

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAURA PURKETT, INDIVIDUALLY
AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF SANDRA CAMACHO, AND
ANTHONY CAMACHO,
INDIVIDUALLY,

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.

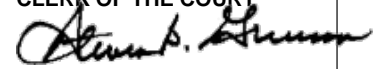
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*PETITIONERS' REPLY APPENDIX
VOLUME 1*

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11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 TIMOTHY A. GEIST, individually, and as
14 Administrator and Personal Representative of
15 the Estate of VERNA LEE GEIST,

16 Plaintiffs,

17 v.

18 PHILIP MORRIS USA, INC., a foreign
19 corporation; R.J. REYNOLDS TOBACCO
20 COMPANY, a foreign corporation,
21 individually, and as successor-by-merger to
22 LORILLARD TOBACCO COMPANY and as
23 successor-in-interest to the United States
24 tobacco business of BROWN &
25 WILLIAMSON TOBACCO CORPORATION,
26 which is the successor-by-merger to THE
27 AMERICAN TOBACCO COMPANY;
28 LIGGETT GROUP, LLC., a foreign
corporation; C-CIGARETTES CHEAPER,
LLC, a Nevada limited liability company;
MARWAN MEDIATI d/b/a C-CIGARETTES
CHEAPER, a Nevada business entity;
CHRISTINE MEDIATI d/b/a/ C-
CIGARETTES CHEAPER a Nevada business
entity; DOES I-X; and ROE BUSINESS
ENTITIES XI-XX, inclusive,

CASE NO.: A-19-807653-C

DEPT. NO.: XXIV

SECOND AMENDED COMPLAINT

JURY TRIAL DEMAND

Defendants.

COMES NOW, TIMOTHY A. GEIST, individually, and as Personal Representative of the Estate of VERNA LEE GEIST, 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. TIMOTHY A. GEIST (hereinafter "Plaintiff") was at all time relevant a resident of Clark County, Nevada. Plaintiff is the surviving spouse of VERNA LEE GEIST (hereinafter "Decedent" or "VERNA") and is duly appointed the Administrator and Personal Representative of the Estate of VERNA LEE GEIST. Decedent was at all times relevant to this litigation a resident of Clark County, Nevada.

3. Plaintiff is informed and believes 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.

4. Plaintiff is informed and believes and thereon allege that at all times relevant herein, Defendant R.J. REYNOLDS TOBACCO COMPANY, Inc. (hereinafter "R.J. REYNOLDS"), was and

1 is a corporation authorized to do business within this jurisdiction of Clark County, Nevada, and was
2 duly organized, created, and existing under and by virtue of the laws of the State of North Carolina
3 with its principal place of business located in the State of North Carolina. Defendant, R.J.
4 REYNOLDS, resides and/or conducts business in every county within the State of Nevada and did so
5 during all times relevant to this action.

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

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

21
22 7. The TOBACCO INDUSTRY RESEARCH COMMITTEE ("TIRC") was formed in
23 1954, and later was re-named the COUNCIL FOR TOBACCO RESEARCH ("CTR"). This was a
24 disingenuous, fake "research committee" organized by Defendants as part of their massive public
25 relations campaign to create a controversy regarding the health hazards of cigarettes.

26
27 8. The TOBACCO INSTITUTE, INC. ("TI") was formed in 1958 and was intended to
28 supplement the work of TIRC/CTR. TI spokespeople appeared on media/news outlets responding on

1 behalf of the cigarette industry with misrepresentations and false statements regarding health concerns
2 over cigarettes.

3 9. Plaintiff is informed and believes, and thereon alleges that Defendant, C-
4 CIGARETTES CHEAPER, LLC, was and is a limited liability company authorized to do business
5 within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under
6 and by virtue of the laws of the State of Nevada. All members of C-CIGARETTES CHEAPER LLC
7 were and are residents of Clark County in the State of Nevada at all times material. At all times
8 material, C-CIGARETTES CHEAPER LLC owns and conducts business at 732 S. Boulder Highway,
9 Henderson, Nevada 89015. C-CIGARETTES CHEAPER LLC is a retailer of tobacco and cigarette
10 products and is registered with the State of Nevada as a licensed tobacco retailer, selling such items to
11 the public, including Decedent.

12 10. Plaintiff is informed and believed, and thereon alleges that Defendant, MARWAN
13 MEDIATI d/b/a C-CIGARETTES CHEAPER, is a sole proprietorship authorized to do business within
14 this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under and by
15 virtue of the laws of the State of Nevada. MARWAN MEDIATI was and is a resident of Clark County
16 in the State of Nevada at all times material. At all times material, MARWAN MEDIATI d/b/a C-
17 CIGARETTES CHEAPER is an officer of and/or owns and/or manages and conducts business at 732
18 S. Boulder Highway, Henderson, Nevada 89015. MARWAN MEDIATI d/b/a C-CIGARETTES
19 CHEAPER is a retailer of tobacco and cigarette products and is registered with the State of Nevada as
20 a licensed tobacco retailer, selling such items to the public, including Decedent.

21 11. Plaintiff is informed and believed, and thereon alleges that Defendant, CHRISTINE
22 MEDIATI d/b/a C-CIGARETTES CHEAPER, is a sole proprietorship authorized to do business
23 within this jurisdiction of Clark County, Nevada, and was duly organized, created, and existing under
24 and by virtue of the laws of the State of Nevada. CHRISTINE MEDIATI was and is a resident of Clark
25
26
27
28

1 County in the State of Nevada at all times material. At all times material, CHRISTINE MEDIATI
2 d/b/a C-CIGARETTES CHEAPER is an officer of and/or owns and/or manages and conducts business
3 at 732 S. Boulder Highway, Henderson, Nevada 89015. CHRISTINE MEDIATI d/b/a C-
4 CIGARETTES CHEAPER is a retailer of tobacco and cigarette products and is registered with the
5 State of Nevada as a licensed tobacco retailer, selling such items to the public, including Decedent.
6

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

13 13. Plaintiff does not know the true names of Defendants Does I through X and sues said
14 Defendants by fictitious names. Upon information and belief, each of the Defendants designated
15 herein as Doe is legally responsible in some manner for the events alleged in this Complaint and
16 actually, proximately, and/or legally caused injury and damages to Plaintiff. Plaintiff will seek leave
17 of the Court to amend this Complaint to substitute the true and correct names for these fictitious names
18 upon learning that information.
19

20 14. Plaintiff does not know the true names of Defendants Roe Business Entities XI through
21 XX and sues said Defendants by fictitious names. Upon information and belief, each of the Defendants
22 designated herein as Roe Business Entities XI through XX, are predecessors-in-interest, successors-
23 in-interest, and/or agencies otherwise in a joint venture with, and/or serving as an alter ego of, any
24 and/or all Defendants named herein; and/or are entities responsible for the supervision of the
25 individually named Defendants at the time of the events and circumstances alleged herein; and/or are
26 entities employed by and/or otherwise directing the individual Defendants in the scope and course of
27 their responsibilities at the time of the events and circumstances alleged herein; and/or are entities
28

1 otherwise contributing in any way to the acts complained of and the damages alleged to have been
2 suffered by the Plaintiff herein. Upon information and belief, each of the Defendants designated as a
3 Roe Business Entity is in some manner negligently, vicariously, and/or statutorily responsible for the
4 events alleged in this Complaint and actually, proximately, and/or legally caused damages to Plaintiff.
5 Plaintiff will seek leave of the Court to amend this Complaint to substitute the true and correct names
6 for these fictitious names upon learning that information.

7
8 15. All conditions precedent to the bringing of this action have been complied with or
9 waived.

10 **FACTS COMMON TO ALL CLAIMS**

11 16. Plaintiff repeats and realleges each and every allegation set forth in the preceding
12 paragraphs, as if fully set forth herein.

13 17. Decedent, VERNA LEE GEIST, was diagnosed on or about January of 2017 with lung
14 cancer and passed away on March 16, 2018 which was caused by smoking Merit brand cigarettes,
15 Pyramid brand cigarettes, and Winston brand cigarettes, to which she was addicted and smoked
16 continuously from approximately 1968 until 2016.

17 18. At all times material, Pyramid cigarettes were designed, manufactured, and sold by
18 Defendant, Liggett.

19 19. At all times material, Merit cigarettes were designed, manufactured, and sold by
20 Defendant, Philip Morris.

21 20. At all times material, Winston cigarettes were designed, manufactured, and sold by
22 Defendant, R.J. Reynolds Tobacco Company.

23 21. Decedent, VERNA LEE GEIST, purchased and smoked Merit, Pyramid, and Winston
24 cigarettes from C Cigarettes Cheaper in sufficient quantities to be a substantial contributing cause of
25 her lung cancer.
26
27
28

1 22. At all times material, Defendants purposefully and intentionally designed cigarettes to
2 be highly addictive. They added ingredients such as urea, ammonia and diammonium-phosphate to
3 “free-base” nicotine and manipulated levels of nicotine and pH in smoke to make cigarettes more
4 addictive, better tasting, and easier to inhale.

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

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

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

15 26. Decedent’s injuries and death arose out of Defendants’ acts and/or omissions which
16 occurred inside and outside of the State of Nevada.

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

- 19 a. Smoking cigarettes causes chronic obstructive pulmonary disease, also referred to as
20 COPD, which includes emphysema and chronic bronchitis, laryngeal cancer, and lung
21 cancer, including squamous cell carcinoma, small cell carcinoma, adenocarcinoma,
22 and large cell carcinoma;
23 b. Nicotine in cigarettes is addictive;

- c. Defendants placed cigarettes on the market that were defective and unreasonably dangerous;
- d. Defendants concealed or omitted material information not otherwise known or available, knowing that the material was false and misleading, or failed to disclose a material fact concerning the health effects or addictive nature of smoking cigarettes, or both;
- e. Defendants entered into an agreement to conceal or omit information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and 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 safer cigarettes free of nicotine, carcinogens, and other deadly and poisonous compounds;

- 1 o. "The thing Defendants sell most is nicotine" (Concealed Document 1980);
- 2 p. Filtered, low tar, low nicotine, and "light" cigarettes are more dangerous than "regular"
- 3 cigarettes;
- 4 q. "Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and
- 5 would almost certainly fail" (Concealed Document 1966);
- 6 r. "Without the nicotine, the cigarette market would collapse, and Defendants would all
- 7 lose their jobs and their consulting fees" (Concealed Document 1977);
- 8 s. "Carcinogens are found in practically every class of compounds in smoke" (Concealed
- 9 Document 1961);
- 10 t. "Cigarettes have certain unattractive side effects. . . they cause lung cancer" (Concealed
- 11 Document 1963).
- 12
- 13
- 14 28. Defendants' tortious and unlawful conduct caused consumers, including VERNA LEE
- 15 GEIST, to suffer dangerous injuries and death.

16 **Historical Allegations of Defendants Unlawful Conduct**

17 **Giving Rise to the Lawsuit**

- 18 29. Lung cancer, caused by cigarette smoking, is the number one leading cause of death in
- 19 the United States.
- 20 30. Cigarettes kill more than 500,000 Americans every year. Over 20 million Americans
- 21 have died from lung cancer.
- 22 31. Lung cancer is a disease manufactured and created by the cigarette industry, including
- 23 Defendants herein.
- 24 32. Prior to 1900, lung cancer was virtually unknown as a cause of death in the United
- 25 States.
- 26 33. By 1935, there were only an estimated 4,000 lung cancer deaths. By 1945, as a result
- 27 of the rise of cigarette consumption, the number of deaths almost tripled.
- 28

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

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

6
7 **Studies of clinical data tend to confirm the relationship between heavy smoking**
8 **and prolonged smoking and incidence of cancer of the lung.**

9 36. Approximately six months later on December 21, 1953, Life Magazine and Reader's
10 Digest published articles regarding a ground-breaking mouse painting study, conducted by Drs.
11 Wynder and Graham, which concluded that tar from cigarettes painted on the backs of mice
12 developed into cancer.

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

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

19 39. This conspiracy was formed in December of 1953 at the Plaza Hotel in New York City.
20 Paul Hahn, president of American Tobacco, sent telegrams to presidents of the seven largest tobacco
21 companies and one tobacco growers' organization, inviting them to meet at the Plaza Hotel.
22



1
2 40. Executives from every cigarette company, except for Liggett, met at the Plaza Hotel
3 on December 14, 1953. The executives discussed the following topics: (i) the negative publicity
4 from the recent articles in the media, (ii) the need to hire a public relations firm, Hill & Knowlton,
5 and (iii) the major threat to their corporations' economic future.

6
7 41. In an internal planning memorandum Hill & Knowlton assessed their cigarette clients'
8 problems in the following manner:

9 "There is only one problem -- confidence, and how to establish it; public assurance,
10 and how to create it -- in a perhaps long interim when scientific doubts must remain.
11 **And, most important, how to free millions of Americans from the guilty fear that**
12 **is going to arise deep in their biological depths -- regardless of any pooh-poohing**
13 **logic -- every time they light a cigarette.** No resort to mere logic ever cured panic yet,
14 whether on Madison Avenue, Main Street, or in a psychologist's office. And no mere
15 recitation of arguments pro, or ignoring of arguments con, or careful balancing of the
16 two together, is going to deal with such fear now. That, gentlemen, is the nature of the
17 unexampled challenge to this office."

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

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

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

27 45. The Frank Statement was signed by the following domestic cigarette and tobacco
28 product manufacturers, including Defendants herein, organizations of leaf tobacco growers, and
tobacco warehouse associations that made up TIRC: American Tobacco by Paul Hahn, President;
B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip

1 Morris by O. Parker McComas, President; Defendant, R.J Reynolds by Edward A. Darr, President;
2 Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S.
3 Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley
4 Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company,
5 Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton,
6 General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco
7 Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson,
8 President.
9

10 46. In their Frank Statement to Cigarette Smokers, Defendants knowingly and intentionally
11 mislead Plaintiff, the public, and the American government when they disingenuously promised to
12 “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and
13 health, and reveal to the public the results of their purported “objective” research.
14

15 47. The Frank Statement set forth the industry’s “open question” position that it would
16 maintain for more than forty years -- that cigarette smoking was not a proven cause of lung cancer;
17 that cigarettes were not injurious to health; and that more research on smoking and health issues was
18 needed. In the Frank Statement, the participating companies accepted “an interest in people’s health
19 as a basic responsibility, paramount to every other consideration in our business” and pledged “aid
20 and assistance to the research effort into all phases of tobacco use and health.” The companies
21 promised that they would fulfill the obligations they had undertaken in the Frank Statement by
22 funding independent research through TIRC, free from any industry influence.
23

24 The “Frank Statement” in its entirety stated as follows:

25 “RECENT REPORTS on experiments with mice have given wide publicity to a theory that
26 cigarette smoking is in some way linked with lung cancer in human beings.

27 Although conducted by doctors of professional standing, these experiments are not regarded
28 as conclusive in the field of cancer research. However, we do not believe that any serious
medical research, even though its results are inconclusive should be disregarded or lightly

1 dismissed. At the same time, we feel it is in the public interest to call attention to the fact that
2 eminent doctors and research scientists have publicly questioned the claimed significance of
3 these experiments.

4 Distinguished authorities point out: 1. That medical research of recent years
5 indicates many possible causes of lung cancer. 2. That there is no agreement among the
6 authorities regarding what the cause is. 3. That there is no proof that cigarette smoking is
7 one of the causes. 4. That statistics purporting to link cigarette smoking with the disease
8 could apply with equal force to any one of many other aspects of modern life. Indeed the
9 validity of the statistics themselves is questioned by numerous scientists.

10 We accept an interest in people's health as a basic responsibility, paramount to every other
11 consideration in our business.

12 We believe the products we make are not injurious to health.

13 We always have and always will cooperate closely with those whose task it is to safeguard
14 the public health.

15 For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At
16 one time or another during these years critics have held it responsible for practically every
17 disease of the human body. One by one these charges have been abandoned for lack of
18 evidence.

19 Regardless of the record of the past, the fact that cigarette smoking today should even be
20 suspected as a cause of disease is a matter of deep concern to us.

21 Many people have asked us what are we going to do to meet the public's concern aroused
22 by the recent reports. Here is the answer: 1. We are pledging aid and assistance to the
23 research effort into all phases of tobacco use and health. This joint financial aid will of course
24 be in addition to what is already being contributed by individual companies. 2. For this
25 purpose we are establishing a joint industry group consisting initially of the undersigned.
26 This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE
27 ["TIRC"]. 3. In charge of the research activities of the Committee will be a scientist of
28 unimpeachable integrity and national reputation. In addition there will be an Advisory Board of
scientists disinterested in the cigarette industry. A group of distinguished men [sic] from
medicine, science, and education will be invited to serve on this Board. These scientists will
advise the Committee on its research activities.

This statement is being issued because we believe the people are entitled to know where we
stand on this matter and what we intend to do about it."

48. The issuance of the "Frank Statement to Cigarette Smokers," was an effective public
relations step. By promising the public that the industry was absolutely committed to its good health,

1 the Frank Statement allayed the public's concerns about smoking and health, reassured smokers,
2 and provided them with an effective rationale for continuing to smoke.

3 49. The Frank Statement was but the first of hundreds, if not thousands, of statements
4 reassuring the public of the safety of cigarette smoking. The industry would push the "open
5 question" as far as the late 1990s.

6 50. Shortly after the Frank Statement was published, Philip Morris, through a publicized
7 speech, told the public that the industry would "stop business tomorrow" if it thought its products
8 was harming smokers.

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

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

19 53. The major initiative of TIRC/CTR, through their Scientific Advisory Board (SAB),
20 was to, "create the appearance of [Defendants] devoting substantial resources to the problem without
21 the risk of funding further 'contrary evidence.'"

22 54. TIRC/CTR's efforts worked brilliantly and cigarette consumption rapidly increased.
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1 55. In 1962, The Tobacco Institute, the public relations successor to the TIRC began to
2 publish many advertisements, including one entitled, "Some frank words about Smoking and
3 Research," which stated in part:

4 "Most scientists recognized long ago that there are no simple, easy answers in
5 cancer research. They know that the answers to fundamental questions about
6 causation can come only through persistent scientific research.

7 "The tobacco industry supports and cooperates with all responsible efforts to
8 find the facts and bring them to the public.

9 "In that spirit, we are cooperating with the U.S. Surgeon General and his special
10 study group appointed to evaluate presently available research knowledge.
11 Similar cooperation has been offered to the American Medical Association's
12 proposed study.

13 "*We know we have a special responsibility to help scientists determine the facts
14 about tobacco use and health.*

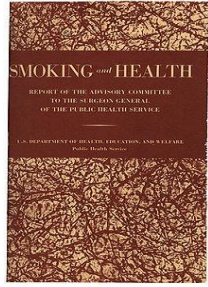
15 "*The industry accepted this responsibility in 1954 by establishing the Tobacco
16 Industry Research Committee to provide research grants to scientists in
17 recognized research institutions. This research program is continuing on an
18 expanded and intensified scale.*"

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

22 57. The cigarette industry's *public* response, through TIRC, to the 1964 Surgeon General
23 Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry
24 would cooperate with the Surgeon General, (iii) "more research" was needed, despite the industry's
25 own internal decision not to conduct research directly related to tobacco and health, and (iv) if there
26 were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those
27 elements. As a result, cigarette consumption again began to rise.
28

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

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



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

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

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

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

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

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

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

"We have deliberately played down the role of nicotine" (Concealed Document 1972).

1 **“Very few consumers are aware of the effects of nicotine, i.e., its addictive**
2 **nature and that nicotine is a poison”** (Concealed Document 1978).

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

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

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

9 60. Defendants deliberately added chemicals such as urea, ammonia, diammonium-
10 phosphate, and other chemicals to their cigarettes. They “free-based” nicotine in cigarettes and
11 manipulated levels of pH in smoke to make cigarettes more addictive and easier to inhale.

12 61. Defendants’ sole priority was to make as much money as quickly as possible, with no
13 concern about the safety and well-being of their customers.

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

16 63. The cigarette industry responded to the “Caution” label by continuing their massive
17 public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the
18 public.

19 64. Also in 1966, the Tobacco Institute (“TI”) issued a press release where it stated on
20 behalf of the industry:

21 *“Scientists throughout the world are continuing to investigate to learn the full*
22 *facts about ‘tar’ and nicotine, and about questions concerning tobacco and*
23 *health. The tobacco industry is supporting much of this research and will*
24 *continue to do so.”*

25 65. Throughout this period Defendants also introduced “filtered” cigarettes – cigarettes
26 falsely marketed, advertised, and promoted as “less tar” and “less nicotine.”

27 66. However, internally, in Defendants’ previously concealed, hidden documents,
28 discussions regarding the true nature of filtered cigarettes was revealed – filters were just as harmful,

1 dangerous, and hazardous as unfiltered cigarettes; in fact, they were more dangerous. In a previously
2 secret document from 1976, Ernie Pepples from Brown & Williamson states, “the smoker of a filter
3 cigarette was getting as much or more nicotine and tar as he would have gotten from a regular
4 cigarette.”

5
6 67. Defendants continued throughout the 1970s, 1980s, and 1990s to encourage the
7 impression that there was a genuine and continuing controversy regarding the health hazards of
8 smoking.

9
10 68. The tobacco industry frequently attacked the Surgeon General. For example, the
11 industry preempted the Surgeon General’s 1979 report on national news networks, stating the report
12 was “suspect from the start”. The industry later attacked the Surgeon General following the 1988
13 report on the addictive nature of cigarettes with a press release titled, “CLAIMS THAT
14 CIGARETTES ARE ADDICTIVE CONTRADICT COMMON SENSE”.

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17 69. Throughout the 1960s, 1970s, 1980s and 1990s, the cigarette industry, including
18 Defendants herein, spent two-hundred and fifty-billion dollars in marketing efforts to promote the
19 sale of cigarettes.

20
21 70. The cigarette industry spent more money on marketing and advertising cigarettes *in*
22 *one day* than the public health community spent *in one year*.

23 71. Cigarette smoking was glamorized – celebrities smoked, athletes smoked, doctors
24 smoked, politicians smoked – everyone smoked cigarettes.

25 72. As early as the 1920s, and continuing today, cigarette manufacturers, including
26 Defendants herein, were also intentionally targeting children. Their documents reveal:
27
28

1 “School days are here. And that means **BIG TOBACCO BUSINESS** for
2 somebody . . . line up the most popular students” (Concealed Document
3 1927).

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

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

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

10 73. Cigarette manufacturers, including Defendants herein, also targeted and preyed upon
11 minority populations in an effort to increase their market share and ultimately their profits.

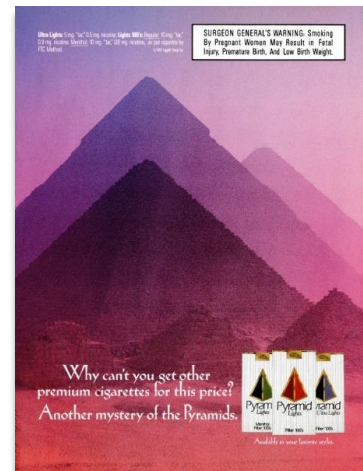
12 74. Cigarettes were the number one most heavily advertised product on television until the
13 United States Government banned television advertisements in 1972.

