

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 COURT
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; and LV
SINGHS INC, d/b/a SMOKES &
VAPORS, a domestic corporation,

Real Parties in Interest.

Supreme Court Case No. 86501

District Court Case No. A-19-807650-C
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Clerk of Supreme Court

**R.J. REYNOLDS TOBACCO
COMPANY'S RESPONSE TO JULY 25,
2023 ORDER TO FILE DOCUMENT**

R.J. Reynolds Tobacco Company (“Reynolds”) files its response to this Court’s July 25, 2023 Order to File Document. Despite Petitioners’ decision to list Reynolds as a real party in interest upon the filing of their May 4, 2023 Petition for Writ of Mandamus (the “Writ Petition”), Reynolds has not been a party to the underlying litigation since October 26, 2022, at which time the District Court granted summary judgment in favor of Reynolds (the “Reynolds SJ Order”).¹ The Writ Petition does not challenge the Reynolds SJ Order, and therefore, Reynolds does not intend to file an answer to the Writ Petition.²

DATED this 1st day of August, 2023.

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¹ Oct. 26, 2022 Order Granting Def. R.J. Reynolds Tobacco Company’s Mot. for Summary Judgment on Pls.’ Claims for Deceptive Trade Practices and Civil Conspiracy, attached as Exhibit 1 (“As a result of this Order, Reynolds is completely dismissed from this litigation.”).

² Reynolds reserves its right to seek leave to file an amicus curiae brief under NRCP 29 at the appropriate time.

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 1st day of August, 2023, service of the foregoing was made by mandatory electronic service through the Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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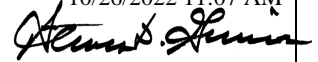
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/s/ Sharon L. Murnane
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Exhibit 1

Exhibit 1


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R.J. REYNOLDS TOBACCO COMPANY

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

Case No. A-19-807650-C
Dept. No. IV

**ORDER GRANTING DEFENDANT R.J.
REYNOLDS TOBACCO COMPANY'S
MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' CLAIMS FOR
DECEPTIVE TRADE PRACTICES AND
CIVIL CONSPIRACY**

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 limited liability company; and 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 1-X; and ROE BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

THIS MATTER came before the Court on August 29, 2022, on Defendant R.J. Reynolds Tobacco Company's Motion for Summary Judgment on Plaintiffs' Claims for Deceptive Trade Practices and Civil Conspiracy (the "Motion for Summary Judgment"). The Parties appeared as follows:

- For Plaintiffs Sandra Camacho and Anthony Camacho ("Plaintiffs"): Matthew Granda of Claggett & Sykes, Fan Li of Kelley Uustal, and John Uustal of Kelley Uustal (admitted Pro Hac Vice).
- For Defendant R.J. Reynolds Tobacco Company ("Reynolds"): Dennis Kennedy of Bailey❖Kennedy, and Ursula Henninger of King & Spalding (admitted Pro Hac Vice).
- For Defendant Philip Morris USA Inc. ("Philip Morris"): D. Lee Roberts of Weinberg Wheeler Hudgins Gunn & Dial, Peter Henk of Shook Hardy & Bacon (admitted Pro Hac Vice), Hassia Diolombi of Shook Hardy & Bacon (admitted Pro Hac Vice), and Alexandra Sorenson of Shook Hardy & Bacon (admitted Pro Hac Vice).
- For Defendant ASM Nationwide Corporation: D. Lee Roberts of Weinberg Wheeler Hudgins Gunn & Dial.
- For Defendant Liggett Group, LLC ("Liggett"): J. Christopher Jorgenson of Lewis Roca Rothgerber Christie, Daniel Polsenberg of Lewis Roca Rothgerber Christie, Kelly Anne Luther of Kasowitz Benson Torres, and Maria Ruiz of Kasowitz Benson Torres.

The Court, having heard oral argument, having reviewed the papers, exhibits, and pleadings on file, and having considered the same, and for the reasons stated upon the record, finds as follows.

