. The website --

14 A. Additives is a better way to put it.

15 Q. The website itself doesn't actually
16 list the recipe for each brand of cigarettes,
17 correct?

18 A. Right, that remains a trade secret.

19 Q. But it does list the ingredients,
20 correct? And you showed some of those to the
21 jury during your examination.

22 A. Yes. But, again, they're additives not
23 ingredients. It's not a cake.

24 Q. Okay. By the way, if you went to the
25 Philip Morris website you wouldn't see any

1 advertisements for various cigarette brands,
2 correct?

3 A. Not that website, no.

4 Q. You wouldn't see any coupons, correct?

5 A. I don't think so.

6 Q. And you would agree that this website
7 is not used for any commercial purposes,
8 correct?

9 A. Well, it's not used directly to sell
10 cigarettes; that's true.

11 Q. It's not used for any commercial
12 purpose, right?

13 A. I guess that's fair.

14 Q. All right. The jury has heard and you
15 talked about it as well that in the late 1980s
16 and early 1990s Philip Morris actually was able
17 to remove almost all of the nicotine from
18 tobacco and test market three different brands,
19 right?

20 A. Yes. They were able to do that and
21 actually did it.

22 Q. They've seen some slides showing the
23 Next brand of cigarettes, right?

24 A. Yes.

25 Q. Benson & Hedges De-Nic, right?

EXHIBIT F

1 of the brands that Mrs. Geist smoked?

2 A That's correct. And in your preface to the
3 question earlier, we kind of excluded the alternative
4 designs, you know. So I'm forced to answer the question
5 that they all were dangerous.

6 Q There were no conventional commercially
7 successful tobacco-burning cigarettes that contained
8 nicotine that were available on the market that were
9 proven to be less dangerous than any of the brands that
10 Mrs. Geist smoked; right?

11 A I agree from a historical perspective, yes.

12 Q And also no conventional commercially
13 successful tobacco-burning cigarettes containing nicotine
14 that were available on the market that were less
15 addictive than the brands Mrs. Geist smoked; right?

16 A As a historian, you know, I see them all
17 equally addictive. A specialist in addiction may have
18 another view on that; for example, menthol cigarettes and
19 the like. But as a historical opinion, which is not a
20 medical opinion, they all cause the injury of addiction.

21 Q Okay. And I can only ask you for your
22 opinions.

23 In your opinion, there were no conventional
24 commercially successful tobacco-burning cigarettes
25 containing nicotine that were available on the market

1 that were proven to pose less risk for lung cancer or
2 COPD than any of the brands that Mrs. Geist smoked;
3 right?

4 A Again, in my view as a historian, I see them
5 all equally as dangerous, including the diseases you
6 indicated in your question.

7 Q Since Mrs. Geist was not deposed and you never
8 had an opportunity to talk to her or interview her, you
9 can't testify to the jury as to what specifically was in
10 her head as it relates to what she thought about the
11 health risk of smoking; right?

12 A I cannot get into her head, as you used that
13 metaphor. I can testify to what her husband testifies to
14 in terms of her knowledge and understanding as an
15 historical source because he's a direct witness,
16 firsthand witness, and I can place people like Miss Geist
17 in the historical context as I do in my Expert Report.

18 Q And when you're repeating what you saw from
19 Mr. Geist, you're repeating what he reports was the
20 information that Mrs. Geist told him, or that's what he
21 claims; right?

22 A Yeah. That's what the text indicates, and then
23 I put that in the broader historical context with other
24 supporting data to evaluate those statements that I think
25 are -- have a high level of truth value, if you will, or

EXHIBIT G

1 IN THE DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 - - -
4 SANDRA CAMACHO, : CASE NO.
5 individually and : A-19-807650-C
6 ANTHONY CAMACHO, :
7 individually, :
8 vs. :
9 PHILIP MORRIS USA :
10 INC., a foreign :
11 corporation; R.J. :
12 REYNOLDS TOBACCO :
13 COMPANY, a foreign :
14 corporation, :
15 individually, a, and :
16 as a :
17 successor-by-merger to :
18 LORILLARD TOBACCO :
19 COMPANY and as :
20 successor-in-interest :
21 to the United States :
22 Tobacco Business of :
23 BROWN & WILLIAMSON :
24 TOBACCO CORPORATION, :
 which is the :
 successor-by-merger to :
 THE AMERICAN TOBACCO :
 COMPANY; LIGGETT :
 GROUP, LLC, a foreign :
 corporation; ASM :
 NATIONWIDE CORPORATION :
 d/b/a SILVERADO SMOKES :
 & CIGARS, a domestic :
 corporation, and LV :
 SINGS, INC., d/b/a :
 SMOKES & VAPORS, a :
 domestic corporation; :
 DOES I-X, and ROE :
 BUSINESS ENTITIES :
 XI-XX, inclusive, :
23 - - -
 April 27, 2022
24 - - -

1 are much less. They're never zero.
2 They're never back to normal, to a
3 nonsmoker. But they're substantially
4 improved.

5 Again, virtually all of that
6 work is population studies, rather than
7 in this patient, if she stopped on that
8 day she would or would not have gotten
9 cancer. You can't make those kinds of
10 patient-specific guesses.

11 Q. Right. So smoking increases
12 a person's risk of laryngeal cancer, but
13 when the person stops smoking, his or her
14 risk of getting laryngeal cancer from
15 smoking begins to decline, right?

16 A. Yes.

17 Q. It's ten years after
18 quitting smoking a person's risk of
19 laryngeal cancer has decreased
20 substantially, right?

21 A. Substantially, yes.

22 Q. Had Mrs. Camacho quit
23 smoking when her doctors told her in
24 2008, her risk for laryngeal cancer would

1 have substantially decreased, right?

2 A. 2008?

3 Q. Yeah.

4 A. Yes. It wouldn't have gone
5 to zero. But it would have been
6 essentially less.

7 Q. If she had quit smoking in
8 2003, 15 years before her cancer
9 diagnosis, her risk would have gone back
10 to almost that of a never smoker, right?

11 A. I think so, yes.

12 Q. And if she had quit smoking
13 in 1998, which would have been 20 years
14 before her cancer diagnosis, her risk
15 would have been almost that of someone
16 who had never smoked, right?

17 A. Correct.

18 Q. Now, you started seeing
19 patients as an intern in 1971; is that
20 right?

21 A. Well, I started seeing them
22 as a medical student. But I started as a
23 physician seeing them as an intern, yes,
24 in '71.