14 75. When cigarettes advertising was banned on television Defendants turned to marketing
15 in stadiums, sponsoring sporting events such as the Winston Cup and Marlboro 500, sponsoring



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21 concerts, utilizing print advertisements in magazines, adding product placement in movies, and
22 more.
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“for nearly 20 years, this industry has employed a single strategy to defend



77. 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.

Page 20 of 144

1 79. 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 heroin and cocaine.

4 80. 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 81. 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 82. 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.



22 83. After the industry executives testified before congress that cigarettes were not addictive
23 and had not been proven to cause cancer, Philip Morris continued to adhere to the controversy by
24 stating "Both smokers and non-smokers deserve to know the facts, not innuendo, about cigarettes.

25
26 Yesterday, Philip Morris and other U.S. tobacco manufacturers helped to set
27 the record straight by speaking before a Congressional committee...

28 Fact: Philip Morris does not add nicotine to its cigarettes...

 Fact: Philip Morris does not "manipulate" nicotine levels...

 Fact: Philip Morris does not believe cigarette smoking is addictive...

 Fact: None of the ingredients added in the manufacture of cigarettes is harmful

as used...

84. Despite their own intensive research and (millions of) internal documents describing the dangers and addictive qualities of cigarettes, Defendants negligently, willfully, maliciously, and intentionally made false and misleading statements to Congress, the public, and Decedent, VERNA LEE GEIST.

85. Even after Defendants knowingly lied during these Congressional hearings, Defendants continued, and still are continuing to, perpetuate their conspiracy.

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

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

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

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

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

1 91. As recently as 2019, Defendants do not admit or acknowledge that nicotine addiction
2 can cause diseases.

3 92. As recently as 2019, Defendants continue to make false or misleading statements that
4 filtered cigarettes, lights, ultra-lights and low tar are less hazardous than conventional full favored
5 cigarettes.

6 93. Finally, Defendants have continued to target and prey upon children, teenagers,
7 minorities, and other segment populations, all in the name of money.

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

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

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

18 97. From 1953 through 2000, Defendants made false or misleading statements including
19 but not limited to the following:

- 20 • denying that smoking “is” addictive;
- 21 • that smoking is not injurious to health;
- 22 • that it is unknown if smoking causes serious diseases;
- 23 • that scientific and medical community has not reached a consensus about the harms of
24 smoking;
- 25 • that no one knows what causes cancer;

- that the tobacco industry made an honest effort to study the harms of smoking and a causal relationship had not need proven;

98. From 1953 through the present, Defendants made false or misleading statements including but not limited to the following:

- that filter, low tar and low nicotine, lights and ultra-light are safe, or safer than full flavor cigarettes, and/or directly and/or indirectly made statements about their safety and efficacy.

99. Throughout the same period, Defendants publicly attacked the validity of research suggesting any harmful effects from smoking.

Conspiratorial Involvement by General Counsel for Tobacco Companies & Outside Law Firms

100. Philip Morris, USA Inc., RJ Reynolds Tobacco Company, British American Tobacco Company, American Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco Company, and Liggett Group LLC, collectively and through their general counsel offices, formed an association known by differing names over times as the Committee of Counsel and/or the Counsel of Six (“CC”), whose purpose was to oversee, organize, operate, and execute a conspiracy to conceal and/or misrepresent the harms and addictive nature of cigarettes.

101. Philip Morris, USA Inc., RJ Reynolds Tobacco Company, British American Tobacco Company, American Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco Company, and Liggett Group LLC, through the CC, retained outside counsel to assist them in their conspiratorial activities which included to conceal and/or misrepresent the harms of smoking and its addictive nature to the public beginning in the 1950s.

102. Some of the outside counsel retained included Shook Hardy Bacon (SHB), Covington & Burling (COVB), Jones Day (DAY), Jacob Medinger & Finnegan (JMF), Womble Carlyle (WOM), Cabell Medinger Forsyth & Decker (CMFD) and others,

103. The group consisting of the CC and the outside law firms are hereinafter referred to as

1 “Lawyers”.

2 104. The Lawyers were co-conspirators of the Defendants and acting as agents, servants,
3 representatives and/or employees of the Defendants and further acting in the course and scope of their
4 agency or employment, during the time period beginning in 1950s. The allegations herein are not
5 directed to the Defendants’ current counsel’s representation as part of their lawful defense in this case.
6

7 105. The Lawyers played an absolutely central role in the creation and perpetuation of the
8 conspiracy and the implementation of its fraudulent schemes.

9 106. Defendants improperly sought to and did conceal material research behind the attorney-
10 client privilege and the work product doctrine in order to avoid discovery. To accomplish that purpose,
11 Defendants’ lawyers improperly exercised extensive control over joint industry and individual company
12 scientific research and often vetted scientific documents for Defendants. For example, correspondence
13 with an institute or an individual regarding CTR special projects was not turned over to CTR, but was
14 instead kept at the law firm generating the letters. Moreover, Don Hoel (SHB) believed that such
15 correspondence was never even provided to CTR nor produced in any litigation.
16

17 107. Many of the actions to suppress information were joint efforts by all of the Defendants
18 through the CC, through other joint organizations, or through Defendants’ law firms, which often
19 represented one or more of the Defendants.
20

21 108. The Lawyers devised and coordinated both national and international strategy; they
22 directed scientists as to what research they should and should not undertake; they vetted scientific research
23 papers and reports as well as public relations materials to ensure that the interests of the conspiracy would
24 be protected; they identified “friendly” scientific witnesses, subsidized them with grants from the Center
25 for Tobacco Research and the Center for Indoor Air Research, paid them enormous fees, and often hid
26 the relationship between those witnesses and the industry; and they devised and carried out document
27 destruction policies and took shelter behind baseless assertions of the attorney client privilege. (SHB118,
28

1 SHB109, CC139).

2 109. Lawyers directed committees specifically created to further the conspiracy. For example,
3 on November 17, 1978, a report on a CTR Meeting in New York stated that William “Bill” Shinn (SHB)
4 said that the ad hoc committee should be a broad policy making committee, not just a smoking and health
5 committee, and that the best way money was spent was on “special projects” where “CTR has acted as a
6 ‘front’”. (CC141).

7
8 110. Lawyers called and chaired meetings with co-conspirators. For example, on July 15, 1988,
9 a meeting of industry scientists and lawyers was held to analyze national and international activities on
10 Environmental Tobacco Smoke in London, England. Don Hoel (SHB) chaired the meeting. (CC188).

11 111. Additionally, lawyers presented the results of scientific studies at similar meetings. For
12 example, on May 18, 1993, Chris Proctor (COVB), presented four epidemiologic studies. These studies
13 were used to “merchandize the ‘positive’ progress in epidemiology”, for COVB to convey the message
14 into the scientific community. (COVB122).

15
16 112. Smoking and health projects were overseen by lawyers domestically. For example, a June
17 28, 1988, memorandum written by Donald Hoel (SHB) stated that SHB assessed scientists’ potential to
18 the tobacco industry. If the assessment was positive, SHB recommended the scientist for funding from
19 the industry. During a project, SHB closely monitored the project and reviewed any papers resulting from
20 the research. Most importantly, SHB advised PM on whether to initially fund, and whether to continue
21 or discontinue funding, the scientists. Additionally, SHB worked to develop the scientists as a possible
22 witness in litigation, to speak at legislative hearings, to serve as a consultant, and/or to conduct specific
23 research. SHB arranged funding, settled logistical problems, and served as an intermediary for the tobacco
24 industry. (SHB109).

25
26 113. International smoking and health projects were also overseen by Lawyers. For instance,
27 on July 24, 1991, a report written by Sharon Boyse of British American Tobacco (BAT) said Latin
28

1 American and Far East programs were ideal because COVB developed them in such a way “that there
2 was no direct association between the scientists and the tobacco industry,”. (COVB130).

3 114. On April 6, 1987 an interoffice memorandum was written detailing the discussion at an
4 international meeting held on March 18-19, 1987, featuring industry representatives, lawyers, and
5 scientists from the US, UK, West Germany, and Japan addressed the issue of industry sponsored research
6 on ETS (environmental tobacco smoke). Lawyers at the meeting stressed the need for close cooperation
7 between scientists and public relations professionals. All the attendees left the meeting understanding the
8 solution to the ETS problem was that “[c]oncerted action is needed to improve the Industry’s position”.
9 (CC160).

11 115. Lawyers were crucial to the continued success of the conspiracy because they continually
12 monitored for potential liability. Sometime after April 28, 1995, a document titled “Brown & Williamson
13 Documents: Document by Document Summary of Publicly Available Information from the Press” was
14 created. Under a section titled “David. R. Hardy Letter”, Hardy stated “documentary evidence from the
15 files of either BAT or B&W which seems to acknowledge or tacitly admit that cigarettes cause cancer or
16 disease would likely be fatal to the defense. . . in a smoking and health case”. (CC216)

18 **Lawyers altered information to make it appear legitimate**

19 116. In furtherance of the conspiracy, Lawyers hid the source of the money used for special
20 projects to make them appear more acceptable to the public.

22 117. For example, on November 15, 1978, at a CTR meeting in New York, William Shinn,
23 of SHB, told the attendees that “special projects” were the best way money was spent, and said “on
24 these projects, CTR has acted as a ‘front’”. (CC141).

25 118. On July 13, 1984 a memorandum from Lee Stanford to David Hardy of SHB stated,
26 “Non-CTR projects fund was originally developed so that companies would not be paying scientists
27 directly”. (SHB118).

119. On October 31, 1988, a memorandum from Christopher “C.J.” Proctor (COVB), in regard to a meeting to inform the UK industry about PM’s initiative to establish a group of scientists in the UK to comment on ETS issues, Proctor wrote, “it was suggested that the position of Covington and Burling allows the members of each group to remain independent of the industry though all know that it is tobacco money that is funding the exercises.” (COBV132).

120. In October 1989, a scientist from BAT, Dr. Ray Thornton, was invited by Dr. Helmut Gaisch, of PM, to a meeting with the Association for Research on Indoor Air (ARIA). Dr. Thornton’s record indicates PM funded ARIA, through COVB, who in turn supplied money to George Leslie, who in turn set up ARIA. (COVB131).

121. On April 28, 1992, David Murphy an attorney for Wachtell, Lipton, Rosek & Katz (another law firm working for PM), wrote that Lorillard and CTR inquired about funding through an SHB special account for a Dr. Bennett Jensen. SHB proposed to give Dr. Jensen \$40,000, not for specific research or with an eye to publication but solely to maintain a good relationship with him and secure his continued help in contacting other scientists. Dr. Jensen previously received CTR Special Project Funds in 1988. Murphy wrote:

Allinder admits that Shook Hardy wants to give Jensen money to keep him happy and that there is no immediate value to his research . . . issue raises a larger question—whether ‘CTR Special Projects’ funds (and, after such activities were moved out of CTR, joint industry funds administered through Shook, Hardy) were used to purchase favorable judicial or legislative testimony, thereby perpetrating a fraud on the public”

(CC119).

122. Lawyers abused work product privileges to conceal the conspiracy. For example, on June 25, 1996, Mark Berlind, general counsel for PM, sent an email stating he participated in a conference call with RJR, where it was decided that it would be appropriate for the lawyers of both companies not to have a role in the ongoing discussions about Dr. Enstrom’s proposals, presumably so a neutral outside counsel member could pursue the proposals. In the email, Mr. Berlind wrote, “one

1 of his proposals is clearly litigation oriented and, we agreed, should still be pursued, if at all, in context
2 of attorney work product,”. (WOM102)

3 **Lawyers altered and/or hid the development of research**

4 123. Outside counsel was excessively involved at every level of scientific research pursued
5 by the tobacco industry in order to ensure the continued success of the conspiracy.
6

7 124. In 1985, a DAY Report monitoring RJR’s Monitoring Smoking and Health Literature
8 found that after the 1964 Surgeon General’s report came out, the law department, did influence research
9 objectives, because the lawyers did not want anyone performing research that would appear to
10 acknowledge that cigarettes or cigarette smoke contained harmful constituents or posed a health problem.
11 (DAY104).

12 125. For example, in a summary report of a special meeting of the UK industry on
13 Environmental Tobacco Smoke, held in London, on February 17, 1988, Philip Morris presented their
14 global strategy on environmental tobacco smoke. The report stated:
15

16 Although the industry is in great need of concerted effort and action in the ETS
17 area, the detailed strategy of Philip Morris leaves something to be desired. **The**
18 **excessive involvement of external lawyers at this very basic scientific level is**
19 **questionable** and, in Europe at least, is likely to frighten off a number of scientists
20 who might otherwise be prepared to talk to the industry.

21 (COVB111) (emphasis added).

22 126. Outside counsel’s involvement insured that the tobacco industry did not support
23 projects related to smoking and health.

24 127. In 1958 BAT representatives wrote a report on their visit to the US and Canada. A
25 section of the report titled “Attitude of U.S. industry to Biological Testing” stated:

26 the constantly re-iterated “not proven” statements in the face of mounting contrary
27 evidence has thoroughly discredited T.I.R.C., and the S.A.B. of T.I.R.C. is
28 supporting almost without exception projects which are not related directly to
smoking and lung cancer.

(WOM106).

128. Instead of supporting projects directed to finding out the truth about smoking and health, lawyers directed the projects in order to bolster defending the industry, thereby, perpetuating the conspiracy.

129. On January, 18, 1954 at a Tobacco Industry Research Committee (T.I.R.C) meeting, it was decided that a list of available scientists who were willing to talk in public needed to be created, and that the list would only be used to defend the industry's position. The report stated:

this list would not be used to promote new discussion programs or to encourage forums to arrange such programs. **The objective would be to see that if there is to be a program, the facts to be presented are not one-sided against the industry.**

(CC297) (emphasis added).

130. Outside counsel promoted the development of research they knew had little to no value so long as it did not result in findings adverse to the conspiracy.

131. On July 24, 1981, J.K Wells, General Counsel B&W, sent Ernest Pepples a letter in regard to a request made by outside counsel, Tim Finnegan (JMF). Finnegan visited Dean Sullivan and persuaded him to "take a new thrust with their research . . . **the new research will have questionable value, but no negative results,**". (CC229) (emphasis added).

132. Outside counsel was also crucial to the development of the research the industry funded because they selected Directors for the Center for Tobacco Research (CTR) Scientific Advisory Board (SAB) that imposed unnecessary limits on the research funded by CTR.

133. On February 14, 1980, William Shinn, of SHB, wrote a letter to the Ernest Pepples, regarding candidates for replacement of the CTR SAB Director. Shinn provided Pepples with a list of candidates, and stated,

what sort of person do we want as a scientific director? This is a key question and perhaps you and I can discuss it next time we are together.

(SHB227).

1 134. On June 10, 1980, William Shinn, met with Ernest Pepples, Addison Yeaman, Tom
2 Hoyt, and Bill Hobbs to discuss candidates for replacement of the CTR SAB Director. (CC293).

3 135. In 1981, Dr. Sheldon “Charlie” Sommers was selected for the position and later that
4 year outlined new CTR operating procedures that made it impossible to receive CTR funding if a study
5 involved a commercial cigarette brand, or the development of a therapeutic procedure. (CC288)
6 (CC295 confirms Dr. Sheldon Sommers is “Charlie Sommers”).
7

8 136. Outside lawyers directed scientists on the research the industry performed.

9 137. For example, on July 15, 1988, a meeting of industry scientists and lawyers was held
10 to analyze national and international activities on Environmental Tobacco Smoke in London, England.
11 John Rupp, an attorney with COVB, argued with Dr. Adlkofer, the head scientist of Verband (the
12 German Tobacco Institute), over the usefulness of continuing current epidemiologic studies. Dr.
13 Adlkofer argued focusing on “modern epidemiology”, human exposure studies, and exploration of the
14 mechanisms of effect. Rupp said, “**epidemiological evidence is necessary if for no other reason**
15 **than to effectively respond to anti-smoking groups** . . . the industry should continue to emphasize
16 the lack of substantive proof of causation”. (CC188) (emphasis added).
17

18 138. On March 8, 1983, Timothy Finnegan (JMF), met with Dr. George Robert DiMarco,
19 the head of Research & Development for RJR, in Winston-Salem, North Carolina. Dr. Dimarco stated
20 “researchers had been turned off because they were told they could not do certain things by lawyers,”.
21 (CC202)
22

23 139. In a letter dated April, 28, 1978, Donald Hoel, of SHB, told Paul Isenring, of PM
24 Europe, it was not appropriate to accept Dr. Heynig’s recommendation because the industry did not
25 want to be in the position of recommending a testing procedure but would prefer to be free to comment
26 on or criticize any such testing procedure as might be established or recommended. (SHB114).
27

28 140. Lawyers screened international scientists in order to eliminate those with views

opposing the conspiracy.

141. On October 2, 1992, Patrick Davies sent a letter to a Brazilian scientist answering his questions in regard to the search for a Brazilian epidemiologist. “North American Consultants” had given Davies some leads, and he would provide a list of names within the next few days. Davies wrote, “Chris [(Proctor of COVB)] will be returning to Brazil to oversee the field study, our goal is to identify candidates before then so Chris can interview them while he is there.” (COBV115)

142. On February 20, 1988 David Remes (COVB), wrote a project report on PM’s international efforts in opposition to ETS, the report stated:

C&B has undertaken to identify and organize the corps of scientific consultants and engineers in all of the markets around the world . . . **Candidates who have made public statements adverse to the industry on the primary health issue generally are avoided.** . . C&B has asked Drs. Roe and Leslie to arrange a meeting between C&B and as many interested candidates as possible at the earliest opportunity to explain the nature of the ETS project and the role of the candidates in detail.

(COVB124) (emphasis added).

143. On September 27, 1989, John Rupp (COVB), wrote a status report on the “Asia ETS Project”. The report discussed an ETS Symposium at McGill University to be held on November 3rd and 4th. The purpose of the symposium was to produce an authoritative monograph that would serve to neutralize two reports that are scheduled to be released near the end of the year. Additionally, the symposium presented an ideal opportunity to expose and develop the Asian consultants on the full range of issues and the industries most advanced current thinking on ETS. (COVB127).

144. On June 24, 1987, Conference Notes from Project Down Under report stated:

John Rupp (Covington & Burling) Where are we? In deep shit . . . Serious Credibility problem . . . Our position: ETS not shown to be health hazard to non-smoker . . . We cannot say ETS is “safe” and if we do, this is a “dangerous” statement . . . **Somebody has to say ETS is no risk. Has to come from somewhere.**

(COVB138) (emphasis added).

145. Not only did outside lawyers direct research toward a specific engineered result, they

1 also became disappointed when studies they recommended funds for showed harm from smoking.

2 146. On March 17, 1977, Donald Hoel, of SHB, sent a letter to industry representatives
3 briefing them on a CTR supported Special Project that was funded in April 1975. Hoel was
4 disappointed by the study's treatment of smoking and lung cancer because the authors stated that the
5 data "speak[s] strongly against the constitutional hypothesis,". Additionally, the study claimed that
6 the twin data supported the "irrefutable evidence of a causal association between smoking and lung
7 cancer found in other studies,". (SHB119)
8

9 147. Research that was engineered by outside attorneys was used to attack the scientific
10 evidence that showed smoking was harmful.

11 148. In August 1990, SHB prepared "Brown & Williamson--Addiction Notebook", the
12 notebook reviewed scientific literature and B&W documents relating to addiction. The notebook
13 outlines B&W's strategy concerning company admissions that smoking is addictive is to focus "on
14 the weakness of the scientific evidence that smoking meets the traditional addiction criteria".
15 (SHB155).
16

17 149. Outside counsel also developed several researchers in furtherance of the conspiracy.

18 150. For example, Dr. Gary Huber was a Harvard researcher the industry continued to fund
19 because they believed if they stopped it would turn him into a dangerous enemy.

20 151. On December 13, 1974, Dr. Huber's initial study commenced at Harvard University to
21 analyze smoke components. (SHB200).
22

23 152. On February 5, 1975, David Hardy of SHB wrote a letter confirming that Dr. Huber
24 did not have to make written annual reports because Hardy was concerned Dr. Huber might say
25 something exposing liability. Hardy stated, "the scientist who has no legal training and who does not
26 fully understand some of our problems and concerns, exercises little care in his form of expression in
27 written communication,". (SHB190).
28

153. On March 7, 1975 Dr. Huber began animal studies using 800 animals. The goal was to move to a larger lengthier study using 2,000 animals. (SHB194).

154. On September 26, 1977, Dr. Huber reported in confidence to Shinn that rats exposed to tobacco smoke for six months developed emphysema. Shinn attempted to get Huber to lessen his interpretation of the results as evidence of direct cause and effect. (CC173).

155. On October 26, 1977, William Shinn announced to the industry that Dr. Huber would not discuss work with the press, and would only answer questions following his presentation from the floor. (SHB217). The next day, Dr. Huber shut down the research facility. As a result, Harvard was not be able to conduct long term studies and proceeded with industry recommendations for short term studies. (SHB218).

156. On November 8, 1977, Shinn advised the industry about Huber's Vegas presentation and anticipated costs for renovating the facility. Shinn told the industry to anticipate a request for up to \$400,000. (SHB219 SHB220).

157. In December, at a T.I. meeting, Shinn reported Huber's lab was shut down entirely and as a result, that no work was being done. Shinn also reported that Huber was still putting together a budget for renovating the lab. There was general dismay with Huber's recent behavior but, they generally agreed that the industry was stuck with Huber and that **"to cut him off would make a bitter and dangerous enemy"**. (CC298) (emphasis added).

158. In 1980, Huber sought to continue his smoking and health research on animals at a time when he was making significant progress, but Defendants cut off funding for his research at Harvard and denied his request for funding after he moved later that year to the University of Kentucky. In a 1980 meeting, Defendants' attorneys told Huber that the reason funding for his research had been discontinued was because he was "getting too close to some things." The attorneys included Lee Stanford (SHB). (CC148, SHB219, SHB220)

159. When Huber was subpoenaed by the State of Texas to testify in its case against the Defendants in 1997, lawyers for Defendants, including Robert McDermott (DAY) and Lee Stanford (SHB) contacted him and urged him "to keep the faith, to hold the line." The attorneys implied to Huber that he did not "fully appreciate the full weight of Shook, Hardy & Bacon and Jones Day" representatives of the tobacco industry. The calls caused Huber to fear for the safety and financial security of his family. Huber perceived a clear message: Defendants wanted to keep him silent. (SHB228-230)

160. Additionally, Dr. Eleanor MacDonald was a statistician whose work would have been discontinued if outside lawyers from SHB had not intervened by recommending her denial be reconsidered. As a result of this, she was able to continue her work which provided publications and manuscripts later used to attack studies linking smoking to negative health effects.