UNDISPUTED MATERIAL FACTS

1. Plaintiffs asserted two claims against Reynolds: (1) violation of the Nevada Deceptive Trade Practices Act – NRS 598.0903 et. seq. and NRS 41.600 (“NDTPA”); and (2) civil conspiracy.¹
2. Ms. Camacho never purchased or used a product (*i.e.*, cigarettes) manufactured or sold by Reynolds.
3. Ms. Camacho smoked Liggett brand cigarettes (L&M) from 1964 to 1990, and Philip Morris brand cigarettes (Marlboro and Basic) from 1990 to 2017.
4. Ms. Camacho lived in Illinois from 1964 (the year she started smoking) through 1990. In 1990, Plaintiffs moved to Las Vegas, Nevada.
5. Plaintiffs’ NDTPA claim against Reynolds is based on the premise that Reynolds allegedly fraudulently misrepresented and/or failed to disclose material facts regarding the safety and harm of smoking cigarettes.
6. Plaintiffs’ civil conspiracy claim is based on the same premise as their NDTPA claim, and Plaintiffs have conceded that their NDTPA claim against Reynolds is the underlying wrong supporting their civil conspiracy claim against Reynolds.
7. Plaintiffs’ own expert has conceded that neither Reynolds, Philip Morris, nor Liggett have ever represented that smoking cigarettes is safe.
8. Plaintiffs have failed to present any evidence that Mrs. Camacho was aware of any fraudulent misrepresentations that were made by Reynolds regarding the safety and harm of smoking cigarettes. In fact, there is no evidence that Ms. Camacho ever saw or heard any statements by Reynolds.
9. Likewise, Plaintiffs have failed to identify any alleged fraudulent omissions by Reynolds which would have played a material and substantial part in leading Ms. Camacho to choose

¹ Mrs. Camacho is the only party who has asserted claims based on her purchase and use of cigarettes. Mr. Camacho’s claims are based entirely on the fact that he was and is married to Mrs. Camacho (*i.e.*, loss of consortium).

not to begin smoking or to later quit smoking.

CONCLUSIONS OF LAW

1. 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.” NRCP 56; *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (Nev. 2005).² When the movant has made and supported its motion as required, the non-moving party must, “by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.” *Id.* The non-movant “may not rest upon general allegations and conclusions” and “is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* 121 Nev. at 731–32, 121 P.3d 1030–31.
2. NRS 41.600 provides a private cause of action for “any person who is a victim of consumer fraud.” NRS 41.600. “Consumer fraud” means: . . . a deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.” *Id.* at § (2)(e). To succeed on a claim under the NDTPA, Plaintiffs must prove by a preponderance of the evidence that “(1) an act of consumer fraud by the [Defendants] (2) caused (3) damage to the [P]laintiff.” *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D. Nev. 2009); *Sattari v. Wash. Mut.*, 475 F. App’x 648, 648 (9th Cir. 2011) (same); *see also Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 165, 232 P.3d 433, 435 (2010) (noting that deceptive trade practices claims are subject to a preponderance of the evidence standard).
3. When an NDTPA claim is based on alleged fraudulent misrepresentations and omissions, reliance is an essential element of the claim. *See, e.g., Bank of New York Mellon as Tr. for Certificateholders of CWALT, Inc., Alternative Loan Tr. 2005-57CB, Mortg. Pass-through Certificates, Series 2005-57CB v. Sunrise Ridge Master Homeowners Ass’n*, No. 217CV00233, 2020 WL 2064065, at *6 (D. Nev. Apr. 28, 2020) (granting summary judgment in favor of defendant where plaintiff could not show that defendant’s representations were knowingly false, or that plaintiff “acted in reliance on such

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

- representations”); *Schmidt v. C.R. Bard, Inc.*, No. 2:11-CV-00978-PMP, 2013 WL 3802804, at *3 (D. Nev. July 22, 2013) (“Defendants’ Deceptive Trade Practices Act claim fails because Plaintiff cannot prove justifiable reliance on any alleged deceptive or false representation on the part of Defendant”); *see also ImageKeeper LLC v. Wright Nat’l Flood Ins. Servs. LLC*, No. 220CV01470, 2021 WL 4466312, at *8 (D. Nev. Sept. 29, 2021) (finding an NDTPA claim plausibly pleaded where plaintiff alleged that he acted “in reliance on” defendant’s misrepresentation); *Rimini St., Inc. v. Oracle Int’l Corp.*, No. 2:14-CV-1699, 2017 WL 5158658, at *9 (D. Nev. Nov. 7, 2017) (same).
4. Further, the Nevada Supreme Court has held that “[l]ack of justifiable reliance bars recovery in an action at law for damages for the tort of deceit.” *Pac. Maxon, Inc. v. Wilson*, 96 Nev. 867, 870, 619 P.2d 816, 817 (1980).
5. The Court rejects Plaintiffs’ argument that they need not prove reliance for their NDTPA claim. Plaintiff cites various precedent which address the threshold issue of standing under the NDTPA, but none of those cases indicate that reliance is not necessary to prove causation and direct harm, especially when Plaintiffs’ NDTPA claim is premised on alleged fraudulent statements and/or omissions—at it is here.³
6. In order to establish justifiable reliance, a plaintiff must show that the false representation or omission “played a material and substantial part in leading the plaintiff to adopt his particular course; and when he was unaware of it at the time that he acted, or it is clear that he was not in any way influenced by it, and would have done the same thing without it for other reasons, his loss is not attributed to the defendant.” *See Lubbe v. Barba*, 91 Nev. 596, 600, 540 P.2d 115, 118 (1975).
7. As such, to establish justifiable reliance here with respect to any alleged fraudulent misrepresentations by Reynolds, Plaintiffs “must show that an alleged false representation