161. On March 15, 1971, Dr. MacDonald told CTR she had unpublished data showing Mexican women in El Paso had significantly more incidence of lung cancer than white women and cigarette smoking was not involved because Mexican women do not smoke in great amounts. (SHB184).

162. In 1972, MacDonald sent a request to CTR for additional funds to complete work that was denied. In response to this denial, SHB sent a letter to industry representatives vouching for the importance of Dr. MacDonald's work and recommending funding it to completion. (SHB185).

163. As a result of SHB's recommendation, on November 30, 1972, CTR approved MacDonald's financial request. (SHB178).

164. On December 7, 1973, MacDonald requested a supplemental extension for existing grant proposal. (SHB180).

165. On February 9, 1976, Don Hoel (SHB) sent a letter to Arthur Stevens (VP and GC Lorillard) in reply to Stevens question, whether the absence of cigarette smoking data would limit the value of the other studies being performed by MacDonald. Hoel said MacDonald assured him that she

1 had anticipated and would meet any criticism stemming from the absence of cigarette smoking data
2 when she published her results. (SHB173).

3 166. On June 27, 1977, Dr. MacDonald sent a letter with her anticipated budget to complete
4 a volume on environmental factors and causes of death pertaining to lung cancer. (SHB181). American
5 Brands approved Special Project funds for MacDonald. (SHB175). PM approved continued support
6 to MacDonald. (SHB176).

7
8 167. On February 14, 1979, MacDonald requested CTR Special Project support for an
9 additional year. The past year saw her first book published, and her second book was, at the time, in
10 press. Both represented culminations of her research that was funded by the industry. In preparation,
11 was a third book giving her personal overview of 50 years of cancer epidemiology. CTR was also
12 expected to consult with her on the upcoming 1979 Surgeon General's Report. (SHB177).

13
14 168. On September 10, 1981, at a Meeting of Committee of General Counsel, attended by
15 outside lawyers from JMF and SHB. MacDonald was named as an example of a person that does not
16 make a good witness but is valuable because she was "someone who knows many people, has ideas,
17 and is sympathetic,". (CC139).

18 169. Additionally, Dr. Murray Senkus, a Research Director for RJR, was hired as an in-
19 house scientist by outside law firms in order to help with the manipulation of studies.

20 170. On May 9, 1980, William Shinn (SHB) suggested Dr. Murray Senkus be employed, as
21 a consultant, through Special Fund 4 for SHB for one year. Senkus had an arrangement with other
22 outside counsel, COVB, and would split his time evenly between both firms. (SHB137).

23
24 171. On April 2, 1981, Senkus and other scientists are charged with the responsibility of
25 identifying an organization to conduct research on "particulates". (CC147).

26 172. On November 24, 1981, SHB recommended Senkus consultancy be extended another
27 year. (SHB138).

173. On May 27, 1982, Dr. Senkus sent a letter outlining his trip visiting Battelle Labs for smoking experiments involving filters. Senkus advised Battelle, to treat filters with potassium bisulfate, and this altered the results of the test, there was no significant amounts of nicotine detected in the treated bubblers. (CC133).

174. On September 2, 1982, Lorillard VP sent Patrick Sirridge, of SHB, a letter that if Battelle does not perform at expected level and meet objectives of defined experiment, no further work will be contemplated at Battelle in regard to this project. Senkus sent a letter that indicated suggested changes for cleanup procedures to Battelle. (CC135)

175. On November 12, 1982, Patrick Sirridge sent a letter to industry recommending Dr. Senkus be retained by SHB as a consultant on a per diem plus expenses basis. Additionally, the Battelle research was not expected to project to continue much longer than March 1983. (SHB141).

176. Additionally, outside attorneys streamlined the approval process of funds for researchers for greater control of the research being funded by the industry.

177. On March 1, 1972, William Shinn recommended a grant of \$5,000 as a special project for Dr. Theodor Sterling for a panel meeting on Effects of Pollutants on Human Health. (SHB234).

178. On February 27, 1980, Shinn recommended Dr. Sterling's request to extend his project another year totaling funding approval at \$283,130 be approved.

179. On March 11, 1980 in a letter from Max Crohn Jr. (CTR Research Director) to CEO and President of RJR Ed Horrigan Jr, Max said "Dr. Sterling is one of our industry's most valuable outside assets . . . Sterling has studied the effect which occupation has had confounding the reported statistical relationship between smoking and lung cancer". (SHB115).

180. On September 10, 1981, William Shinn (SHB) decided to reduce administrative procedures for clearing Special Four projects. Shinn asked for the presumption that the industry will fund special project unless they were opposed it in writing. Shinn named Sterling as an example for

1 this, “eg- Sterling has only computer capacity”. (CC138).

2 181. On December 1, 1986, Robert Northrip of SHB teleconferenced with Dr. Sterling
3 regarding clearance of Sterling’s Manuscript. (SHB161).

4 182. On January 15, 1987, Don Hoel (SHB) said he would invite Dr. Sterling to come to the
5 next meeting to discuss the results of his study in Vancouver involving office buildings before and
6 after implementation of smoking restriction regulations. (CC169).

7 183. On March 2, 1990, Sterling’s project was classified as no longer a CTR project, instead
8 the project was to be funded directly by the companies and administered as a Special Research Project
9 Through SHB. Sterling would receive a check and divide the funds between Simon Fraser University
10 and Sterling and Associates. (CC123).

11 184. On March 26, 1992, Dr. Sterling requested continued support for a research project for
12 one year in the amount of \$359,75.00. SHB recommended the research program for an additional two
13 years. SHB felt that Sterling’s challenges to the scientific bases of many of the results on smoking and
14 health published in the epidemiological literature provided, “a much-needed perspective on the
15 possible meanings of these scientific reports”.

16 185. For instance, Sterling was working on a publication suggesting that the estimation
17 procedures, used for claims about the number of deaths yearly attributed to tobacco use, were neither
18 reliable nor valid. (SHB124).

19 186. On May 18, 1992, PM approved the project and sent SHB a check for \$161,638.00 for
20 Dr. Sterling’s research. (SHB125).

21 187. Additionally, Dr. George Robert DiMarco, the head of Research & Development for
22 RJR, almost lost his job by crossing outside attorneys for believing cigarettes caused cancer.

23 188. On October 27, 1982, a private individual, Dr. Armstead Hudnell contacted the CEO
24 at RJR about meeting with Dr. George Robert DiMarco, head of R&D at RJR. Hudnell was surprised
25

1 to learn there were no scientists on the Advisory Board of the Tobacco Research Council. Hudnell
2 wanted T.I. to take out an option buying the right to use evidence he funded. (CC211). Kornegay,
3 Shinn, and Horrigan were aware of Hudnell, called him “our old friend”, and his desire for the industry
4 to accept the negative effects of smoking while focusing on the potential benefits, i.e. stress reduction.
5 (CC199).

6
7 189. On November 10, 1982, Hudnell sent a letter to Senator Helms that stated he had shown
8 his research to Dr. Hueber and Dimarco. In this letter, Hudnell stated SHB was incentivized to
9 perpetuate the controversy to the detriment of both the public and the Tobacco industry. (CC198).
10 Two days later, DiMarco responded to Hudnell and acknowledged that he met with Hudnell but
11 disagreed with the assessment that he believed “cigarettes were guilty as charged” (Causation still
12 unproven). (CC200). Two days later, Hudnell sent a letter to RJR CEO stating SHB was the problem
13 and that he was creating a new tobacco organization called Tobacco Review Unbiased On Tobacco &
14 Health (T.R.U.T.H.). (CC212). A few days later, DiMarco writes a letter to Hudnell insisting he cease
15 unauthorized use of Company’s name in efforts to promote Hudnell’s views. (CC213).

16
17 190. On December 9, 1982, Dr. Nystrom wrote to DiMarco with his comments on Hudnell’s
18 arguments. While he disagreed with Hudnell that cigarettes must show some important health benefit
19 to be a defensible product, Nystrom said Hudnell made some interesting points like that it is quite
20 likely that a good portion of lung cancer in smokers is metastasized cancer from other sites. (CC214).

21
22 191. Also on December 13, 1982, DiMarco was sent for Law Department Orientation, with
23 Edwin “Ed” Jacob (JMF). DiMarco believed that working on the development of a less mutagenic
24 cigarette was the prudent and reasonable thing to do. Jacob told him he could not do that work.
25 DiMarco replied that the industry medical/scientific witnesses lacked credibility and integrity. He told
26 Jacob that outside lawyers and the rigid legal positions restricted the proper function of R&D. Dr.
27 DiMarco wanted to research the benefits of smoking, but lawyers told him he could not. Dr. DiMarco
28

1 also told Jacob he would quit before letting them take ammonia off the list of ingredients because it
2 would be misleading and dishonest. (JMF117).

3 192. On March 12, 1983 Timothy Finnegan met with DiMarco to review a paper JMF was
4 preparing for RJR Germany. Finnegan outlined problems they were having with Dr. Adlkofer in
5 regard to his beliefs and open expressions that smoking causes lung cancer and other diseases.
6 DiMarco was confused because he thought Adlkofer worked for the industry. DiMarco agreed that a
7 paper explaining the differing points of view between Adolkofer and RJR should be done in the U.S.
8 JMF was tasked with preparing a draft using materials previously approved by legal committees.
9 DiMarco mentioned “that the people in research had been turned off because they were told they could
10 not do certain things by the lawyers.” In response, the industry reviewed DiMarco’s position on
11 smoking and health. (CC202). In response, the industry identified major risks associated with his
12 continuing as R&D director. On March 29, 1983, Sam Witt, General Counsel for RJR, drafted a paper
13 that discussed “legal concerns associated with [Dimarco’s] position on the smoking and health
14 controversy”. The draft contained a list of positive and negative points for continuing to employ Dr.
15 DiMarco. (JMF119).

16 193. On April 7, 1983, lawyers threatened DiMarco with his job. DiMarco had called Wayne
17 Juchatz, General Counsel for RJR, and expressed concern about the language in the proposed
18 procedure for legal review of R&D projects. DiMarco and two or three other researchers were in
19 agreement that the procedure gave the Law Department control over the nature of R&D work. Juchatz
20 told DiMarco “that outside counsel had expressed serious concerns as to the litigation consequences
21 in the event that our head of R&D did, in fact, believe that smoking caused cancer and was cross-
22 examined in a smoking and health case.” (JMF118).

23 194. On December 31, 1985, a report monitoring Smoking and Health Literature produced
24 by the outside law firm DAY for RJR R&D found Dr. DiMarco said RJR had given the responsibility
25

1 of the Research Department in the area of smoking and health to the Law Department, and it was
2 understood that the lawyers-controlled things in this area. Dr. DiMarco and his staff felt frustrated by
3 the situation. (DAY104).

4 195. On April 10, 1989, handwritten meeting notes show Dr. DiMarco asked the question:
5 “Where can we go to grow the business? If we get the right product, price is not an issue.” DiMarco
6 brings up the viewpoint that positive reason for smoking. Should we put more emphasis on finding
7 out the positive? Believes there is a value to smoking that has not been discovered. (CC215).

8 196. Additionally, outside lawyers took over access to a database of documents created by
9 RJR’s Research and Development division. Access to these documents was barred to the tobacco
10 companies and their in-house counsel by outside counsel in order to conceal the documents through
11 an abuse of attorney work product privileges.

12 197. On March 10, 1983, in a memorandum written by George DiMarco on the removal of
13 materials from the R&D library in respect to the LRD (Literature Retrieval Division), DiMarco
14 discussed whether Frank Colby, a scientific director with RJR, should continue to work for RJR or
15 transfer to work directly for JMF. (CC201).

16 198. On December 4, 1984, hand-written notes titled “Colby Interview” (with JMF) state
17 “FGC” (Colby) was hired to get all literature on tobacco, not just to assist lawyers in litigation but to
18 keep the company informed. The notes indicate Colby gathered everything related to science and
19 tobacco to establish data; Colby began microfilming everything housed in R&D in the 1950s; Colby
20 left RJR because the LRD was no longer accessible to companies, including in-house lawyers, it was
21 only available to litigating lawyers (out-side counsel). Colby said when the order was given to remove
22 documents from files it came from the legal departments. (CC150).

23 199. Sometime in the 1990’s, a document on the relationship between the US and German
24 tobacco industries, stated Frank G. Colby held a position with RJR, went to work for JMF, and later
25

1 became a sole proprietor of Frank G. Colby and Associates, with an employment agreement with
2 benefits provided by RJR Tobacco through the DAY law firm, in the approximate amount of \$120,000
3 a year plus retirement benefits at about \$24,000 a year. (CC218).

4 200. Additionally, outside counsel argued with Dr. Franz Adlkofer about T.I.'s decisions to
5 publish statements that criticized the results of studies they knew were correct, and T.I.'s avoidance
6 of epidemiological methods they knew would result in proof that smoking caused adverse health
7 effects.
8

9 201. On April 28, 1978, the Scientific Director for RJR, Frank Colby, forwarded a
10 memorandum of a phone call with Dr. Adlkofer to Ed Jacob (JMF). Adlkofer was emphatic that
11 important sources of information would dry up, if American Cigarette Industry leaked information
12 that could be traced to the Verband. Adlkofer said it was probably ok to approach members of the
13 committee individually since there was no danger of tracing the info back to Verband. (JMF120).
14

15 202. Later that year in October, at a Nicotine Research Concept meeting, Adlkofer agreed
16 to limit research to "disease" related problems and omit tests of nicotine as a single compound.
17 (CC219).

18 203. On February 16, 1981, Adlkofer met with Frank Colby at JMF's office. Adlkofer told
19 Colby his days with the association would probably soon be numbered because tobacco companies
20 were apprehensive about his statements that "smoking is the essential causal factor for lung cancer in
21 addition to other factors". Adlkofer disagreed with Colby about the potential for development of
22 liability through the European Community. Colby offered Adlkofer to step down as Scientific Director
23 of Verband, to keep a position as secretary of the "Forshungsrat" (research council), which could be
24 structured to satisfy Adlkofer, Verband, RJR, and Tobacco Industry. (CC223).
25

26 204. On July 24, 1981, at a T.I. meeting, Adlkofer committed himself to the position that
27 Lee and Hirayama were correct. When asked how he could continue to support the projects if
28

1 Hirayama's work was dead, Adlkofer replied that Hirayama was correct, that the TI knew it, and
2 published its statement about Hirayama knowing that the work was correct. (CC229).

3 205. On August 5, 1981, Adlkofer sent Colby a letter and confidential paper assessing two
4 very contrary statistical assessments of the Hirayama paper. The paper concluded Hirayama evaluated
5 the available data correctly. Colby forwarded the letter and paper to Tim Finnegan of JMF. (CC224).

6
7 206. On July 15, 1988, at a meeting on ETS in London, Adlkofer disagreed with John Rupp
8 (COVB), over what direction ETS research should go forward. Adlkofer stated conventional
9 epidemiological studies were not worth continuing, and that the industry should focus on "modern
10 epidemiology" and the alleged mechanisms of effect. Rupp and other members said Adlkofer's
11 suggestion would provide "a priori proof of causation". Additionally, Rupp argued existing studies
12 are necessary, if for no other reason than to effectively respond to anti-smoking groups". At the end
13 of the meeting, Dr. Adlkofer expressed disappointment that no new information had been presented.
14 (CC188).

15
16 207. Some of the specific researchers that were developed over time were funded solely to
17 maintain good relationships and secure help contacting other scientists.

18 208. For example, Dr. Bennett Jenson was given \$40,000 despite lawyers from SHB
19 knowing the research had no immediate value just to keep Dr. Benson happy.

20 209. On January 11, 1983, a letter from SHB enclosed a chart of CTR Special Projects
21 supported under Special Accounts 4 and 5. Dr. Jenson's HPV project was listed for two years at a
22 budget of \$60,000. (SHB240).

23
24 210. On December 30, 1983, Patrick Sirridge, of SHB, recommended funding for Dr. Jenson
25 to receive additional CTR Special Project funds for two years in the amount of \$63,600. The proposed
26 new project was related to Jenson's previous CTR special project. Jenson wished to study the presence
27 of HPV in specific types of respiratory tract lesions. (SHB241). The proposal did not mention tobacco
28

1 at all, and only mentioned cancer on the very last line of the proposal before the budget stating,
2 “[a]nimal models utilizing papillomavirus could be used to study the mechanisms of carcinogenesis
3 as it relates to carcinoma of the lung,”. (CC301).

4 211. On January 9, 1984, Sam Witt, of RJR, sent Sirridge a letter that confirmed funding for
5 Dr. Jenson’s research as a CTR Special Project. (CC299).

6 212. On March 8, 1984, Robert Gentenbach, the president of CTR, sent Dr. Bennet Jenson
7 a letter that confirmed funding for two additional years of the special project. The letter stated that any
8 credit line for future publications resulting from the project should state “Special Project of the Council
9 for Tobacco Research-U.S.A., Inc.” (CC300).

10 213. On December 6, 1988, Bernard O’Neill of SHB sent a letter approving a supplementary
11 request for Dr. Jenson, that was considered granted unless other members voiced objections.
12 (SHB197).

13 214. On April 28, 1992, a letter stated SHB proposed giving Dr. Jenson \$40,000 solely to
14 maintain a good relationship and secure his continued help making contact with other scientists. Bill
15 Allinder of SHB admitted the funding is not for specific research or with an eye to publication. Jenson
16 had been facing problems receiving funding at Georgetown stemming from his ties to the industry.
17 SHB wanted to give Jenson money to keep him happy and knew that there was “no immediate value
18 to his research”. (CC119).

19 **Lawyers developed witnesses in furtherance of the conspiracy**

20 215. David Hardy, a partner at SHB, played a major role in the Defendants’ witness
21 development plans to perpetuate the conspiracy’s “open question” position.

22 216. For example, shortly after joining Brown & Williamson Tobacco Co., as Vice President
23 of Research and Development in 1989, Jeffrey Wigand, as part of his orientation, was required to go
24 to Kansas City, Missouri to meet for three days with lawyers from the law firm of SHB for an
25

1 orientation session. At the session Wigand was "coached by lawyers regarding the company line on
2 smoking and health, and addiction." The company line was "[t]hat causation had not been proven and
3 that nicotine had not been shown to be addictive." Similar orientation meetings took place with other
4 tobacco scientists at SHB's offices. (See SHB195, SHB106, *United States v. Philip Morris USA, Inc.*,
5 449 F. Supp. 2d 1, 805 (D.D.C. 2006))
6

7 217. Wigand described the orientation session as follows:

8 Lawyers were instructing me, a scientist, how to interpret epidemiological studies.
9 In every instance, I was instructed that the evidence in the public health domain had
10 not satisfactorily proven causation. I was told that studies that demonstrated a link
11 between smoking and cancer were fraught with errors. Moreover, I was told that
epidemiology could not be relied upon because it was just statisticians doing guess
work.

12 *Id.*

13 218. A May 1967 letter from an SHB attorney, William Shinn, showed witnesses would avoid
14 giving testimony on smoking being the cause of disease even though they privately held the opinion:

15 Specifically: Dr. S. would accept grants to study the affects of stress on animals,
16 would speak and assist writers, would consult regarding ways to interest medical
17 schools and doctors, etc. If such a program properly publicized his theories, he
18 would testify before Congress. He would not give an, opinion on smoking as a
19 cause of any disease because he does not consider himself qualified. [His private
20 opinion is that smoking does cause some cancers to develop, may cause heart
disease in some people and does cause bronchitis - he says these views are shared
by all the doctors he knows but that these same doctors are willing to concede a
beneficial diverting affect to smoking:.]

21 (SHB121).

22 219. The purpose of special projects was not only developing research, it also included
23 developing witnesses. As one lawyer said, at a meeting of the committee of general counsel said
24 "Lawyers cannot testify; we need people who can." (CC139)
25

26 220. For example, a letter from Lee Stanford (SHB) to David Hardy (SHB) on briefing Dr.
27 Alex Spears showed outside attorneys coaching responses designed to avoid lawyer involvement. In
28 the letter Stanford stated,

1 CTR Special Projects, non-CTR projects and the Industry Research Committee are
2 obviously sensitive. **Dr. Spears should be prepared to respond to questions in a**
3 **way that does not lead Edell into these areas.** In particular, Dr. Spears should try
4 to avoid references to the role of attorneys. However, this should not become too
awkward . . . Dr. Spears should attempt to divert the questioning away from the
involvement of attorneys.

5 (SHB118).

6 221. In 1966 letters from Frank Decker, of SHB, outlined visits with several doctors and
7 scientists working on special projects. Decker concluded that Dr. Pratt could be developed into a witness,
8 and Dr. Soloff might be persuaded that the validity of previous statements he made are questionable.
9 (SHB110).

11 222. On January 12, 1967, David Hardy (SHB) wrote to several other industry attorneys asking
12 them for written comments regarding special projects and congressional hearings. (SHB111). Don Cohn
13 and Francis Decker wrote back. They hoped materials being developed by Tom Hoyt for various Special
14 Projects **would be useful in developing a witness to emphasize the importance of multivariant**
15 **analysis over univariant ones.** Cohn and Decker also recommend development of two witnesses who
16 could comment upon diseases other than lung cancer. They would present the position that the claimed
17 associations have not been proven to be causal. Also, they consider Dr. Pratt to be a potential witness.
18 However, considerable work would have to be done before his attendance in Congress. (SHB112).

20 223. William Shinn responded, if Dr. Seltzer of Harvard had Tom Hoyt's charts available and
21 was willing to testify he might be able to use them to support a theory that lung cancer is not associated
22 with cigarette smoking any more than it is with a constitutional theory. Shinn stated he had "in mind
23 charts showing the male-female ratio, peak age, etc." (SHB113).

25 224. In 1973, at a committee of counsel meeting it was stated that Dr. Aviado was prepared to
26 help with responses to the upcoming Surgeon General's report in 1974. (CC104).

27 225. Additionally, lawyers influenced and developed witnesses to provide alternative theories
28 of causation.

1 226. For example, On February 2, 1967, a letter from William Shinn recapped interviews he
2 had with Alex Holtzman, and Frank Decker for Dr. Carl Seltzer regarding a paper on Constitutional
3 Factors theory (a genetic predisposition for early mortality that is linked to difficulty adapting to the
4 problems of existence). Shinn hoped Seltzer would develop the available material that supports their
5 alternative answer because they need a witness (for congressional hearings) who would review Tom
6 Hoyt's statistic charts and prepare a presentation using them. Shinn suggested that if Seltzer had charts
7 and was willing to testify, he might be able to use them to support a theory that lung cancer is not
8 associated with cigarette smoking. (SHB113).

10 227. On February 5, 1974, SHB recommended a grant for Dr. Carl Seltzer, for \$50,000 as a
11 CTR Special Project. Seltzer was given an extension to continue one year beyond normal retirement.
12 SHB acknowledged the grant requested is not the kind normally provided from the CTR budget since it
13 is not oriented to any project and financing for Dr. Seltzer in the past has been through a "special project"
14 type grant. (SHB122).

16 228. On January 17, 1977, a letter from Dr. Charles Waite to Horace Kornegay discussed a
17 visit to Kansas City with Bill Shinn (SHB), Don Hoel (SHB), and Tim Finnegan (JMF). Waite stated,
18 "particular emphasis was placed on the pitfalls of assurance of safety and the avoidance of conspiracy to
19 undermine health warnings at all costs." Waite was told to become familiar with the Fisher hypothesis
20 (on causation), Seltzer's theory of Burch's constitutional hypothesis theory, and review the Auerbach
21 reports. Waite's own work was discussed and edited with a view toward a rewrite. Waite was told, "future
22 reviews for spokespersons must not carry too much detailed information,". (SHB106).

24 229. On March 7, 1980, SHB recommended approval of Dr. Seltzer's request for renewal of
25 his CTR Special Project administered through the Peabody Museum, at a rate of \$70,000 through June
26 30, 1981. (SHB226).

27 230. Additionally, researchers that were willing to change their methodology to conform with
28

1 CTR's wishes were selected to continue to receive funds and eventually developed into witnesses.

2 231. For example, on January 8, 1973 the Committee of Counsel met at the Tobacco Institute
3 and discussed Dr. Rao, a steroid biochemist that requested grant money from CTR to fund research into
4 a theory that lung cancer is an endocrine disease. Rao switched his methodology, from urinalysis to blood
5 analysis because it was CTR's preferred method. In light of this, Hardy and Jacob felt Rao would become
6 an important witness. (CC104).

7
8 232. On September 26, 1977, Ed Jacob (JMF) recommended funding Dr. Rao through Special
9 Account No. 4 since the research was not appropriate for consideration as a CTR special project, yet still
10 of value because under appropriate circumstances, he might be able to provide useful information to a
11 Congressional Committee or other body inquiring into certain aspects of smoking and health. (JMF100).

12 233. On December 1, 1986, SHB statement for services and expenses indicated Rao still
13 received Special project funds. Under "CIGS-Science and Research" services included "Review Rao
14 Special Project". (SHB161).

15 234. Additionally, internal industry documents acknowledge that outside lawyers spent years
16 developing witness testimony.

17
18 235. For example, on February 6, 1981, Patrick Sirridge recommended Dr. Blau's non-CTR
19 special project collecting and evaluating literature on the "tobacco habit" (addiction) be renewed for an
20 additional year. (SHB242).

21
22 236. On March 5, 1982, at a House of Representatives Subcommittee on Health and The
23 Environment Committee on Energy and Commerce. Dr. Blau testified "There is no scientific basis for a
24 statement that cigarette smoking is addictive." (CC180).

25 237. On April 2, 1982, Patrick Sirridge recommended a research grant as a Special Fund 4
26 project for Dr. Blau. (SHB139).

27 238. On June 3, 1985, an RJR report on addiction stated, "Patrick Sirridge of Shook, Hardy,
28

1 and Bacon has been developing Dr. Blau's testimony since 1979." (CC179).

2 239. On October 24, 1985, a letter from Patrick Sirridge recommended Dr. Blau's project be
3 renewed for another year because the project was educating Dr. Blau. The letter stated, "given the rapid
4 growth of the field **the project has helped Dr. Blau maintain his expertise in this important area**".
5 Additionally, the letter emphasized that Dr. Blau's project was important "since questions relating to the
6 motivations for smoking have arisen in a variety of forums such as the current litigation". (CC243)
7 (emphasis added).
8

9 **The Tobacco industry was warned by lawyers not to warn the public about smoking**

10 240. In 1975, David Hardy (SHB) advised British American Tobacco Co. (BATCo) against
11 admitting to the public what its scientists knew internally -- that smoking causes disease. At the time,
12 BATCo was considering placing a warning on cigarette packages sold in England -- with no government
13 attribution -- that stated that smoking "causes lung cancer, bronchitis, heart disease." In a letter addressed
14 to BATCo, Hardy advised that this admission of fact would impede the defense of smoking and health
15 litigation in the United States. He wrote:
16

17 The proposed new warning removes the attribution of the warning to "H.M.
18 Government," and instead appears to be a voluntary and direct admission by the
19 cigarette manufacturer that the cigarettes contained in the package cause "lung
20 cancer, bronchitis, heart disease." A wholly owned subsidiary of the manufacturer
21 would, in our opinion, be adversely and prejudicially effected by such a voluntary
22 warning even though it is a separate entity. Once the fact and content of the warning
23 got before a jury in the United States in a case involving the subsidiary, the defense
24 of "no proof of causation" would be lost for all practical purposes. Such a result
25 would indeed be unfortunate in view of the fact that in every instance where the
26 matter has been explored in our Courts through expert testimony and otherwise, the
27 cigarette manufacturer has prevailed.

28 (SHB149).

29 **Lawyers directed the industry away from valid research that could be performed**

30 241. Lawyers did not allow funds to go to qualified groups and individuals that held beliefs
31 contract to the entrenched industry position, that smoking did not cause negative health effects.

1 242. For example, on August 9, 1978, Shinn received a letter from Leonard Cornell of the
2 Addiction Research Foundation, requesting \$400,000 to construct a laboratory for research on tobacco.
3 The Foundation hypothesized that there was a hormone produced in the body which functioned like
4 nicotine. If this natural hormone could be combined with the flavor of tobacco it could be less toxic.
5 (SHB168).
6

7 243. On August 15, 1978, Shinn forwarded the letter to industry attorneys and planned to tell
8 Cornell that he cannot advise him on any of his inquiries. (SHB170, SHB171).
9

10 244. By September 6, 1978, Cornell had contacted Lorillard and other tobacco companies
11 individually, stating that the foundation now had a finding which corroborated their theory and Dr.
12 Goldstein, a prominent pharmacologist and neuroscientist, attached as well. (CC231).
13

14 245. On September 12, 1978, B&W responded to the request for a grant, stating that they had
15 already committed all of their health research funds for the year. (CC233).
16

17 246. On September 19, 1978, in a letter from a T.I. representative, Waite, in regard to Cornell's
18 letter, Waite stated sarcastically that he wonders why they (the tobacco industry) might not be interested
19 in light of the Addiction Research Foundation assuming tobacco and nicotine are addictive, smoking
20 costs the U.S. Citizen billions a year, and that causes 300,000 premature deaths. (CC228).
21

22 247. Further, outside counsel reversed decisions made by in-house counsel when it came to the
23 publication of industry sponsored research.
24

25 248. For example, on January 10, 1983, a manuscript of Dr. Victor Denoble's study results
26 was approved for publication in Science (Magazine, Peer-reviewed Journal) by PM. (CC221).
27

28 249. In a July 27, 1983, a letter to the head of Philip Morris from an SHB attorney, Patrick
Sirridge, summarized the nicotine research being conducted by scientist and recommended its
suppression. Sirridge pointed out the legal implications of the "unfavorable" Philip Morris internal
nicotine research:

Research engaged in, as well as some possibly under consideration, by Philip Morris has undesirable and dangerous implications for litigation positions the industry takes in regard to smoking behavior. The pharmacological nature of the research implies strongly a view of the importance of nicotine. What is worse, research reports under Philip Morris' sponsorship contain claims of unequivocal demonstrations of reinforcement by nicotine in animals. This kind of research is a major tool of our adversaries on the addiction issue; the irony is that industry-sponsored research is honing that tool. In the final analysis, the performing and publishing of nicotine related research clearly seems ill-advised from a litigation point of view.

(SHB158).

250. In April 1994, an SHB report titled "Philip Morris Research of Nicotine Pharmacology and Human Smoking Behavior" pinpoints exactly which research was never made public and the relationship of that research to Philip Morris products. When describing the "Nicotine/Acetaldehyde" research conducted by DeNoble in 1982, research that showed that acetaldehyde and nicotine functioned as "positive reinforcers," the SHB report admitted that the research was never published:

CAVEAT: This research has never been published. There is nothing in the literature regarding the synergistic effects of nicotine and acetaldehyde. In addition, see description below re: Frank Ryan data on predicting sales.

Upon learning that acetaldehyde functions as a positive reinforcer, they endeavored to study the combined effects of nicotine and acetaldehyde on self-administration. Results indicated that reinforcing effects of these agents are additive.

Research done by Frank Ryan indicated that acetaldehyde and nicotine data could be used to predict cigarette sales at a 96% accuracy. . . . Frank Ryan ran a program and was able to predict blindly which cigarettes would sell and which wouldn't base on the combination of nicotine and acetaldehyde delivery.

(SHB153).

251. The 1994 SHB report acknowledges that researcher, Victor DeNoble's, research was suppressed: "[H]e was not allowed to publish the research regarding the effects of nicotine and acetaldehyde." This occurred "after a letter from Shook, Hardy to the Philip Morris Legal Department and discussions between [attorney] Alex Holtzman and [scientist] Jim Charles." (SHB153).

252. In a later section of the 1994 report, SHB described how nicotine research undermined Philip Morris's public position denying addiction, and could invite regulation by the FDA:

D. Why Was Research Stopped

1. Sensitivity. [CAVEAT: Significance is self-evident.]

According to DeNoble, "we were the only tobacco company that I knew of, or that anybody else knew of, doing work with whole animals, live whole animals, and because of the nature of the research, that is, looking at self-administration, looking at the effects of nicotine on the brain function, the research was held restricted to upper management only."

DeNoble discussed the effect of his research on the company with Dr. Charles, Dr. Osdene, Dr. Pages, Mr. McDow, Max Hausermann, Mr. Pollock, and Jim Remington. . . . "The downside was that we were doing whole animal research, which looked to them like we were doing Federal Drug Administration [sic] research."

DeNoble understood that the research he was doing could undermine the public posture Philip Morris was taking with outsiders.

DeNoble discussed with Jim Charles and Tom Osdene the potential damage to the company of continuing animal research.

(SHB153).

253. In April 1994, Dr. Denoble testified that he had authored a paper that was accepted for publication but was told if it were published it wouldn't be good for litigation. Denoble was forbidden from making a poster presentation at the American Psychological Association because it would not look good in litigation. Shortly after that, attorneys from SHB set up a xerox in Denoble's office and began reviewing and copying all of his work. Denoble's work was discontinued, when he was told to shut his equipment off, terminate the experiment, and to kill all the animals the following day. PM provided him with an office and funds to look for other jobs. Denoble's request to complete the manuscripts of data already collected was denied. In December 1985, and 1986, Denoble attempted to publish and present some of his work because as he testified, "[t]his information wasn't going out simply because the company didn't like what it said. And that was unacceptable. In 1986 people still weren't close to doing this kind of research." (CC182).

254. None of the results or conclusions from the Philip Morris Nicotine Program or Behavioral Research Program were made public or were included in Philip Morris's and the industry's collective

1 submission to the FDA in 1996. In fact, Volume III of the industry's "Comments" deny FDA assertions
2 that research existed showing that nicotine is addictive. (CC271).

3 **Outside lawyers made representations to the general public about smoking and health**

4 255. While internally, SHB advised the Defendants not to publicly admit what the industry
5 already knew about the harms of smoking, publicly, they were drafting false and misleading statements.

6 256. For example, in November 1967, at the direction of outside lawyers David Hardy (SHB),
7 and Ed Jacob (JMF), and the Tiderock Corporation, a public relations firm working for the Tobacco
8 Institute, prepared an action plan titled "The Cigarette Controversy." The action plan proposed to
9 influence public opinion by creating specific initiatives to re-open the "open question" cigarette
10 controversy. The program called for the creation of a position paper for intra-industry use as well as one
11 for distribution to the media and public. The plan included targeted categories for mailings such as the
12 medical profession, scientists, communicators (press, radio, and television), educators, top public figures,
13 and 10,000 top corporate presidents. It also detailed the publication of magazine articles. (CC174,
14 SHB102).

15 257. On May 22, 1967, David Hardy of SHB sent a letter to Committee of Council members,
16 accompanying the letter was what Hardy referred to as "our Position Paper". Hardy indicated he had
17 reviewed the paper and felt it was a "comprehensive job" evidencing that he reviewed its contents. The
18 paper admits that smoke condensate caused skin cancer in mice but questions whether smoking was a
19 definite cause of cancer. (SHB102)

20 258. On May 27, 1969 David Hardy of SHB sent a Letter to Dr. Robert Hockett (CTR
21 Scientist) that included a paper SHB prepared explaining laymen reasons why representatives of the
22 industry contend that the case against cigarettes has not been proven titled "Cigarette Controversy Eight
23 Questions and Answers". (SHB150).

24 259. On November 21, 1967, William "Bill" Shinn of SHB, made a radio appearance where
25
26
27
28

1 he advocated on behalf of the industry. Shinn was introduced as a “special Assistant to the President of
2 the Tobacco Institute”, accompanied Addison Yeaman, the Vice President and General Counsel for B&W
3 (later Addison would become the President and Chairman of CTR), onto an evening radio program called
4 “Night Talk”. During the interview Shinn stated that “a lot of local doctors, not being cancer specialists,
5 not being pathologists, not being in an area where they themselves can go in and make an independent
6 determination, feel because of the pressures that have been created, that perhaps they need to set an
7 example for their patients . . . there are many doctors who do not believe that the case against cigarettes
8 has been proved,”.

10 260. On October 13, 1977, William Shinn of SHB sent a letter to Alex Holtzman, General
11 Counsel for PM, enclosing a preliminary draft of a paper titled “Cigarettes and the Cardiac-Cancer
12 Cartel”. The draft contained so many numerous “major errors” that Shinn felt the need to state in his letter
13 he had not “attempted to rewrite the paper,”. (SHB215). Later, the paper was used as a public statement
14 made by Clifford Goldsmith, the CEO of PM, to criticize private and public health agencies by claiming
15 they went beyond the boundaries of fact, reason, and decency. (SHB216).

17 261. On April 17, 1978, a letter from Edwin Jacob (JMF) delivered a position paper titled
18 “Public Smoking” drafted for RJR. Jacob indicated that the paper was used as the basis for an international
19 position paper still under draft. The paper relied upon research funded by the tobacco industry, i.e. Huber,
20 without disclosing that the work was funded by the industry. (JMF122).

22 262. On October 15, 1981, Donald Hoel of SHB sent a letter to Horace Kornegay, attorney for
23 T.I., enclosing the most recent drat of the “Public Smoking Paper” SHB prepared for use by INFOTAB.
24 Hoel wanted Kornegay to have a copy of the paper despite the fact it had not been officially cleared by
25 all members. (SHB147).

26 263. In 1981, the Tobacco Institute published a document titled "On Smoking -- 21 questions
27 and answers," written by the law firm SHB, which stated:
28

1 The tobacco industry has committed more than \$91 million for independent research
2 on smoking and health questions. . . . The tobacco industry remains committed to
3 advancing scientific inquiry into the gaps in knowledge in the smoking controversy.
(CC178).

4 264. In 1990, INFOTAB also issued an INFOTAB publication titled "Children & Smoking --
5 The Balanced View" that addressed various World Health Organization claims. It stated that cigarettes
6 are not addictive, and that there were inconsistent findings as to whether smoking causes low birth weight,
7 birth defects, and delayed mental and physical development in infancy. (CC273)

8 265. Sometime after 1990, general counsel for B&W sent an "Addiction Statement" attributed
9 to Robert Northrip of SHB. Northrip stated smoking must be characterized as a habit because in-part
10 people have been able to quit, therefore, the "behavior is simply not consistent with any reasonable use
11 of the term addiction,". Northrip concluded with a warning, "statements in company documents cannot
12 refute this conclusion,". (SHB156).

13 266. A June 20, 1984 memorandum, written by an SHB attorney, Wendell L. Stone,
14 summarizes the significance of CTR-funded nicotine research for industry clients. In his memorandum,
15 Stone conceded that:

16
17
18 Of the three areas pertinent to Cipollone¹ (lung cancer, emphysema, and addiction)
19 the abstracts and CTR commentary regarding addiction are the most consistently
20 adverse. Through the years, CTR has funded psychopharmacological and
21 neuropharmacological studies which emphasize and leave clear the points that CTR
22 views nicotine as a "psychoactive" or "psychotropic" drug (terms which CTR has
23 used), and that the research approach most appropriate to studying smoking behavior
24 involves the pharmacology of nicotine. Among the undesirable research claims which
25 appear in abstracts which acknowledge CTR support: the identification of specific
26 central nervous system structures (nicotine receptors) at which nicotine acts; effects
27 of nicotine on a variety of different purported neurotransmitters involved in learning,
28 memory, etc.; various behavioral effects of nicotine from which can be inferred central
nervous system effects, some of which might be used to support assertions regarding
"tolerance" and "withdrawal."

¹*Cipollone v. Liggett Group*, 505 U.S. 504 (1992), was one of the first tobacco lawsuits in which the industry was assessed damages. It was particularly significant to the industry because it involved the unprecedented use of thousands of internal industry documents.

1 (CC101)

2 267. In a June 3, 1985 RJR document titled "Report on Medical and Scientific Issues --
3 Addiction," the scientist authors attempted to examine current scientific literature to assist the industry
4 with respect to the scientific consensus on nicotine addiction. As part of their review, the scientists
5 reviewed literature compiled by the tobacco law firms of JMF, SHB, and DAY. The scientists wrote in
6 their report that, "Both Mr. Wroblewski [(JMF)] and Mr. Sirridge [(SHB)] warned, however, that there is
7 very little literature favorable to the industry's position on addiction." (CC179).

8
9 268. CTR Special Projects were a separate category of research projects funded by CTR.
10 Unlike the grant-in-aid category of research, CTR Special Projects were not screened by the CTR
11 Scientific Advisory Board ("SAB"); instead the process was directed by the General Counsels of Philip
12 Morris, Reynolds, Lorillard, Liggett, B&W, and American, as well as attorneys at outside law firms
13 including JMF, and SHB. The work was specifically commissioned for possible use in litigation. (CC230,
14 CC138, CC139, SHB116, SHB120)

15
16 269. The lawyers who coordinated, requested and monitored CTR Special Projects were not
17 scientists and did not have scientific backgrounds. The lawyers wished to avoid the CTR SAB method of
18 funding because the SAB evaluated its project-funding requests in part for scientific legitimacy, while
19 the lawyers were focused on litigation and liability objectives. (SHB111, SHB119, SHB122, CC138,
20 CC119)

21
22 270. Notes from a meeting with outside lawyers at JMF reference Bob Suber, Reynolds'
23 Director of Health and Environmental Studies, critique of the CTR, including that it is "very sloppy as
24 far as research" and that it is "a way for the company to 'launder' money for research". (RJR187)

25 271. Another example of the lawyers' involvement, in 1990, BAT held a series of mandatory
26 training sessions about writing and document creation for company scientists. "The sessions were
27 called 'caution in writing' seminars and at Brown & Williamson they were presented by lawyers,
28

1 predominantly from Shook, Hardy & Bacon." At the seminars, scientists were instructed by lawyers
2 "on how to sanitize the documents they created." The scientists were told "how to avoid writing
3 documents with contentious words and topics." The contentious words included words like "safer,"
4 "addictive," "disease," and "cancer." (*Id.* at 806, CC283)

5
6 272. In a January 29, 1974 report concerning the progress made by Liggett in 1973 on Project
7 TE 5001, James R. Newsome, an attorney with SHB, explained: "[future plans on this project will consist
8 of screening a number of basic materials on both the cigarette filter and blend in an attempt to find which
9 additive is most effective in producing a smoke able increased smoke pH cigarette." (SHB159).

10 273. Up to a year prior to the release of a Surgeon General's Report on Smoking and Health,
11 the Defendants would start planning their response to what they expected it to say. That response included
12 establishing a task force to write and publish a rebuttal paper. Rather than have scientists evaluate the
13 evidence or the Report's findings, once they were issued, the Tobacco Institute assigned a public relations
14 staff member to research, write, and edit the rebuttal paper. Anne Duffin was given this responsibility
15 multiple times, under the direction and guidance of the law firm SHB. Other public relations staff
16 members re-read and edited chapters of the document as it was drafted.

17
18 274. On September 21, 1978, T.I. began to formulate plans to preemptively present the
19 industry's position before the 1979 Surgeon General's Report. A report to the executive committee
20 detailed the plans included staging counter media events preempting the SGR by one day. Anne Duffin
21 (T.I.) was preparing a readable lay critique which would be made available the same day. (CC268).

22
23 275. On January 19, 1979, a memorandum outlined that in order to frustrate the impact of the
24 Surgeon General's 79 report, the industry decided to hold a news conference the day before the scheduled
25 release of the report. In response to learning that advance copies of the report would be distributed to
26 news outlets at the same time, the industry moved its conference up three hours. (CC177).

27 276. In April 1981, Anne Duffin sent a letter to Patrick Sirridge, of SHB, with an attached
28

1 marked-up copy of the "On Tobacco" report. Most of the information contained within the report had
2 been cleared previously. Some of the revisions substantively alter what the document conveys ie:

3 Original version: In 1977, the director of the government agency responsible for
4 coronary heart disease (CHD) research told a Congressional committee, 'We still don't
5 know the etiology of arteriosclerosis and hypertension.' In January 1981, the Surgeon
6 General's newest report on smoking and health said the same thing.

7 Edited version: In early 1981, a past president of the American Heart Association said
8 it best when he told a New York reporter, "We have yet to uncover what causes
9 atherosclerosis, responsible for heart attack and stroke." In January 1981, discussing
10 smoking and cardiovascular disease the Surgeon General's newest report pointed out
11 that "correlation is not synonymous with causation."

12 (CC178).

13 277. On October 12, 1982, the industry began planning again to attempt to blunt the impact of
14 the upcoming 1983 Surgeon General's Report. The Scientific Division of T.I. was assigned to prepare a
15 brief paper with a 10-day deadline, while SHB attorneys would provide clearance of the paper and its
16 final format between October 22 and December 1 (40-day deadline). (CC102).

17 278. In August 1986, T.I. began a project to reply to the 1986 Surgeon General's Report on
18 ETS, planned by IAPAG (Indoor Air Pollution Advisory Group) working with COVB. (CC171).

19 279. On March 15, 1994, a letter from Paul Crist (DAY), to John Rupp (COVB) stated the
20 industry was in substantial agreement with the Surgeon General on what the available scientific evidence
21 showed, yet, disagreed on whether cigarettes caused disease, rather, the industry believed smoking was a
22 risk factor. (DAY100).