³ Plaintiffs cite an unpublished disposition from 2013, *Hirji v. State*, 2013 WL 7158555, 129 Nev. 1122 (Nov. 1, 2013), to argue that the “Nevada Supreme Court has previously rejected the reliance requirement Defendants attempt to inject in the NDTPA.” Not only is this an unpublished disposition which may not be cited under NRAP 36(c)(3), it is irrelevant considering *Hirji* was initiated by the State of Nevada—not a private litigant like Plaintiffs. The elements for an NDPTA claim brought by the State of Nevada are markedly different than for a private litigant because a private litigant must show they are a victim under NRS 41.600.

- played a material and substantial part in leading [Ms. Camacho] to adopt her particular course” and “reliance on an alleged misrepresentation presumes that [Ms. Camacho] had actually read or heard the alleged misrepresentation.” *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1155 (9th Cir. 2005).
8. To establish justifiable reliance with respect to any alleged fraudulent omissions, Plaintiffs must show Ms. Camacho was “unaware of the fact and would have acted differently if [she] had known of the concealed or suppressed fact.” *Rivera*, 395 F.3d at 1154; *see also Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D. Nev. 1995); *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98, 110 (1998) (overruled on other grounds by *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001)).⁴
9. Plaintiffs have failed to present any evidence showing that Ms. Camacho saw or heard any allegedly fraudulent statements by Reynolds. Ms. Camacho could not have justifiably relied on a fraudulent statement by Reynolds that she never saw or heard.
10. Likewise, Plaintiffs have failed to present any evidence showing that Ms. Camacho was unaware of any material fact regarding cigarettes and would have acted differently if she had known.
11. Plaintiffs have presented no evidence indicating that Ms. Camacho decided to start smoking, switched to a particular brand of cigarettes, refrained from quitting, or made any decision related to her smoking because of a statement made by Reynolds. The undisputed fact that Ms. Camacho never purchased or smoked Reynolds’ cigarettes further shows that she did not rely—justifiably or otherwise—on statements by Reynolds.
12. The fact that Plaintiffs did not move to Nevada until 1990 further confirms the lack of justifiable reliance in this case. The Court finds, and the Plaintiffs do not dispute, that for the purposes of the NDPTA claim, all of Plaintiffs’ pre-1990 allegations are immaterial because Plaintiffs did not reside in Nevada at that time.
13. Accordingly, the Court finds that Plaintiffs have failed to present sufficient evidence of

⁴ Plaintiffs incorrectly argue in their Opposition that “[c]ommon law frauds like fraudulent concealment...does not require proof of reliance.” As shown by the precedent above, that is an incorrect statement as a matter of law.

justifiable reliance that could raise a genuine issue of material fact for the jury. Accordingly, Ms. Camacho has failed to create a genuine issue of material fact as to whether she is a victim under NRS 41.600. *Fairway Chevrolet Co. v. Kelley*, 134 Nev. 935, 429 P.3d 663, 2018 WL 5906906 (2018).

14. Plaintiffs did not provide any independent arguments and/or evidence in support of their civil conspiracy claim. To the contrary, Plaintiffs agree with Reynolds that if their NDPTA claim were to be dismissed, their derivative civil conspiracy claim—which is based on their NDTPA claim against Reynolds—should be dismissed as well. *See Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 74–75, 110 P.3d 30, 51 (2005) (en banc) (per curiam) (underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud), *overruled on other grounds, Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *see also Sommers v. Cuddy*, No. 2:08-cv-78-RCJ-RJJ, 2012 WL 359339, at *5 (D. Nev. Feb. 2, 2012) (applying Nevada law and recognizing that a cause of action for civil conspiracy to defraud requires a viable underlying cause of action for fraud).

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ORDER

Based upon the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that the Motion for Summary Judgment is GRANTED. The Court enters summary judgment in favor of Reynolds and against Plaintiffs Sandra Camacho and Anthony Camacho, and dismisses, with prejudice, the following claims for relief against Reynolds:

- Violation of the Nevada Deceptive Trade Practices Act – NRS 598.0903 et. seq. and NRS 41.600.
- Civil Conspiracy.

As a result of this Order, Reynolds is completely dismissed from this litigation.

Dated this 26th day of October, 2022



83A 0B0 E5C9 F499
Nadia Krall
District Court Judge

Submitted by:

BAILEY ♦ KENNEDY

By /s/ Joseph A. Liebman
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Attorneys for Defendant, R.J. Reynolds Tobacco Company

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Sandra Camacho, Plaintiff(s)

CASE NO: A-19-807650-C

7 vs.

DEPT. NO. Department 4

8 Philip Morris USA Inc,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
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