23 280. As early as 1970, however, attorneys at SHB wrote a seven-page letter to B&W's
24 General Counsel expressing concern that BAT Group research documents would be subject to
25 discovery and that these documents "constitute a real threat to the continued success in the defense of
26 smoking and health litigation." (SHB148)

27 281. The TRC was re-named the Tobacco Advisory Council ("TAC") on August 31, 1978.
28 Various members of the conspiracy participated in the TAC, including BATCo, RJR, and Philip Morris,

1 John Rupp (COVB), and Don Hoel (SHB). The last TAC meetings occurred in May of 1999. (CC272,
2 CC284)

3 282. CTR Special Project funding ended sometime around 1990. Thereafter, Philip Morris,
4 Reynolds, Lorillard, Liggett, B&W, and American continued to jointly fund research projects on behalf
5 of the conspiracy through Lawyers Special Accounts. For example, on March 2, 1990, Stevens sent a
6 letter to Patrick Sirridge, of SHB, enclosing a check for \$46,461, which represented Lorillard's share of
7 joint funding for Theodor Sterling, a long-time CTR Special Projects grantee. Stevens noted "that this is
8 no longer a CTR project, but is now being funded directly by the Companies and administered as a Special
9 Research Project through your firm." (CC123)

11 283. Arthur Stevens, Senior Vice President and General Counsel of Lorillard, and William
12 Allinder, also of Lorillard, wanted to know if Lorillard could "participate in funding through a Shook,
13 Hardy special account the work of a Georgetown pathologist, Bennett Jensen." Jensen had received CTR
14 Special Project funding in 1988, and now faced problems at Georgetown because of his ties to the tobacco
15 industry. SHB proposed to "give him \$40,000 – not for specific research...or with an eye to publication
16 but solely in order to maintain a good relationship with him and secure his continue help in making contact
17 with other scientists." The question was raised whether
18

19 'CTR Special Projects' funds (and, after such activities were moved out of CTR, joint
20 industry funds administered through SHB) were used to purchase favorable judicial
21 or legislative testimony, thereby perpetrating a fraud on the public.

22 (SHB197, CC119)

23 284. Similar acknowledgments were made in prior communications. In 1982, a memorandum
24 summarizing incoming Reynolds' R&D scientist, Dr. Robert DiMarco, states the view that, "our
25 medical/scientific witnesses will say whatever we want them to say – clearly implying (if not stating) that
26 they lacked credibility and integrity." (JMF117).

27 285. A June 28, 1988 memorandum addressed to Toss Sollis, Assistant General Counsel of
28

PM, from Donald Hoel, an attorney with SHB, described the central role played by SHB, with respect to INFOTAB (International Tobacco Information Center/Centre International d'Information Du Tabac, registered in Geneva, Switzerland). Hoel stated:

SHB, as counsel to PM and other international manufacturers, was instrumental in the founding of INFOTAB to help strengthen and coordinate the activities of the various national manufacturers associations. The firm remains active in the operation of INFOTAB. It monitors the meetings and clears the draft minutes of the INFOTAB Board of Directors and the Global Issues Working Party, as well as INFOTAB workshops. All materials prepared by INFOTAB on smoking and health issues, including briefing documents sent to national manufacturers associations and presentations by the INFOTAB staff, are cleared by SHB in order to protect the member association and member companies. SHB also approves all public relations campaigns, tactics and strategies which address smoking and health issues

(SHB109)

286. A 1989 INFOTAB document outlined how to attack the WHO [World Health Organization]. The tactics it suggested included the following:

Criticize budget management, Address health priorities, Expose resource blackmail, Highlight regional failures, Attack "behaviourism," Counter on public issues, Discredit activists' credentials, Engage in statistical warfare, Invest in press relations.

(CC274).

FIRST CLAIM FOR RELIEF

(WRONGFUL DEATH)

Timothy A. Geist as Personal Representative of the Estate of Verna Lee Geist and Timothy A. Geist as Heir of Verna Lee Geist Against Defendants Philip Morris, R.J. Reynolds, and Liggett

287. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 286 and incorporate the same herein by reference.

288. Plaintiff brings this wrongful death claim based on Defendants' negligence as set forth below.

289. Plaintiff, TIMOTHY A. GEIST, is the heir of VERNA.

1 290. Plaintiff, TIMOTHY A. GEIST, brings this cause of action pursuant to NRS 41.085(4),
2 as heir of VERNA.

3 291. Plaintiff, TIMOTHY A. GEIST, is the Personal Representative of the Estate of
4 VERNA LEE GEIST.

5 292. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the
6 Estate of VERNA LEE GEIST.

7 293. Defendants owed a duty to the general public, including Decedent, to manufacture,
8 design, sell, market, promote, and/or otherwise produce a product and/or any of its component parts
9 safe and free of unreasonable and harmful defects when used in the manner and for the purpose it was
10 designed, manufactured, and/or intended to be used.

11 294. Decedent was exposed to and did inhale smoke from cigarettes which were designed,
12 manufactured, marketed, distributed, and/or sold by Defendants.

13 295. Each exposure to Defendants' cigarettes caused Decedent to inhale smoke which caused
14 her to become addicted to cigarettes, and further caused her to develop lung cancer and suffer severe
15 bodily injuries and death.

16 296. Defendants were negligent in all the following respects, same being the proximate
17 and/or legal cause of VERNA LEE GEIST'S injuries and death, including but not limited to:

- 18 a. designing and manufacturing an unreasonably dangerous and deadly product;
- 19 b. designing and manufacturing cigarettes to be addictive;
- 20 c. designing and manufacturing cigarettes to be inhalable;
- 21 d. manipulating the level of nicotine in cigarettes to make them more addictive;
- 22 e. genetically modifying nicotine in tobacco plants;
- 23 f. blending different types of tobacco to obtain a desired amount of nicotine;
- 24 g. engineering cigarettes to be rapidly inhaled into the bloodstream;
- 25
- 26
- 27
- 28

- h. adding chemicals and other deadly, poisonous compounds to cigarettes;
- i. adding and/or manipulating compounds such as urea, ammonia and diammonium phosphate to Defendants' cigarettes to "free-base" nicotine;
- j. marketing and advertising "filter" and "filtered" cigarettes as safe;
- k. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and low tar;
- l. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;
- m. manipulating levels of pH in Defendants' cigarettes;
- n. targeting children who could not understand or comprehend the seriousness or addictive nature of nicotine and smoking;
- o. targeting minority populations such as African Americans, Hispanics, and women, such as VERNA LEE GEIST, to obtain a greater market share to increase their profits;
- p. failing to develop and utilize alternative designs, manufacturing methods, and/or materials to reduce and/or eliminate harmful materials from cigarettes;
- q. continuing to manufacture, distribute, and/or sell cigarettes when Defendant knew at all times material that its products could cause, and in fact were more likely to cause, injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal cancer, lung cancer, and/or other forms of cancer when used as intended;
- r. making knowingly false and misleading statements to Plaintiff, the public, and the American government that cigarettes were safe and/or not proven to be dangerous;
- s. failing to remove and recall cigarettes from the stream of commerce and the marketplace upon ascertaining that said products would cause disease and death.

1 297. Additionally, prior to July 1, 1969, Defendants failed to warn/and or adequately warn
2 foreseeable users, such as VERNA LEE GEIST, of the following, including but not limited to:

- 3 a. failing to warn and/or adequately warn foreseeable users, such as VERNA LEE GEIST,
4 of the dangerous and deadly nature of cigarettes;
5
6 b. failing to warn foreseeable users, such as VERNA LEE GEIST, that they could develop
7 fatal injuries including, but not limited to, emphysema, COPD, throat cancer, laryngeal
8 cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling
9 smoke from Defendants' cigarettes;
10
11 c. failing to warn foreseeable users, such as VERNA LEE GEIST, that the use of
12 cigarettes would more likely than not lead to addiction, habituation, and/or dependence;
13
14 d. failing to warn foreseeable users, such as VERNA LEE GEIST, that quitting and/or
15 limiting use of cigarettes would be extremely difficult, particularly if users started
16 smoking at an early age;
17
18 e. failing to disclose to consumers of cigarettes, such as VERNA LEE GEIST, the results
19 of genuine scientific research conducted by and/or known to Defendant that cigarettes
20 were dangerous, defective, and addictive.

21 298. Defendants breached said aforementioned duties of due and reasonable care in that they
22 produced, designed, manufactured, sold, and/or marketed defective cigarettes and/or any of its
23 component parts which contained risks of harm to the user/consumer and which were reasonably
24 foreseeable to cause harm in the use or exercise of reasonable and/or ordinary care.

25 299. VERNA LEE GEIST'S aforementioned injuries arose out of and were connected to
26 and incidental to the way Defendants' designed, manufactured, marketed, distributed, and/or sold its
27 products.
28

1 300. The aforementioned damages of VERNA LEE GEIST were directly and proximately
2 and/or legally caused by Defendants' negligence, in that it produced, sold, manufactured, and/or
3 otherwise placed into the stream of intrastate and interstate commerce, cigarettes which it knew, or in
4 the exercise of ordinary care should have known, were deleterious and highly harmful to VERNA
5 LEE GEIST'S health and well-being.

6
7 301. Defendants, prior to selling and/or distributing the cigarettes to which VERNA LEE
8 GEIST was exposed, knew or should have known that exposure to cigarette smoke was harmful and
9 caused injuries including, but not limited to, lung cancer, pharyngeal cancer, laryngeal cancer,
10 emphysema, COPD, heart disease, other forms of cancer, and/or result in death.

11 302. Defendants' negligence and/or wrongful acts was the actual and proximate or legal
12 cause of VERNA LEE GEIST'S injuries and death. Plaintiff has sustained damages consisting of the
13 loss of VERNA LEE GEIST'S love, companionship, comfort, affection, society, and moral support,
14 and has suffered great emotional and psychological loss, all in amount in excess of Fifteen Thousand
15 Dollars (\$15,000.00). As VERNA LEE GEIST'S heir, Plaintiff seeks these damages pursuant to NRS
16 41.085(4).
17

18 303. As a further actual and proximate or legal result of Defendants' negligence, VERNA
19 LEE GEIST endured pain, suffering, and/or disfigurement. As VERNA LEE GEIST'S heirs, Plaintiff
20 seeks general damages for this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an
21 amount in excess of Fifteen Thousand Dollars (\$15,000.00).
22

23 304. As a further actual and proximate or legal result of Defendants' negligence, VERNA
24 LEE GEIST'S estate incurred special damages, to include medical expenses and funeral expenses, in
25 an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of VERNA
26 LEE GEIST'S Estate, TIMOTHY A. GEIST seeks these special damages pursuant to NRS 41.085(5).
27
28

1 305. Defendant's conduct was despicable and so contemptible that it would be looked down
2 upon and despised by ordinary decent people and was carried on by Defendants with willful and
3 conscious disregard for the safety of anyone in the community.

4 306. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
5 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
6 example of Defendants, and to deter similar conduct in the future. As personal representative of
7 Verna Lee Geist's estate, Timothy A. Geist seeks exemplary and punitive damages pursuant
8 to NRS 41.085(5).

9 307. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
10 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
11 employees, agents, and/or servants, as set forth herein.

12 308. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
13 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
14 attorney's fees and costs of suit.

15
16
17
18 **SECOND CLAIM FOR RELIEF**

19 **(NEGLIGENCE)**

20 **Timothy A. Geist as Administrator of the Estate of Verna Lee Geist Against Defendants Philip**
21 **Morris, R.J. Reynolds, and Liggett**

22 309. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 286
23 and 88-109 and incorporate the same herein by reference.

24 310. Plaintiff, TIMOTHY A. GEIST, brings this claim as Administrator of the Estate of
25 Verna Lee Geist pursuant to NRS 41.100.

26 311. Defendants owed a duty to the general public, including Decedent, to manufacture,
27 design, sell, market, promote, and/or otherwise produce a product and/or any of its component parts
28

1 safe and free of unreasonable and harmful defects when used in the manner and for the purpose it was
2 designed, manufactured, and/or intended to be used.

3 312. Decedent was exposed to and did inhale smoke from cigarettes which were designed,
4 manufactured, marketed, distributed, and/or sold by Defendants.

5 313. Each exposure to Defendants' cigarettes caused Decedent to inhale smoke which caused
6 her to become addicted to cigarettes, and further caused her to develop lung cancer and suffer severe
7 bodily injuries and death.
8

9 314. Defendants were negligent in all the following respects, same being the proximate
10 and/or legal cause of VERNA LEE GEIST'S injuries and death, including but not limited to:

- 11 a. designing and manufacturing an unreasonably dangerous and deadly product;
- 12 b. designing and manufacturing cigarettes to be addictive;
- 13 c. designing and manufacturing cigarettes to be inhalable;
- 14 d. manipulating the level of nicotine in cigarettes to make them more addictive;
- 15 e. genetically modifying nicotine in tobacco plants;
- 16 f. blending different types of tobacco to obtain a desired amount of nicotine;
- 17 g. engineering cigarettes to be rapidly inhaled into the bloodstream;
- 18 h. adding chemicals and other deadly, poisonous compounds to cigarettes;
- 19 i. adding and/or manipulating compounds such as ammonia and diammonium phosphate
20 to Defendants' cigarettes to "free-base" nicotine;
- 21 j. marketing and advertising "filter" and "filtered" cigarettes as safe;
- 22 k. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and
23 low tar;
- 24 l. adding "onserts" to packages of cigarettes even after the United States government
25 banned marketing of "light" and "ultra-light" cigarettes;
- 26
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- m. manipulating levels of pH in Defendants' cigarettes;
- n. targeting children who could not understand or comprehend the seriousness or addictive nature of nicotine and smoking;
- o. targeting minority populations such as African Americans, Hispanics, and women such as VERNA LEE GEIST, to obtain a greater market share to increase their profits;
- p. failing to develop and utilize alternative designs, manufacturing methods, and/or materials to reduce and/or eliminate harmful materials from cigarettes;
- q. continuing to manufacture, distribute, and/or sell cigarettes when Defendants knew at all times material that their products could cause, and in fact were more likely to cause, injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal cancer, lung cancer, and/or other forms of cancer when used as intended;
- r. making knowingly false and misleading statements to Plaintiff, the public, and the American government that cigarettes were safe and/or not proven to be dangerous;
- s. failing to remove and recall cigarettes from the stream of commerce and the marketplace upon ascertaining that said products would cause disease and death.

315. Additionally, prior to July 1, 1969, Defendants failed to warn/and or adequately warn foreseeable users, such as VERNA LEE GEIST, of the following, including but not limited to:

- a. failing to warn and/or adequately warn foreseeable users, such as VERNA LEE GEIST, of the dangerous and deadly nature of cigarettes;
- b. failing to warn foreseeable users, such as VERNA LEE GEIST, that they could develop fatal injuries including, but not limited to, emphysema, COPD, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;

- c. failing to warn foreseeable users, such as VERNA LEE GEIST, that the use of cigarettes would more likely than not lead to addiction, habituation, and/or dependence;
- d. failing to warn foreseeable users, such as VERNA LEE GEIST, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;
- e. failing to disclose to consumers of cigarettes, such as VERNA LEE GEIST, the results of genuine scientific research conducted by and/or known to Defendant that cigarettes were dangerous, defective, and addictive.

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

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

318. VERNA LEE GEIST'S aforementioned injuries arose out of and were connected to and incidental to the way Defendants' designed, manufactured, marketed, distributed, and/or sold their products.

319. The aforementioned damages of VERNA LEE GEIST were directly and proximately and/or legally caused by Defendants' negligence, in that it produced, sold, manufactured, and/or

1 otherwise placed into the stream of intrastate and interstate commerce, cigarettes which it knew, or in
2 the exercise of ordinary care should have known, were deleterious and highly harmful to VERNA
3 LEE GEIST'S health and well-being.

4 320. Defendants, prior to selling and/or distributing the cigarettes to which VERNA LEE
5 GEIST was exposed, knew or should have known that exposure to cigarette smoke was harmful and
6 caused injuries including, but not limited to, lung cancer, pharyngeal cancer, laryngeal cancer,
7 emphysema, COPD, heart disease, other forms of cancer, and/or result in death.

8 321. Defendants' negligence is an actual and proximate or legal cause of VERNA LEE
9 GEIST'S injuries. VERNA LEE GEIST'S thereby experienced great pain, and anxiety to her body
10 and mind. VERNA LEE GEIST'S sustained injuries and damages in an amount in excess of Fifteen
11 Thousand Dollars (\$15,000.00), for which Plaintiff, TIMOTHY A. GEIST, as Administrator of the
12 Estate of VERNA LEE GEIST, now seeks recovery pursuant to NRS 41.100.

13 322. As a further actual and proximate or legal result of Defendants' negligence VERNA
14 LEE GEIST underwent medical treatment and incurred past medical and/or incidental expenses. The
15 exact amount of such damages is unknown at this present time, but VERNA LEE GEIST suffered
16 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, TIMOTHY A. GEIST,
17 as Administrator of the Estate of VERNA LEE GEIST seeks recovery of these damages pursuant to
18 NRS 41.100.

19 323. Defendants' conduct was despicable and so contemptible that it would be looked down
20 upon and despised by ordinary decent people and was carried on by Defendants with willful and
21 conscious disregard for the safety of anyone in the community.

22 324. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
23 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
24 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of

VERNA LEE GEIST, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant to NRS 41.100.

325. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its employees, agents, and/or servants, as set forth herein.

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

THIRD CLAIM FOR RELIEF

(WRONGFUL DEATH)

Timothy A. Geist as Personal Representative of the Estate of Verna Lee Geist and Timothy Geist as Heir of Verna Lee Geist Against Defendants Philip Morris, R.J. Reynolds, and Liggett

327. Plaintiff repeats and realleges the allegations contained in the paragraphs 1-286 and incorporates the same herein by reference.

328. Plaintiff brings this wrongful death claim based on a strict liability claim against Defendants Philip Morris, R.J. Reynolds, and Liggett.

329. Plaintiff, TIMOTHY A. GEIST, is the heir of VERNA.

330. Plaintiff, TIMOTHY A. GEIST, brings this cause of action pursuant to NRS 41.085(4), as heir of VERNA'S Estate.

331. Plaintiff, TIMOTHY A. GEIST, is the Personal Representative of the Estate of VERNA LEE GEIST.

332. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the Estate of VERNA LEE GEIST.

1 333. Upon information and belief, at all times material, Defendants were/are in the business
2 of designing, engineering, manufacturing, distributing, marketing, selling, and/or otherwise placing
3 cigarettes into the stream of commerce.

4 334. The products complained of were cigarettes designed, manufactured, marketed,
5 distributed, and/or sold by Defendants and used by Verna Lee Geist.

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

8 336. Defendants' defective and unreasonably dangerous cigarettes reached Verna Lee
9 Geist without substantial change from that in which such products were when within the possession
10 of Defendants.

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

13 338. The nature and degree of danger of Defendants' cigarettes were beyond the expectation
14 of the ordinary consumer, including Verna Lee Geist, when used as intended or in a reasonably
15 foreseeable manner.

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

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

- 20 a. designing and manufacturing an unreasonably dangerous and deadly product;
- 21 b. designing and manufacturing cigarettes to be addictive;
- 22 c. designing and manufacturing cigarettes to be inhalable;
- 23 d. manipulating levels of nicotine in cigarettes to make them more addictive;
- 24 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 chemicals 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. failed to filter the harmful substances so that during ordinary use, such materials would not be liberated into the air and/or breathed by the smoker such as the Plaintiff herein;
- m. through the use of filters, manufacturing methods, engineering methods and/or materials utilized were designed in such a way to make smoking Defendant's cigarette products more tasteful, pleasurable and less likely to trigger the smoker's own biological self defense mechanisms which otherwise may have limited and/or altered the smoker's behavior in such a way that the smoker may have smoked less, inhaled less deeply or not at all;
- n. marketing and advertising "filter" and "filtered" cigarettes as safe;
- o. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and low tar;
- p. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;
- q. prior to July 1, 1969, failing to warn and/or adequately warn foreseeable users, such as VERA LEE GEIST, of the dangerous and deadly nature of cigarettes;

- r. prior to July 1, 1969, failing to warn foreseeable users, such as VERNA LEE GEIST, 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;
- s. prior to July 1, 1969, failing to warn foreseeable users, such as VERNA LEE GEIST, that the use of cigarettes would more likely than not lead to addiction, habituation and/or dependence;
- t. prior to July 1, 1969, failing to warn foreseeable users, such as VERNA LEE GEIST, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;
- u. prior to July 1, 1969, failing to disclose to consumers of cigarettes, such as VERNA LEE GEIST, the results of scientific research conducted by and/or known to Defendant that cigarettes may be dangerous, defective, and/or addictive.

341. VERNA LEE GEIST 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.

342. Defendants knew their cigarettes would be used without inspection for defects, and by placing them on the market, represented that they would be safe.

343. VERNA LEE GEIST was unaware of the hazards and defects in Defendants' cigarettes, to-wit: That exposure to said products would cause VERNA LEE GEIST to become addicted and develop lung cancer and ultimately caused her death.

344. Defendants' actions were the actual and proximate or legal cause of VERNA LEE GEIST'S injuries and death. Plaintiff has sustained damages consisting of the loss of VERNA LEE

1 GEIST'S love, companionship, comfort, affection, society, and moral support, and have suffered great
2 emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars (\$15,000.00).

3 As VERNA LEE GEIST'S heir, Plaintiff seeks these damages pursuant to NRS 41.085(4).

4 345. As a further actual and proximate or legal result of Defendants' actions, VERNA LEE
5 GEIST endured pain, suffering, and/or disfigurement. As VERNA LEE GEIST'S heir, Plaintiff seeks
6 general damages for this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an amount
7 in excess of Fifteen Thousand Dollars (\$15,000.00).
8

9 346. As a further actual and proximate or legal result of Defendants' actions, VERNA LEE
10 GEIST'S estate incurred special damages, to include medical expenses and funeral expenses, in an
11 amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of VERNA
12 LEE GEIST'S Estate, TIMOTHY A. GEIST seeks these special damages pursuant to NRS 41.085(5).
13

14 347. Defendant's 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 anyone in the community.

17 348. 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. As personal representative of
20 VERNA LEE GEIST'S estate, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant
21 to NRS 41.085(5).
22

23 349. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
24 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
25 employees, agents, and/or servants, as set forth herein.
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1 350. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
2 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
3 attorney's fees and costs of suit.
4

5 **FOURTH CLAIM FOR RELIEF**

6 **(STRICT PRODUCTS LIABILITY)**

7 **Timothy A. Geist as Administrator of the Estate of Verna Lee Geist**
8 **Against Defendants Philip Morris, R.J. Reynolds, and Liggett**
9

10 351. Plaintiff repeats and realleges the allegations as contained in paragraphs 1 through 286
11 and 328-350 and incorporate the same herein by reference.

12 352. Plaintiff, TIMOTHY A. GEIST, brings this claim as Administrator of the Estate of
13 VERNA LEE GEIST pursuant to NRS 41.100.

14 353. Upon information and belief, at all times material, Defendants were/are in the business
15 of designing, engineering, manufacturing, distributing, marketing, selling, and/or otherwise placing
16 cigarettes into the stream of commerce.

17 354. The products complained of were cigarettes designed, manufactured, marketed,
18 distributed, and/or sold by Defendants and used by VERNA LEE GEIST.
19

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

22 356. Defendants' defective and unreasonably dangerous cigarettes reached VERNA LEE
23 GEIST without substantial change from that in which such products were when within the possession
24 of Defendants.
25

26 357. Defendants' cigarettes were dangerous beyond the expectation of the ordinary
27 user/consumer when used as intended or in a manner reasonably foreseeable by Defendants.
28

1 358. The nature and degree of danger of Defendants' cigarettes were beyond the expectation
2 of the ordinary consumer, including VERNA LEE GEIST, when used as intended or in a reasonably
3 foreseeable manner.

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

6 360. Defendants' cigarettes were defective and unreasonably dangerous in the following
7 ways, including but not limited to:
8

- 9 a. designing and manufacturing an unreasonably dangerous and deadly product;
- 10 b. designing and manufacturing cigarettes to be addictive;
- 11 c. designing and manufacturing cigarettes to be inhalable;
- 12 d. manipulating levels of nicotine in cigarettes to make them more addictive;
- 13 e. genetically modifying nicotine in tobacco plants;
- 14 f. blending different types of tobacco to obtain a desired amount of nicotine;
- 15 g. engineering cigarettes to be rapidly inhaled into the lungs;
- 16 h. adding chemicals and other deadly, poisonous compounds to cigarettes;
- 17 i. adding and/or manipulating compounds such as ammonia and diammonium phosphate
18 to Defendants' cigarettes to "free-base" nicotine;
- 19 j. manipulating levels of pH in Defendants' cigarettes;
- 20 k. utilizing deadly and harmful additives, compounds, and ingredients in their cigarette
21 design and manufacturing process when alternative, less dangerous materials were
22 available;
- 23 l. failed to filter the harmful substances so that during ordinary use, such materials would
24 not be liberated into the air and/or breathed by the smoker such as the Plaintiff herein;
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- 1 m. through the use of filters, manufacturing methods, engineering methods and/or
2 materials utilized were designed in such a way to make smoking Defendant's cigarette
3 products more tasteful, pleasurable and less likely to trigger the smoker's own
4 biological self defense mechanisms which otherwise may have limited and/or altered
5 the smoker's behavior in such a way that the smoker may have smoked less, inhaled
6 less deeply or not at all'
- 7
- 8 n. marketing and advertising "filter" and "filtered" cigarettes as safe;
- 9 o. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and
10 low tar;
- 11 p. adding "onserts" to packages of cigarettes even after the United States government
12 banned marketing of "light" and "ultra-light" cigarettes;
- 13 q. prior to July 1, 1969, failing to warn and/or adequately warn foreseeable users, such as
14 Verna Lee Geist, of the dangerous and deadly nature of cigarettes;
- 15 r. prior to July 1, 1969, failing to warn foreseeable users, such as Verna Lee Geist,
16 that they could develop fatal injuries including, but not limited to, emphysema, throat
17 cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of
18 smoking and/or inhaling smoke from Defendants' cigarettes;
- 19 s. prior to July 1, 1969, failing to warn foreseeable users, such as Verna Lee Geist,
20 that the use of cigarettes would more likely than not lead to addiction, habituation
21 and/or dependence;
- 22 t. prior to July 1, 1969, failing to warn foreseeable users, such as Verna Lee Geist,
23 that quitting and/or limiting use of cigarettes would be extremely difficult, particularly
24 if users started smoking at an early age;
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1 u. prior to July 1, 1969, failing to disclose to consumers of cigarettes, such as VERNA
2 LEE GEIST, the results of scientific research conducted by and/or known to Defendant
3 that cigarettes may be dangerous, defective, and/or addictive.

4 361. VERNA LEE GEIST was unaware of the defective and unreasonably dangerous
5 condition of Defendants' cigarettes, and at a time when such products were being used for the purposes
6 for which they were intended, was exposed to, breathed smoke from, and inhaled Defendants'
7 cigarettes.

8 362. Defendants knew their cigarettes would be used without inspection for defects, and by
9 placing them on the market, represented that they would be safe.

10 363. VERNA LEE GEIST was unaware of the hazards and defects in Defendants' cigarettes,
11 to-wit: That exposure to said products would cause VERNA LEE GEIST to become addicted and
12 develop lung cancer and ultimately caused her death.

13 364. Defendants' actions are an actual and proximate or legal cause of VERNA LEE
14 GEIST'S injuries. VERNA LEE GEIST thereby experienced great pain, and anxiety her body and
15 mind. VERNA LEE GEIST sustained injuries and damages in an amount in excess of Fifteen
16 Thousand Dollars (\$15,000.00), for which Plaintiff, TIMOTHY A. GEIST, as Administrator of the
17 Estate of VERNA LEE GEIST, now seeks recovery pursuant to NRS 41.100.

18 365. As a further actual and proximate or legal result of Defendants' actions VERNA LEE
19 GEIST underwent medical treatment and incurred past medical and/or incidental expenses. The exact
20 amount of such damages is unknown at this present time, but VERNA LEE GEIST suffered special
21 damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, TIMOTHY A. GEIST, as
22 Administrator of the Estate of VERNA LEE GEIST seeks recovery of these damages pursuant to NRS
23 41.100.

366. 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 anyone in the community.

367. 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. As Administrator of the Estate of Verna Lee Geist, Timothy A. Geist seeks exemplary and punitive damages pursuant to NRS 41.100.

368. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its employees, agents, and/or servants, as set forth herein.

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

FIFTH CLAIM FOR RELIEF

(WRONGFUL DEATH)

Timothy A. Geist as Personal Representative of the Estate of Verna Lee Geist and Timothy A. Geist as Heir of Verna Lee Geist Against Defendants Philip Morris, R.J. Reynolds, and Liggett

370. Plaintiff repeats and realleges the allegations contained in the paragraphs 1-286 and incorporates the same herein by reference.

371. Plaintiff brings this wrongful death claim based on a fraudulent misrepresentation claim against Defendants Philip Morris, R.J. Reynolds, and Liggett.

372. TIMOTHY A. GEIST is the heir of VERNA.

1 373. Plaintiff, TIMOTHY A. GEIST, brings this cause of action pursuant to NRS 41.085(4),
2 as heir of VERNA'S Estate.

3 374. Plaintiff, TIMOTHY A. GEIST, is the Personal Representative of the Estate of
4 VERNA LEE GEIST.

5 375. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the
6 Estate of VERNA LEE GEIST.

7 376. Beginning at an exact time unknown to Plaintiff, and continuing even today, the
8 cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a
9 campaign designed to deceive the public, including VERNA LEE GEIST, the government, and others
10 as to the health hazards and addictive nature of cigarettes, through false statements and/or
11 misrepresentations of material facts.

12 377. The cigarette manufacturers, including Defendants herein, made literally hundreds of
13 misrepresentations to the decedent and others similarly situated over the course of the last 50 years.
14 Plaintiff is unable to allege in full the thousands of pre-1969 advertisements, and the continuing press
15 releases, testimony by cigarette manufacturers' officers and employees before Congress and other
16 governmental entities, etc., that the cigarette manufacturers and their co-conspirators, THE TOBACCO
17 INSTITUTE, INC. ("TI") formed in 1958, TOBACCO INDUSTRY RESEARCH COMMITTEE
18 ("TIRC") formed in 1954, and COUNCIL for TOBACCO RESEARCH ("CTR") formed in 1964 and
19 previously known as the TIRC, have prepared, participated in, given, and released over the last almost 50
20 years both because he does not have access to this information, and because to allege each and every such
21 misrepresentation and/or false statement here would entail hundreds or even thousands of pages of
22 pleadings; indeed, it is the cigarette manufacturers themselves, including Defendants herein, which have
23 this knowledge and information, and are in the best position to know the contents of each and every such
24 misrepresentation and/or false statement.

1 378. Defendants made intentional misrepresentations, false promises, concealed
2 information, and failed to disclose material information to VERNA LEE GEIST, the public, and the
3 American government.

4 379. Defendants carried out their campaign of fraud, false statements, and/or
5 misrepresentations in at least six ways:
6

- 7 a. Defendants falsely represented to VERNA LEE GEIST that questions about smoking
8 and health would be answered by an unbiased, trustworthy source;
- 9 b. Defendants misrepresented and confused facts about health hazards of cigarettes and
10 addiction;
- 11 c. Defendants, along with other cigarette manufacturers, spent billions of dollars hiring
12 lawyers, fake scientists, and public relations firms to misdirect purported “objective”
13 scientific research;
- 14 d. Defendants discouraged meritorious litigation by engaging in “scorched earth” tactics
15 – in fact in a previously secret 1988 document they commented “to paraphrase General
16 Patton, the way we won these cases was not by spending all of [their] money, but by
17 making that other son of a bitch spend all of his;”
- 18 e. Defendants suppressed and distorted evidence to protect its existence and profits;
- 19 f. Defendants designed, marketed, and sold “filtered” and “light” cigarettes despite
20 knowing internally that such cigarettes were just as addictive, dangerous, and deadly
21 as “regular” cigarettes.
- 22 g. by designing, selling and marketing so called “Light” cigarettes as being substantially
23 lower in tar and nicotine than regular, or non-light cigarettes and therefore healthier or
24 safer for consumers. Defendants knew that the system to measure the tar and nicotine
25 was neither a valid nor reliable way to measure the amount of tar and nicotine inhaled
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1 by an actual smoker. Notwithstanding same, the Defendants marketed “Light”
2 cigarettes to consumers as a safer alternative. Defendants manipulated the design of
3 cigarettes to produce test results that were artificially low. Furthermore, Defendants
4 knew that “Light” cigarette smokers may compensate to obtain the same level of tar or
5 nicotine as non-light cigarettes either by taking more puffs on each cigarette, by taking
6 larger, longer or deeper puffs, or by smoking more cigarettes.

- 7
- 8 h. by continuing to fraudulently market and sell “mild”, “low tar”, and “light” cigarettes
9 through 2010 despite knowing they were no safer than full flavor cigarettes and
10 knowing consumers perceived them as safer. The cigarette manufacturers, including
11 Defendants herein, were ultimately prohibited by Congress from marketing “mild”,
12 “low tar”, and “light” cigarettes when Congress passed the Family Smoking Prevention
13 and Tobacco Control Act, Public Law 111-31 (June 22, 2009), which became effective
14 on June 22, 2010. Despite the congressional ban, the cigarette manufacturers, including
15 Defendants herein, have continued to market and sell even today the same “mild”, “low
16 tar”, and “light” cigarettes, only now these cigarettes are marketed with a new coloring
17 scheme in order to get around the banned light descriptors. These cigarettes are the
18 same or substantially the same cigarettes as the pre-prohibition cigarettes. Consumers
19 often perceive the color descriptors on packaging as suggesting less harmful to smoke
20 than regular or full flavor brands. The cigarette manufacturers, including Defendants
21 herein, is thus able to continue fraudulently misrepresenting the “light”, “low tar” and
22 “mild” cigarette marketing the ban was designed to prevent.
- 23
- 24 i. by continuing even today to fraudulently market and sell multiple brands as “filtered”
25 knowing that smokers wrongly believe that filtered cigarettes reduce the harms of
26 smoking. The word “filter” implies filtration of the smoke and therefore relative safety.
27
28

1 However, Defendants and the industry know filtered cigarettes provide no health
2 benefit as proven by numerous reliable epidemiologic studies that have shown that
3 filtered cigarettes are no safer than non-filtered cigarettes.

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

8 381. Defendants made multiple misrepresentations to VERNA LEE GEIST including
9 misrepresentations and misleading statements in advertisements, news programs and articles, media
10 reports, and press releases regarding the health hazards and addictive nature of smoking cigarettes.

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

14 383. These misrepresentations and false statements also include the following statements,
15 or substantially similar statements, which were heard, read, or seen, and relied upon by Decedent,
16 VERNA LEE GEIST, including but not limited to:

- 17 a. In 1953, Cigarette manufacturers, including Defendants herein, took out a full-page
18 advertisement called the “Frank Statement to Cigarette Smokers” which falsely assured
19 the public, the American government, and VERNA LEE GEIST, that the cigarette
20 manufacturers, including Defendant herein, would purportedly “safeguard” the health
21 of smokers, support allegedly “disinterested” research into smoking and health, and
22 reveal to the public the results of their alleged “objective” research;
23 b. Beginning in 1953 and continuing for decades, Cigarette manufacturers, including
24 Defendants herein, falsely assured the public that TIRC/CTR was an “objective”
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research committee when internal company document reveal that TIRC/CTR functioned not for the promotion of scientific goals, but for public relations, politics, and positioning for litigation;

- c. In the 1950s and 1960s, Cigarette manufacturers, including Defendants herein, sponsored, were quoted in, and helped publish articles to mislead the public including but not limited to the following: “Smoke-Cancer Tie Termed Obscure” (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);
- d. In response to the 1964 Surgeon General Report which linked cigarette smoking to health, the cigarette industry falsely assured the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements;
- e. In the 1950s and 1960s, the Cigarette manufacturers, including Defendants herein, advertised and promoted cigarettes on television and radio as safe and glamorous, to the extent that cigarette advertising was the number one most heavily advertised product on television;
- 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. 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;”

- 1 h. In 1984, continuing to purposefully target children yet openly in press releases falsely
2 claim, “We don’t advertise to children . . . Some straight talk about smoking for young
3 people;”
4
5 i. In 1988, in response to the United States Surgeon General’s report that cigarettes are
6 addictive and nicotine is the drug in tobacco that causes addiction, Defendants issued
7 a press release knowingly and disingenuously stating, “Claims that cigarettes are
8 addictive is irresponsible and scare tactics;”
9
10 j. Through representatives in the Tobacco Institute, making countless publicized
11 appearances on television and radio disingenuously denying cigarettes were addictive
12 and claimed smoking was a matter of free choice and smokers could quit smoking if
13 they wanted to;
14
15 k. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein,
16 knowingly providing false and misleading testimony under oath before the United
17 States Congress that it had not been proven that cigarettes were addictive, caused
18 disease, or caused one single person to die;
19
20 l. In 1975, William Dwyer stated “How can cigarette smoking be the cause of lung cancer
21 if the cause of lung cancer is, as yet, unknown. In fact, no one knows what causes lung
22 cancer”;
23
24 m. Edward Horrigan, President of R.J. Reynolds Tobacco Company, stated on ABC
25 Nightline in 1984 “It is not known whether cigarettes cause cancer, it has not been
26 casually established”, “Despite all of the research to date there has been no causal link
27 established [between cigarette smoking and cancer.]”, and “As a matter of fact, there
28 are studies that while we are accused of being associated with heart disease, there have
been studies conducted over 10 years that would say again that science is still puzzled

over these forces.” Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline 1984;

- n. “To my knowledge, it’s not been proven that cigarette smoking causes cancer.” William Campbell, CEO Philip Morris, Congressional Testimony, 1993;
- o. “No, I don’t believe that tobacco smoking is addictive.” William Campbell, CEO Philip Morris, Congressional Testimony, 1993;
- p. “Is it your position that it has never been proven that cigarette smoking has caused a single person to die? That is my position, yes.” James Johnston, R.J. Reynolds Tobacco Company, Congressional Testimony 1994.

384. Throughout the years, Defendants and co-conspirators have repeatedly stated that cigarettes were not dangerous, and they would either remove harmful constituents or stop making cigarettes altogether. Some examples include:

A 1970 advertisement from the Tobacco Institute said: “[t]he Tobacco Institute believes the American public is entitled to complete, authenticated information about cigarette smoking and health.”

In 1971, Joseph Cullman, Chairman of Philip Morris, stated on Face the Nation, “we do not believe that cigarettes are hazardous; we don’t accept that.”

In 1972 Philip Morris vice president James Bowling repeated the company’s promise to consumers two decades earlier that “if our product is harmful, we’ll stop making it.”

Bowling repeated the company’s position on smoking and health in a 1976 interview when he noted: “from our standpoint, if anyone ever identified any ingredient in tobacco smoke as being hazardous to human health or being something that shouldn’t be there, we could eliminate it. But no one ever has.”

In a 1978 magazine interview William Dwyer, vice president of the Tobacco Institute, stated: “we take the view that the best science can say is that cigarette smoking may be hazardous. And then it may not be.”

A 1978 Philip Morris publication entitled “Facts About the Smoking Controversy” stated: “scientists have not determined what causes cancer...cigarettes have never been proven unsafe.”

1 In 1985, R.J. Reynolds took out advertisements in major newspapers and
2 magazines which stated: "We believe in science. That is why we continue to
3 provide funding for independent research into smoking and health...Science is
4 science. Proof is proof. That is why the controversy over smoking and health
5 remains an open one."

6 385. Defendants continued to make these and similar statements well into the 1990s with
7 the goal of convincing smokers to keep smoking, not reducing their smoking, and/or not quitting.

8 386. Defendant and the tobacco industry promoted their message through a large number of
9 press releases and statements and through less obvious methods, including influencing the content of
10 apparently neutral articles and cultivating opinion leaders who would convey their message.
11 Defendant and the tobacco industry communicated their message through all forms of available media,
12 including newspapers, magazines, and television.

13 387. Industry spokespersons appeared on news shows, on commercials and public television
14 to state that the evidence concerning the health effects of tobacco was based primarily on statistical
15 relationships and that there was no proof that a specific tobacco component caused a specific disease
16 and that cigarette smoking was not addictive.

17 388. Cigarette manufacturers when sued denied that cigarettes were addictive and claimed that
18 smoking was a matter of free choice and that smokers could quit smoking if they so wanted.

19 389. Cigarette manufacturers claimed attorney-client privilege to shield as many documents as
20 possible from disclosure and destroyed and/or refused to produce documents related to health issues and
21 plaintiffs' claims.

22 390. Cigarette manufacturers when sued for smoking-related injuries, conducted the litigation
23 in such a way as to cause the maximum expenditure of time and resources by the claimant for the purposes
24 of exhausting their adversaries' resources and to discourage other meritorious litigation.

25 391. VERA LEE GEIST, during the course of her smoking history heard some or all of
26 the false or misleading statements and/or similar statements made directly or indirectly by the
27
28

1 Defendants, believed some or all of the Defendants' false or misleading statements and relied to her
2 detriment and smoked and/or continued to smoke cigarettes based on such false or misleading
3 statements.

4 392. The aforementioned acts, false statements and/or misrepresentations which were made
5 and/or caused to be made by the cigarette manufacturers, including Defendants herein, and their co-
6 conspirators were justifiably relied upon by VERNA LEE GEIST, resulted in her being unaware of
7 the extent of the danger of the Defendants' cigarette products, the addictive nature of Defendants'
8 cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as dangerous as
9 regular and/or unfiltered cigarettes. Such acts, false statements and/or misrepresentations were made
10 by the Defendants who had knowledge superior to VERNA LEE GEIST regarding the health aspects
11 and addictive nature of cigarettes.

12 393. Defendants made intentional misrepresentations to Decedent, VERNA LEE GEIST, in
13 the following ways:

- 14 a. The aforementioned representations were regarding material facts about cigarettes and
15 were knowingly false;
- 16 b. Defendants knew said representations were false at the time they made such statements
- 17 c. Defendants knew VERNA LEE GEIST did not hold sufficient information to
18 understand or appreciate the dangers of cigarettes;
- 19 d. Defendants intended to induce VERNA LEE GEIST, and did indeed induce VERNA
20 LEE GEIST, to rely upon the aforementioned false representations/acts/statements;
- 21 e. VERNA LEE GEIST was unaware of the falsity of Defendants' aforementioned false
22 representations/acts/statements;
- 23
- 24
- 25
- 26
- 27
- 28

1 f. VERNA LEE GEIST was justified in relying upon Defendants' misrepresentations
2 because they were made by Defendants who possessed superior knowledge regarding
3 the health hazards and addictive nature of cigarettes;

4 g. As a direct and proximate and/or legal cause of Defendants' intentional
5 misrepresentations, VERNA LEE GEIST became addicted to cigarettes and developed
6 lung cancer and caused her death.

7
8 394. Furthermore, Defendants made false promises to Decedent, VERNA LEE GEIST, in
9 the following ways:

10 a. Defendants made false promises to the public, including VERNA LEE GEIST to (i)
11 cooperate with public health, including the Surgeon General, (ii) conduct allegedly
12 "objective" research regarding the addictive nature and health hazards of cigarettes, (ii)
13 remove any harmful elements to cigarettes, if there were any, (iv) form purported
14 "objective" research committees dedicated to undertaking an interest in health as its
15 "basic responsibility paramount to every other consideration," (v) falsely pledging to
16 provide aid and assistance to research cigarette use and health and others;

17 b. At all times material, Defendants did not intend to keep its promises;

18 c. Defendants made its promises with the intent to induce Decedent to begin and continue
19 smoking;

20 d. VERNA LEE GEIST was unaware of Defendants' intention not to perform their
21 promises;

22 e. VERNA LEE GEIST acted in reliance upon Defendants' promises;

23 f. VERNA LEE GEIST was justified in relying upon Defendants' promises;

1 g. As a direct and proximate and/or legal cause of Defendants' false promises, VERNA
2 LEE GEIST became addicted to cigarettes and developed lung cancer and caused her
3 death.

4 395. Defendants' conduct was the actual and proximate or legal cause of VERNA LEE
5 GEIST'S injuries and death. Plaintiff has sustained damages consisting of the loss of VERNA LEE
6 GEIST'S love, companionship, comfort, affection, society, and moral support, and have suffered great
7 emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars (\$15,000.00).
8 As VERNA LEE GEIST'S heir, Plaintiff seeks these damages pursuant to NRS 41.085(4).
9

10 396. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
11 GEIST endured pain, suffering, and/or disfigurement. As VERNA LEE GEIST'S heir, Plaintiff seeks
12 general damages for this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an amount
13 in excess of Fifteen Thousand Dollars (\$15,000.00).
14

15 397. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
16 GEIST'S estate incurred special damages, to include medical expenses and funeral expenses, in an
17 amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of VERNA
18 LEE GEIST'S Estate, TIMOTHY A. GEIST seeks these special damages pursuant to NRS 41.085(5).
19

20 398. 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 anyone in the community.

23 399. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
24 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
25 example of Defendants, and to deter similar conduct in the future. As personal representative of
26 VERNA LEE GEIST'S estate, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant
27 to NRS 41.085(5).
28

1 400. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
2 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
3 employees, agents, and/or servants, as set forth herein.

4 401. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
5 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
6 attorney's fees and costs of suit.
7

8
9 **SIXTH CLAIM FOR RELIEF**

10 **(FRAUDULENT MISREPRESENTATION)**

11 **Timothy A. Geist as Administrator of the Estate of Verna Lee Geist**
12 **Against Defendants Philip Morris, R.J. Reynolds, and Liggett**

13 402. Plaintiff repeats and realleges each and every allegation as contained in paragraphs 1
14 through 286 and 371 through 401 and incorporate the same herein by reference.

15 403. Plaintiff, TIMOTHY A. GEIST, brings this claim as Administrator of the Estate of
16 VERNA LEE GEIST pursuant to NRS 41.100.

17 404. Beginning at an exact time unknown to Plaintiff, and continuing even today, the
18 cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a
19 campaign designed to deceive the public, including VERNA LEE GEIST, the government, and others
20 as to the health hazards and addictive nature of cigarettes, through false statements and/or
21 misrepresentations of material facts.
22

23 405. The cigarette manufacturers, including Defendants herein, made literally hundreds of
24 misrepresentations to the decedent and others similarly situated over the course of the last 50 years.
25 Plaintiff is unable to allege in full the thousands of pre-1969 advertisements, and the continuing press
26 releases, testimony by cigarette manufacturers' officers and employees before Congress and other
27 governmental entities, etc., that the cigarette manufacturers and their co-conspirators, THE TOBACCO
28

1 INSTITUTE, INC. ("TI") formed in 1958, TOBACCO INDUSTRY RESEARCH COMMITTEE
2 ("TIRC") formed in 1954, and COUNCIL for TOBACCO RESEARCH ("CTR") formed in 1964 and
3 previously known as the TIRC, have prepared, participated in, given, and released over the last almost 50
4 years both because he does not have access to this information, and because to allege each and every such
5 misrepresentation and/or false statement here would entail hundreds or even thousands of pages of
6 pleadings; indeed, it is the cigarette manufacturers themselves, including Defendants herein, which have
7 this knowledge and information, and are in the best position to know the contents of each and every such
8 misrepresentation and/or false statement.
9

10 406. Defendants made intentional misrepresentations, false promises, concealed
11 information, and failed to disclose material information to VERA LEE GEIST, the public, and the
12 American government.
13

14 407. Defendants carried out their campaign of fraud, false statements, and/or
15 misrepresentations in at least six ways:

- 16 a. Defendants falsely represented to VERA LEE GEIST that questions about smoking
17 and health would be answered by an unbiased, trustworthy source;
- 18 b. Defendants misrepresented and confused facts about health hazards of cigarettes and
19 addiction;
- 20 c. Defendants, along with other cigarette manufacturers, spent billions of dollars hiring
21 lawyers, fake scientists, and public relations firms to misdirect purported "objective"
22 scientific research;
- 23 d. Defendants discouraged meritorious litigation by engaging in "scorched earth" tactics
24 – in fact in a previously secret 1988 document they commented "to paraphrase General
25 Patton, the way we won these cases was not by spending all of [their] money, but by
26 making that other son of a bitch spend all of his;"
27
28

- 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.
- g. by designing, selling and marketing so called “Light” cigarettes as being substantially lower in tar and nicotine than regular, or non-light cigarettes and therefore healthier or safer for consumers. Defendants knew that the system to measure the tar and nicotine was neither a valid nor reliable way to measure the amount of tar and nicotine inhaled by an actual smoker. Notwithstanding same, the Defendants marketed “Light” cigarettes to consumers as a safer alternative. Defendants manipulated the design of cigarettes to produce test results that were artificially low. Furthermore, Defendants knew that “Light” cigarette smokers may compensate to obtain the same level of tar or nicotine as non-light cigarettes either by taking more puffs on each cigarette, by taking larger, longer or deeper puffs, or by smoking more cigarettes.
- h. by continuing to fraudulently market and sell “mild”, “low tar”, and “light” cigarettes through 2010 despite knowing they were no safer than full flavor cigarettes and knowing consumers perceived them as safer. The cigarette manufacturers, including Defendants herein, were ultimately prohibited by Congress from marketing “mild”, “low tar”, and “light” cigarettes when Congress passed the Family Smoking Prevention and Tobacco Control Act, Public Law 111-31 (June 22, 2009), which became effective on June 22, 2010. Despite the congressional ban, the cigarette manufacturers, including Defendants herein, have continued to market and sell even today the same “mild”, “low tar”, and “light” cigarettes, only now these cigarettes are marketed with a new coloring scheme in order to get around the banned light descriptors. These cigarettes are the

1 same or substantially the same cigarettes as the pre-prohibition cigarettes. Consumers
2 often perceive the color descriptors on packaging as suggesting less harmful to smoke
3 than regular or full flavor brands. The cigarette manufacturers, including Defendants
4 herein, is thus able to continue fraudulently misrepresenting the “light”, “low tar” and
5 “mild” cigarette marketing the ban was designed to prevent.
6

- 7 i. by continuing even today to fraudulently market and sell multiple brands as “filtered”
8 knowing that smokers wrongly believe that filtered cigarettes reduce the harms of
9 smoking. The word “filter” implies filtration of the smoke and therefore relative safety.
10 However, Defendants and the industry know filtered cigarettes provide no health
11 benefit as proven by numerous reliable epidemiologic studies that have shown that
12 filtered cigarettes are no safer than non-filtered cigarettes.
13

14 408. Cigarette manufacturers, including Defendants herein, knew cigarettes were dangerous
15 and addictive. It became their practice, purpose, and goal to question any scientific research which
16 concluded cigarettes were dangerous. They did this through misleading media campaigns, mailings
17 to doctors and other scientific professionals, and testimony before governmental bodies.
18

19 409. Defendants made multiple misrepresentations to VERNA LEE GEIST including
20 misrepresentations and misleading statements in advertisements, news programs and articles, media
21 reports, and press releases regarding the health hazards and addictive nature of smoking cigarettes.
22

23 410. These misrepresentations and false statements include, but are not limited to, the
24 aforementioned statements and conduct contained in the *Historical Allegations of Defendants*
25 *Unlawful Conduct Giving Rise to the Lawsuit* section above.
26

- 27 a. These misrepresentations and false statements also include the following statements,
28 or substantially similar statements, which were heard, read, or seen, and relied upon by
Decedent, VERNA LEE GEIST, including but not limited to:

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

- 1 the extent that cigarette advertising was the number one most heavily advertised
2 product on television;
- 3 g. Falsely advertised and promoted “filtered” and “light” cigarettes as “low tar” and “low
4 nicotine” through print advertisements in magazines and newspapers throughout the
5 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- 6
7 h. False and misleading statements to governmental entities, including in 1982 when the
8 CEO of Defendant R.J. Reynolds, Edward Horrigan, disingenuously stated during a
9 governmental hearing, “there is absolutely no proof that cigarettes are addictive;”
- 10
11 i. In 1984, continuing to purposefully target children yet openly in press releases falsely
12 claim, “We don’t advertise to children . . . Some straight talk about smoking for young
13 people;”
- 14
15 j. In 1988, in response to the United States Surgeon General’s report that cigarettes are
16 addictive and nicotine is the drug in tobacco that causes addiction, Defendants issued
17 a press release knowingly and disingenuously stating, “Claims that cigarettes are
18 addictive is irresponsible and scare tactics;”
- 19
20 k. Through representatives in the Tobacco Institute, making countless publicized
21 appearances on television and radio disingenuously denying cigarettes were addictive
22 and claimed smoking was a matter of free choice and smokers could quit smoking if
23 they wanted to;
- 24
25 l. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein,
26 knowingly providing false and misleading testimony under oath before the United
27 States Congress that it had not been proven that cigarettes were addictive, caused
28 disease, or caused one single person to die;

1 m. In 1975, William Dwyer stated “How can cigarette smoking be the cause of lung cancer
2 if the cause of lung cancer is, as yet, unknown. In fact, no one knows what causes lung
3 cancer”;

4 n. Edward Horrigan, President of R.J. Reynolds Tobacco Company, stated on ABC
5 Nightline in 1984 “It is not known whether cigarettes cause cancer, it has not been
6 casually established”, “Despite all of the research to date there has been no causal link
7 established [between cigarette smoking and cancer.]”, and “As a matter of fact, there
8 are studies that while we are accused of being associated with heart disease, there have
9 been studies conducted over 10 years that would say again that science is still puzzled
10 over these forces.” Edward Horrigan, President of R.J. Reynolds Tobacco Company
11 on ABC Nightline 1984;

12 o. “To my knowledge, it’s not been proven that cigarette smoking causes cancer.”
13 William Campbell, CEO Philip Morris, Congressional Testimony, 1993;

14 p. “No, I don’t believe that tobacco smoking is addictive.” William Campbell, CEO
15 Philip Morris, Congressional Testimony, 1993;

16 q. “Is it your position that it has never been proven that cigarette smoking has caused a
17 single person to die? That is my position, yes.” James Johnston, R.J. Reynolds
18 Tobacco Company, Congressional Testimony 1994.

19
20
21 411. Throughout the years, Defendants and co-conspirators have repeatedly stated that
22 cigarettes were not dangerous, and they would either remove harmful constituents or stop
23 making cigarettes altogether. Some examples include:
24

25 A 1970 advertisement from the Tobacco Institute said: “[t]he Tobacco Institute
26 believes the American public is entitled to complete, authenticated information
27 about cigarette smoking and health.”

28 In 1971, Joseph Cullman, Chairman of Philip Morris, stated on Face the Nation,
“we do not believe that cigarettes are hazardous; we don’t accept that.”

1 In 1972 Philip Morris vice president James Bowling repeated the company's
2 promise to consumers two decades earlier that "if our product is harmful, we'll
3 stop making it."

4 Bowling repeated the company's position on smoking and health in a 1976
5 interview when he noted: "from our standpoint, if anyone ever identified any
6 ingredient in tobacco smoke as being hazardous to human health or being
7 something that shouldn't be there, we could eliminate it. But no one ever has."

8 In a 1978 magazine interview William Dwyer, vice president of the Tobacco
9 Institute, stated: "we take the view that the best science can say is that cigarette
10 smoking may be hazardous. And then it may not be."

11 A 1978 Philip Morris publication entitled "Facts About the Smoking
12 Controversy" stated: "scientists have not determined what causes
13 cancer...cigarettes have never been proven unsafe."

14 In 1984, Ed Horrigan, Chairman of R.J. Reynolds spoke on Nightline and told
15 the public, "It is not known whether cigarettes cause cancer. It has not been
16 causally established."

17 In 1985, R.J. Reynolds took out advertisements in major newspapers and
18 magazines which stated: "We believe in science. That is why we continue to
19 provide funding for independent research into smoking and health...Science is
20 science. Proof is proof. That is why the controversy over smoking and health
21 remains an open one."

22 412. Defendants continued to make these and similar statements well into the 1990s with
23 the goal of convincing smokers to keep smoking, not reducing their smoking, and/or not quitting.

24 413. Defendant and the tobacco industry promoted their message through a large number of
25 press releases and statements and through less obvious methods, including influencing the content of
26 apparently neutral articles and cultivating opinion leaders who would convey their message.
27 Defendant and the tobacco industry communicated their message through all forms of available media,
28 including newspapers, magazines, and television.

414. Industry spokespersons appeared on news shows, on commercials and public television
to state that the evidence concerning the health effects of tobacco was based primarily on statistical

1 relationships and that there was no proof that a specific tobacco component caused a specific disease
2 and that cigarette smoking was not addictive.

3 415. Cigarette manufacturers when sued denied that cigarettes were addictive and claimed that
4 smoking was a matter of free choice and that smokers could quit smoking if they so wanted.

5 416. Cigarette manufacturers claimed attorney-client privilege to shield as many documents as
6 possible from disclosure and destroyed and/or refused to produce documents related to health issues and
7 plaintiffs' claims.

8 417. Cigarette manufacturers when sued for smoking-related injuries, conducted the litigation
9 in such a way as to cause the maximum expenditure of time and resources by the claimant for the purposes
10 of exhausting their adversaries' resources and to discourage other meritorious litigation.

11 418. VERNA LEE GEIST, during the course of her smoking history heard some or all of
12 the false or misleading statements and/or similar statements made directly or indirectly by the
13 Defendants, believed some or all of the Defendants' false or misleading statements and relied to her
14 detriment and smoked and/or continued to smoke cigarettes based on such false or misleading
15 statements.

16 419. The aforementioned acts, false statements and/or misrepresentations which were made
17 and/or caused to be made by the cigarette manufacturers, including Defendants herein, and their co-
18 conspirators were justifiably relied upon by VERNA LEE GEIST, resulted in her being unaware of
19 the extent of the danger of the Defendants' cigarette products, the addictive nature of Defendants'
20 cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as dangerous as
21 regular and/or unfiltered cigarettes. Such acts, false statements and/or misrepresentations were made
22 by the Defendants who had knowledge superior to VERNA LEE GEIST regarding the health aspects
23 and addictive nature of cigarettes.

1 420. Defendants made intentional misrepresentations to Decedent, VERNA LEE GEIST, in
2 the following ways:

- 3 a. The aforementioned representations were regarding material facts about cigarettes and
4 were knowingly false;
5
6 b. Defendants knew said representations were false at the time they made such statements;
7
8 c. Defendants knew VERNA LEE GEIST did not hold sufficient information to
9 understand or appreciate the dangers of cigarettes;
10
11 d. Defendants intended to induce VERNA LEE GEIST, and did indeed induce VERNA
12 LEE GEIST, to rely upon the aforementioned false representations/acts/statements;
13
14 e. VERNA LEE GEIST was unaware of the falsity of Defendants' aforementioned false
15 representations/acts/statements;
16
17 f. VERNA LEE GEIST was justified in relying upon Defendants' misrepresentations
18 because they were made by Defendants who possessed superior knowledge regarding
19 the health hazards and addictive nature of cigarettes;
20
21 g. As a direct and proximate and/or legal cause of Defendants' intentional
22 misrepresentations, VERNA LEE GEIST became addicted to cigarettes and developed
23 lung cancer and caused her death.

24 421. Furthermore, Defendants made false promises to Decedent, VERNA LEE GEIST, in
25 the following ways:

- 26 a. Defendants made false promises to the public, including VERNA LEE GEIST to (i)
27 cooperate with public health, including the Surgeon General, (ii) conduct allegedly
28 "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 Decedent 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, VERNA LEE GEIST became addicted to cigarettes and developed lung cancer and caused her death.

422. Defendants’ conduct is an actual and proximate or legal cause of VERNA LEE GEIST’S injuries. VERNA LEE GEIST thereby experienced great pain, and anxiety her body and mind. VERNA LEE GEIST’S sustained injuries and damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), for which Plaintiff, TIMOTHY A. GEIST, as Administrator of the Estate of VERNA LEE GEIST, now seeks recovery pursuant to NRS 41.100.

423. As a further actual and proximate or legal result of Defendant’s conduct VERNA LEE GEIST underwent medical treatment and incurred past medical and/or incidental expenses. The exact amount of such damages is unknown at this present time, but VERNA LEE GEIST suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, TIMOTHY A. GEIST, as Administrator of the Estate of VERNA LEE GEIST seeks recovery of these damages pursuant to NRS 41.100.

1 424. Defendants' conduct was despicable and so contemptible that it would be looked down
2 upon and despised by ordinary decent people and was carried on by Defendants with willful and
3 conscious disregard for the safety of anyone in the community.

4 425. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
5 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
6 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of
7 Verna Lee Geist, Timothy A. Geist seeks exemplary and punitive damages pursuant to NRS
8 41.100.

10 426. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
11 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
12 employees, agents, and/or servants, as set forth herein.

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

18
19 **SEVENTH CLAIM FOR RELIEF**

20 **(WRONGFUL DEATH)**

21
22 **Timothy A. Geist as Personal Representative of the Estate of Verna Lee Geist and Timothy A.**
23 **Geist as Heir of Verna Lee Geist Against Defendants Philip Morris, R.J. Reynolds, and Liggett**

24 428. Plaintiff repeats and realleges the allegations contained in the paragraphs 1-286 and
25 incorporates the same herein by reference.

26 429. Plaintiff brings this wrongful death claim based on a fraudulent concealment claim
27 against Defendants Philip Morris, R.J. Reynolds, and Liggett.
28

1 430. Plaintiff, TIMOTHY A. GEIST, is the heir of VERNA.

2 431. Plaintiff, TIMOTHY A. GEIST, brings this cause of action pursuant to NRS 41.085(4),
3 as heir of VERNA'S Estate.

4 432. Plaintiff, TIMOTHY A. GEIST, is the Personal Representative of the Estate of
5 VERNA LEE GEIST.

6 433. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the
7 Estate of VERNA LEE GEIST.

8 434. Beginning at an exact time unknown to VERNA LEE GEIST, and continuing today,
9 cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out, a
10 campaign designed to deceive the public, including VERNA LEE GEIST, physicians, the government,
11 and others as to the true danger of cigarettes.

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

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

18 437. Defendants also carried out such scheme by concealing their knowledge concerning,
19 but not limited to, the following:

- 20
- 21 a. the highly addictive nature of nicotine in cigarettes;
 - 22 b. the design of cigarettes to make them more addictive and easier to inhale;
 - 23 c. the manipulating and controlling of nicotine content of their products to create and
24 perpetuate users' addiction to cigarettes;
 - 25
 - 26
 - 27
 - 28

- d. the manufacturing and engineering process of making cigarettes, including adding chemicals and other deadly, poisonous compounds to cigarettes;
- e. the deliberate use of ammonia technology and/or certain tobacco blends to boost the pH of cigarette smoke to “free base” nicotine in cigarettes;
- f. 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;
- g. its scheme to target and addict children to replace customers who were dying from smoking cigarettes;
- h. the true results of its research regarding the dangers posed by smoking cigarettes and the addictive nature of 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.
- i. 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;
 - j. filtered, low tar, low nicotine, and/or “light” cigarettes were not safe, safer, or less dangerous than “regular” cigarettes;
 - k. 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;

- l. continuing even today to fraudulently market and sell multiple brands as “filtered” knowing that smokers wrongly believe that filtered cigarettes reduce the harms of smoking and despite knowing internally that such cigarettes are just as addictive, dangerous, and deadly as non-filtered cigarettes.

438. Cigarette manufacturers, including Defendants herein, also concealed and/or made fraudulent statements and misrepresentations to the public, including VERA LEE GEIST, 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.

439. Defendants made false promises to Decedent, VERA LEE GEIST, in the following ways:

- a. Defendants assumed the responsibility to provide VERA LEE GEIST, and the public,

- 1 accurate and truthful information about their own products;
- 2 b. Defendants concealed and/or suppressed the aforementioned material facts about the
- 3 dangers of cigarettes;
- 4 c. Defendants were under a duty to disclose material facts about the dangers of cigarettes
- 5 to Decedent;
- 6 d. Defendants assumed the duty of disclosing material facts about the dangers of
- 7 cigarettes through repeated public statements concerning tobacco and health, the need
- 8 for more research, and the open question about disease causation;
- 9 e. Defendants knew they were concealing material facts about the dangers of cigarettes
- 10 from Decedent;
- 11 f. Defendants intended to induce Decedent to smoke and become addicted to cigarettes;
- 12 g. Decedent was unaware of the dangerous and addictive nature of cigarettes, and would
- 13 not have begun or continued to smoke had she known the aforementioned concealed
- 14 and/or suppressed information Defendants' possessed;
- 15 h. Decedent was unaware of the danger of Defendants' cigarettes, the addictive nature of
- 16 Defendants' cigarettes, and that low tar, low nicotine, "light," and/or filtered cigarettes
- 17 were just as dangerous as unfiltered and "regular" cigarettes;
- 18 i. Decedent justifiably relied upon Defendants to disseminate the superior knowledge and
- 19 information they possessed regarding the dangers of cigarettes;
- 20 j. The concealment and/or suppressed of material facts regarding the hazards of cigarettes
- 21 caused Decedent to become addicted to cigarettes, and also caused her to develop lung
- 22 cancer.
- 23
- 24
- 25
- 26 440. These fraudulent statements and misrepresentations which concealed material
- 27 information about the health hazards of cigarettes also include the following statements, or
- 28

1 substantially similar statements, which were heard, read, or seen, and relied upon by VERNA LEE
2 GEIST, made by Defendants, their co-conspirators, and their spokesmen and women:

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

- e. In the 1950s and 1960s, the Cigarette manufacturers, including Defendants herein, advertised and promoted cigarettes on television and radio as safe and glamorous, to the extent that cigarette advertising was the number one most heavily advertised product on television;
- 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. 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, Defendants issued 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

1 States Congress that it had not been proven that cigarettes were addictive, caused
2 disease, or caused one single person to die;

3 l. In 1975, William Dwyer stated “How can cigarette smoking be the cause of lung cancer
4 if the cause of lung cancer is, as yet, unknown. In fact, no one knows what causes lung
5 cancer”;

6
7 m. Edward Horrigan, President of R.J. Reynolds Tobacco Company, stated on ABC
8 Nightline in 1984 “It is not known whether cigarettes cause cancer, it has not been
9 casually established”, “Despite all of the research to date there has been no causal link
10 established [between cigarette smoking and cancer.]”, and “As a matter of fact, there
11 are studies that while we are accused of being associated with heart disease, there have
12 been studies conducted over 10 years that would say again that science is still puzzled
13 over these forces.” Edward Horrigan, President of R.J. Reynolds Tobacco Company
14 on ABC Nightline 1984;

15
16 n. “To my knowledge, it’s not been proven that cigarette smoking causes cancer.”
17 William Campbell, CEO Philip Morris, Congressional Testimony, 1993;

18
19 o. “No, I don’t believe that tobacco smoking is addictive.” William Campbell, CEO
20 Philip Morris, Congressional Testimony, 1993;

21
22 p. “Is it your position that it has never been proven that cigarette smoking has caused a
23 single person to die? That is my position, yes.” James Johnston, R.J. Reynolds
24 Tobacco Company, Congressional Testimony 1994.

25 441. Verna Lee Geist and others similarly situated justifiably relied upon the cigarette
26 manufacturers, including the Defendants herein, the TIRC and the CTR to disseminate knowledge and
27 information which they possessed regarding the health hazards of cigarettes, especially after the
28 industry chose to repeatedly and publicly deny the harms of smoking and the addictive nature of

1 cigarettes/nicotine. VERNA LEE GEIST, during the course of her smoking history heard some or all
2 of these false and misleading statements and/or similar statements made directly or indirectly by the
3 Defendants, believed some or all of the Defendants' false and misleading statements and relied to her
4 detriment and smoked and/or continued to smoke cigarettes based on such false and misleading
5 statements.

6
7 442. The aforementioned information and/or knowledge concealed and/or suppressed by the
8 cigarette manufacturers, including Defendants herein, and its co-conspirators was concealed for the
9 purposes of inducing the Plaintiff to smoke, fail to quit or reduce consumption. VERNA LEE GEIST
10 was unaware of the extent of the danger of the Defendants' cigarette products, the addictive nature of
11 Defendants' cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as
12 dangerous as unfiltered cigarettes. The knowledge and information concealed by the cigarette
13 manufacturers, including the Defendants herein, was concealed by entities which had superior
14 knowledge regarding the health aspects of cigarettes than VERNA LEE GEIST.

15
16 443. Defendants' conduct was the actual and proximate or legal cause of VERNA LEE
17 GEIST'S injuries and death. Plaintiff has sustained damages consisting of the loss of VERNA LEE
18 GEIST'S love, companionship, comfort, affection, society, and moral support, and have suffered great
19 emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars (\$15,000.00).
20 As VERNA LEE GEIST'S heir, Plaintiff seeks these damages pursuant to NRS 41.085(4).

21
22 444. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
23 GEIST endured pain, suffering, and/or disfigurement. As VERNA LEE GEIST'S heir, Plaintiff seeks
24 general damages for this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an amount
25 in excess of Fifteen Thousand Dollars (\$15,000.00).

26
27 445. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
28 GEIST'S estate incurred special damages, to include medical expenses and funeral expenses, in an

1 amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of Verna
2 Lee Geist's Estate, Timothy A. Geist seeks these special damages pursuant to NRS 41.085(5).

3 446. Defendant's conduct was despicable and so contemptible that it would be looked down
4 upon and despised by ordinary decent people and was carried on by Defendants with willful and
5 conscious disregard for the safety of anyone in the community.

6 447. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
7 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
8 example of Defendants, and to deter similar conduct in the future. As personal representative of
9 Verna Lee Geist's estate, Timothy A. Geist seeks exemplary and punitive damages pursuant
10 to NRS 41.085(5).

11 448. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
12 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
13 employees, agents, and/or servants, as set forth herein.

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

17
18
19
20 **EIGHTH CLAIM FOR RELIEF**

21 **(FRAUDULENT CONCEALMENT)**

22 **Timothy A. Geist as Administrator of the Estate of Verna Lee Geist Against Defendants Philip**
23 **Morris, R.J. Reynolds, and Liggett**

24 450. Plaintiffs repeat and reallege each and every allegation as contained in paragraphs 1
25 through 286 and 429 through 449 and incorporate the same herein by reference.

26 451. Plaintiff, Timothy A. Geist, brings this claim as Administrator of the Estate of
27 Verna Lee Geist pursuant to NRS 41.100.
28

1 452. Beginning at an exact time unknown to VERNA LEE GEIST, and continuing today,
2 cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out, a
3 campaign designed to deceive the public, including VERNA LEE GEIST, physicians, the government,
4 and others as to the true danger of cigarettes.

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

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

11 457. Defendants also carried out such scheme by concealing their knowledge concerning,
12 but not limited to, the following:

- 13 a. the highly addictive nature of nicotine in cigarettes;
- 14 b. the design of cigarettes to make them more addictive and easier to inhale;
- 15 c. the manipulating and controlling of nicotine content of their products to create and
16 perpetuate users' addiction to cigarettes;
- 17 d. the manufacturing and engineering process of making cigarettes, adding chemicals and
18 other deadly, poisonous compounds to cigarettes;
- 19 e. the deliberate use of ammonia technology and/or certain tobacco blends to boost the
20 pH of cigarette smoke to "free base" nicotine in cigarettes;
- 21 f. its intentional use of tobacco high in nitrosamines—a potent carcinogen not found in
22 natural, green tobacco leaf, but created during the tobacco curing process;
- 23 g. its scheme to target and addict children to replace customers who were dying from
24 smoking cigarettes;
- 25
- 26
- 27
- 28

- 1 h. the true results of its research regarding the dangers posed by smoking cigarettes and
2 the addictive nature of cigarettes. For example, in response to the 1965 Surgeon
3 General report that related cigarette smoking to lung cancer in men, the cigarette
4 manufacturers, including Defendant herein, concealed their research, from the year
5 prior, which concluded:

6
7 Moreover, nicotine is addictive. We are, then in the business of
8 selling nicotine, an addictive drug effective in the release of
9 stress mechanisms ... But cigarettes - we assume the Surgeon
General's Committee to say - despite the beneficent effect of
nicotine, have certain unattractive side effects:

- 10 1. They cause, or predispose to, lung cancer.
11 2. They contribute to certain cardiovascular disorders.
12 3. They may well be truly causative in emphysema, etc.
- 13 i. the risks of contracting cancer, including but not limited to laryngeal cancer,
14 esophageal cancer, other head and neck cancers, oral cancer, emphysema, COPD, lung
15 cancer, heart disease, strokes, bladder cancer, other forms of cancer;
16 j. filtered, low tar, low nicotine, and/or "light" cigarettes were not safe, safer, or less
17 dangerous than "regular" cigarettes;
18 k. the Federal Trade Commission ("FTC") method of measuring "tar & nicotine" levels
19 underestimated and did not accurately reflect the levels of tar and nicotine delivered to
20 a smoker.
21 l. continuing even today to fraudulently market and sell multiple brands as "filtered"
22 knowing that smokers wrongly believe that filtered cigarettes reduce the harms of
23 smoking and despite knowing internally that such cigarettes are just as addictive,
24 dangerous, and deadly as non-filtered cigarettes.

25
26 458. Cigarette manufacturers, including Defendants herein, also concealed and/or made
27 fraudulent statements and misrepresentations to the public, including VERNA LEE GEIST, through
28

1 their actions, funding, and involvement with TIRC/CTR, including but not limited to the following:

- 2 a. falsely concealing the true purpose of TIRC/CTR was public relations, politics, and
- 3 positioning for litigation;
- 4 b. falsely pledging to provide aid and assistance to research cigarette use and health;
- 5 c. expressly undertaking a disingenuous interest in health as its “basic responsibility
- 6 paramount to every other consideration;”
- 7 d. Defendants assumed the duty of disclosing material facts about the dangers of
- 8 cigarettes through repeated public statements concerning tobacco and health, the need
- 9 for more research, and the open question about disease causation;
- 10 e. purposely created the illusion that scientific research regarding the dangers of cigarettes
- 11 was being conducted and the results of which would be made public;
- 12 f. concealing information regarding the lack of bona fide research being conducted by
- 13 TIRC/CTR and the lack of funds being provided for research;
- 14 g. concealing that TIRC/CTR was nothing more than a “public relations” front and shield.

15 459. Defendants made false promises to Decedent, VERA LEE GEIST, in the following

16 ways:

- 17 a. Defendants assumed the responsibility to provide VERA LEE GEIST, and the public,
- 18 accurate and truthful information about their own products;
- 19 b. Defendants concealed and/or suppressed the aforementioned material facts about the
- 20 dangers of cigarettes;
- 21 c. Defendants was under a duty to disclose material facts about the dangers of cigarettes
- 22 to Decedent;
- 23 d. Defendants knew it was concealing material facts about the dangers of cigarettes from
- 24 Decedent;
- 25
- 26
- 27
- 28

- e. Defendants intended to induce Decedent to smoke and become addicted to cigarettes;
- f. Decedent was unaware of the dangerous and addictive nature of cigarettes, and would not have begun or continued to smoke had she known the aforementioned concealed and/or suppressed information Defendants' possessed;
- g. Decedent 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. Decedent 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 Decedent to become addicted to cigarettes, and also caused her to develop lung cancer.

460. These fraudulent statements and misrepresentations which concealed material information about the health hazards of cigarettes also include the following statements, or substantially similar statements, which were heard, read, or seen, and relied upon by VERNA LEE GEIST, made by Defendants, their co-conspirators, and their spokesmen and women:

- 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 VERNA LEE GEIST, that the cigarette manufacturers, including Defendant herein, would purportedly "safeguard" the health of smokers, support allegedly "disinterested" research into smoking and health, and reveal to the public the results of their alleged "objective" research;
- b. Beginning in 1953 and continuing for decades, Cigarette manufacturers, including Defendants herein, falsely assured the public that TIRC/CTR was an "objective"

research committee when internal company document reveal that TIRC/CTR functioned not for the promotion of scientific goals, but for public relations, politics, and positioning for litigation;

- c. In the 1950s and 1960s, Cigarette manufacturers, including Defendants herein, sponsored, were quoted in, and helped publish articles to mislead the public including but not limited to the following: “Smoke-Cancer Tie Termed Obscure” (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);
- d. In response to the 1964 Surgeon General Report which linked cigarette smoking to health, the cigarette industry falsely assured the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements;
- e. In the 1950s and 1960s, the Cigarette manufacturers, including Defendants herein, advertised and promoted cigarettes on television and radio as safe and glamorous, to the extent that cigarette advertising was the number one most heavily advertised product on television;
- 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. 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;”

- 1 h. In 1984, continuing to purposefully target children yet openly in press releases falsely
2 claim, “We don’t advertise to children . . . Some straight talk about smoking for young
3 people;”
4
5 i. In 1988, in response to the United States Surgeon General’s report that cigarettes are
6 addictive and nicotine is the drug in tobacco that causes addiction, Defendants issued
7 a press release knowingly and disingenuously stating, “Claims that cigarettes are
8 addictive is irresponsible and scare tactics;”
9
10 j. Through representatives in the Tobacco Institute, making countless publicized
11 appearances on television and radio disingenuously denying cigarettes were addictive
12 and claimed smoking was a matter of free choice and smokers could quit smoking if
13 they wanted to;
14
15 k. In 1994 CEOs from the seven largest cigarette companies, including Defendants herein,
16 knowingly providing false and misleading testimony under oath before the United
17 States Congress that it had not been proven that cigarettes were addictive, caused
18 disease, or caused one single person to die;
19
20 l. In 1975, William Dwyer stated “How can cigarette smoking be the cause of lung cancer
21 if the cause of lung cancer is, as yet, unknown. In fact, no one knows what causes lung
22 cancer”;
23
24 m. Edward Horrigan, President of R.J. Reynolds Tobacco Company, stated on ABC
25 Nightline in 1984 “It is not known whether cigarettes cause cancer, it has not been
26 casually established”, “Despite all of the research to date there has been no causal link
27 established [between cigarette smoking and cancer.]”, and “As a matter of fact, there
28 are studies that while we are accused of being associated with heart disease, there have
been studies conducted over 10 years that would say again that science is still puzzled

over these forces.” Edward Horrigan, President of R.J. Reynolds Tobacco Company on ABC Nightline 1984;

n. “To my knowledge, it’s not been proven that cigarette smoking causes cancer.”

William Campbell, CEO Philip Morris, Congressional Testimony, 1993;

o. “No, I don’t believe that tobacco smoking is addictive.” William Campbell, CEO

Philip Morris, Congressional Testimony, 1993;

p. “Is it your position that it has never been proven that cigarette smoking has caused a

single person to die? That is my position, yes.” James Johnston, R.J. Reynolds

Tobacco Company, Congressional Testimony 1994.

461. VERNA LEE GEIST and others similarly situated justifiably relied upon the cigarette manufacturers, including the Defendants herein, the TIRC and the CTR to disseminate knowledge and information which they possessed regarding the health hazards of cigarettes, especially after the industry chose to repeatedly and publicly deny the harms of smoking and the addictive nature of cigarettes/nicotine. VERNA LEE GEIST, during the course of her smoking history heard some or all of these false and misleading statements and/or similar statements made directly or indirectly by the Defendants, believed some or all of the Defendants’ false and misleading statements and relied to her detriment and smoked and/or continued to smoke cigarettes based on such false and misleading statements.

462. The aforementioned information and/or knowledge concealed and/or suppressed by the cigarette manufacturers, including Defendants herein, and its co-conspirators was concealed for the purposes of inducing the Plaintiff to smoke, fail to quit or reduce consumption. VERNA LEE GEIST was unaware of the extent of the danger of the Defendants’ cigarette products, the addictive nature of Defendants’ cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as dangerous as unfiltered cigarettes. The knowledge and information concealed by the cigarette

1 manufacturers, including the Defendants herein, was concealed by entities which had superior
2 knowledge regarding the health aspects of cigarettes than VERNA LEE GEIST.

3 463. Defendants' conduct is an actual and proximate or legal cause of VERNA LEE
4 GEIST'S injuries. VERNA LEE GEIST thereby experienced great pain, and anxiety her body and
5 mind. VERNA LEE GEIST sustained injuries and damages in an amount in excess of Fifteen
6 Thousand Dollars (\$15,000.00), for which Plaintiff, TIMOTHY A. GEIST, as Administrator of the
7 Estate of VERNA LEE GEIST, now seeks recovery pursuant to NRS 41.100.
8

9 464. As a further actual and proximate or legal result of Defendant's conduct VERNA LEE
10 GEIST underwent medical treatment and incurred past medical and/or incidental expenses. The exact
11 amount of such damages is unknown at this present time, but VERNA LEE GEIST suffered special
12 damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, TIMOTHY A. GEIST, as
13 Administrator of the Estate of VERNA LEE GEIST seeks recovery of these damages pursuant to NRS
14 41.100.
15

16 465. 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 anyone in the community.

19 466. 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. As Administrator of the Estate of
22 VERNA LEE GEIST, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant to NRS
23 41.100.
24

25 467. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
26 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
27 employees, agents, and/or servants, as set forth herein.
28

1 468. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
2 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
3 attorney's fees and costs of suit.

4 **NINTH CLAIM FOR RELIEF**

5 **(WRONGFUL DEATH)**

6 **Timothy A. Geist as Personal Representative of the Estate of Verna Lee Geist and Timothy A.**
7 **Geist as Heir of Verna Lee Geist Against Defendants R.J. Reynolds, Liggett and Philip Morris**
8

9 469. Plaintiff repeats and realleges the allegations contained in the paragraphs 1-286 and
10 287-468 and incorporates the same herein by reference.

11 470. Plaintiff brings this wrongful death claim based on a civil conspiracy claim against
12 Defendants Philip Morris, R.J. Reynolds, and Liggett.

13 471. Plaintiff, TIMOTHY A. GEIST, is the heir of VERNA.

14 472. Plaintiff, TIMOTHY A. GEIST, brings this cause of action pursuant to NRS 41.085(4),
15 as heir of VERNA'S Estate.
16

17 473. Plaintiff, TIMOTHY A. GEIST, is the Personal Representative of the Estate of
18 VERNA LEE GEIST.

19 474. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the
20 Estate of VERNA LEE GEIST.
21

22 475. Defendants acted in concert to accomplish an unlawful objective for the purposes of
23 harming Decedent, VERNA LEE GEIST. Defendants' actions include, but are not limited to the
24 following:

- 25 a. Defendants, along with other cigarette manufacturers, and CTR, TIRC, and TI, along
26 with attorneys and law firms retained by Defendants, unlawfully agreed to conceal
27 and/or omit, and did in fact conceal and/or omit, information regarding the health
28

- 1 hazards of cigarettes and/or their addictive nature with the intention that smokers and
2 the public would rely on this information to their detriment.
- 3 b. Defendants agreed to execute their scheme by performing the abovementioned
4 unlawful acts and/or by doing lawful acts by unlawful means;
- 5 c. Defendants, along with other entities including TIRC, CTR, TI and persons including
6 their in-house lawyers and outside retained counsel, entered into a conspiracy in 1953
7 to conceal the harms of smoking cigarettes;
- 8 d. Defendants, through their executives, employees, agents, officers and representatives
9 made numerous public statements from 1953 through 2000 directly denying the health
10 hazards and addictive nature of smoking cigarettes.
- 11 476. After the year 2000, Defendants continued their conspiratorial acts in furtherance of
12 their conspiracy related to the harms of smoking including but not limited to the following acts:
- 13 a. Marketing and/or advertising filters as safer or less hazardous to health than non-
14 filtered cigarettes;
- 15 b. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- 16 c. Marketing and/or advertising lights and ultra-light cigarettes as safer or less hazardous
17 to health;
- 18 d. Knowingly concealing from the public that filtered, low tar, lights, and ultra-lights
19 cigarettes were no safer or even less hazardous than other cigarettes;
- 20 e. Adding “onserts” to packages of cigarettes even after the United States government
21 banned marketing of “light” and “ultra-light” cigarettes;
- 22 f. Continuing to market and/or advertise lights, ultra lights, and low tar cigarettes under
23 color brand name descriptors such as “Gold” and “Silver” and informing smokers “pack
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1 will be changing, but your cigarette will stay the same” following the federal ban on the
2 use of “lights”, “mild”, and “low” tar descriptors in 2010;

3 g. Opposing, and continuing to oppose proposed FDA regulations to reduce or eliminate
4 levels of nicotine in cigarettes;

5 h. Continuing to market and prey upon children and teenagers who are not able to
6 understand or appreciate the risks and dangers associated with cigarette smoking.

7
8 477. Defendants’ actions, as it relates to their acts in furtherance of their conspiracy as
9 alleged in this complaint, continues through the present.

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

13 479. VERNA LEE GEIST relied, both directly and indirectly, on the Defendants’
14 concealment and omission of such information to her detriment. VERNA LEE GEIST, during the
15 course of her smoking history heard, some or all of these false and misleading statements and/or
16 similar statements made directly or indirectly by the Defendants and their co-conspirators, believed
17 some or all of the Defendants’ and their co-conspirators’ false and misleading statements and relied
18 to her detriment and smoked and/or continued to smoke cigarettes based on such false and misleading
19 statements.
20

21 480. Defendants’ conduct was the actual and proximate or legal cause of VERNA LEE
22 GEIST’S injuries and death. Plaintiff has sustained damages consisting of the loss of VERNA LEE
23 GEIST’S love, companionship, comfort, affection, society, and moral support, and has suffered great
24 emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars (\$15,000.00).
25 As VERNA LEE GEIST’S heir, Plaintiff seeks these damages pursuant to NRS 41.085(4).
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1 481. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
2 GEIST endured pain, suffering, and/or disfigurement. As VERNA LEE GEIST'S heir, Plaintiff seeks
3 general damages for this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an amount
4 in excess of Fifteen Thousand Dollars (\$15,000.00).

5 482. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
6 GEIST'S estate incurred special damages, to include medical expenses and funeral expenses, in an
7 amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of VERNA
8 LEE GEIST'S Estate, TIMOTHY A. GEIST seeks these special damages pursuant to NRS 41.085(5).

9 483. Defendant's conduct was despicable and so contemptible that it would be looked down
10 upon and despised by ordinary decent people and was carried on by Defendants with willful and
11 conscious disregard for the safety of anyone in the community.

12 484. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
13 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
14 example of Defendants, and to deter similar conduct in the future. As personal representative of
15 VERNA LEE GEIST'S estate, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant
16 to NRS 41.085(5).

17 485. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
18 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
19 employees, agents, and/or servants, as set forth herein.

20 486. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
21 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
22 attorney's fees and costs of suit.

23 **TENTH CLAIM FOR RELIEF**

24 **(CIVIL CONSPIRACY)**

Timothy A. Geist as Administrator of the Estate of Verna Lee Geist Against Defendants R.J. Reynolds, Liggett, and Philip Morris

487. Plaintiff repeats and realleges the allegations as contained in paragraphs 1-286 and 287-486 and incorporate the same herein by reference.

488. Plaintiff, TIMOTHY A. GEIST, brings this claim as Administrator of the Estate of VERNA LEE GEIST pursuant to NRS 41.100.

489. Defendants acted in concert to accomplish an unlawful objective for the purposes of harming Decedent, VERNA LEE GEIST. 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.
- b. Defendants agreed to execute their scheme by performing the abovementioned unlawful acts and/or by doing lawful acts by unlawful means;
- c. 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;
- d. 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.

490. 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. Continuing to market and/or advertise lights, ultra lights, and low tar cigarettes under color brand name descriptors such as “Gold” and “Silver” and informing smokers “pack will be changing, but your cigarette will stay the same” following the federal ban on the use of “lights”, “mild”, and “low” tar descriptors in 2010;
- g. Opposing, and continuing to oppose proposed FDA regulations to reduce or eliminate levels of nicotine in cigarettes;
- h. 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.

491. Defendants’ actions, as it relates to their acts in furtherance of their conspiracy as alleged in this complaint, continues through the present.

492. 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.

493. VERNA LEE GEIST relied, both directly and indirectly, on the Defendants’ concealment and omission of such information to her detriment. VERNA LEE GEIST, during the

1 course of her smoking history heard, some or all of these false and misleading statements and/or
2 similar statements made directly or indirectly by the Defendants and their co-conspirators, believed
3 some or all of the Defendants' and their co-conspirators' false and misleading statements and relied
4 to her detriment and smoked and/or continued to smoke cigarettes based on such false and misleading
5 statements.

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7 494. Defendants' conduct is an actual and proximate or legal cause of VERNA LEE
8 GEIST'S injuries. VERNA LEE GEIST thereby experienced great pain, and anxiety her body and
9 mind. VERNA LEE GEIST sustained injuries and damages in an amount in excess of Fifteen
10 Thousand Dollars (\$15,000.00), for which Plaintiff, TIMOTHY A. GEIST, as Administrator of the
11 Estate of VERNA LEE GEIST, now seeks recovery pursuant to NRS 41.100.

12
13 495. As a further actual and proximate or legal result of Defendant's conduct VERNA LEE
14 GEIST underwent medical treatment and incurred past medical and/or incidental expenses. The exact
15 amount of such damages is unknown at this present time, but VERNA LEE GEIST suffered special
16 damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, TIMOTHY A. GEIST, as
17 Administrator of the Estate of VERNA LEE GEIST seeks recovery of these damages pursuant to NRS
18 41.100.

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20 496. 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 anyone in the community.

23
24 497. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
25 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
26 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of
27 VERNA LEE GEIST, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant to NRS
28 41.100.

1 498. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
2 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
3 employees, agents, and/or servants, as set forth herein.

4 499. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
5 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
6 attorney's fees and costs of suit.
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12 **ELEVENTH CLAIM FOR RELIEF**

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14 **(WRONGFUL DEATH)**

15 **Timothy A. Geist as Personal Representative of the Estate of Verna Lee Geist and Timothy A.**
16 **Geist as Heir of Verna Lee Geist Against Defendants R.J. Reynolds, Liggett and Philip Morris**
17

18 500. Plaintiff repeats and realleges the allegations contained in paragraphs 1-286 and 287-
19 499 herein and incorporates the same herein by reference.

20 501. Plaintiff brings this wrongful death claim based on a deceptive trade practice claim
21 against Defendants Philip Morris, R.J. Reynolds, and Liggett.

22 502. Plaintiff, TIMOTHY A. GEIST, is the heir of VERNA.

23 503. Plaintiff, TIMOTHY A. GEIST, brings this cause of action pursuant to NRS 41.085(4),
24 as heir of VERNA'S Estate.
25

26 504. Plaintiff, TIMOTHY A. GEIST, is the Personal Representative of the Estate of
27 VERNA LEE GEIST.
28

1 505. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the
2 Estate of VERNA LEE GEIST.

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

5 507. Defendants are subject to the provisions of the Nevada Deceptive Trade Practices Act,
6 and Plaintiff is one of the persons the Act was enacted to present.

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

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

12 *****

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

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

17 *****

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

22 7. Represents that goods or services for sale or lease are of a particular standard, quality
23 or grade, or that such goods are of a particular style or model, if he or she knows or
24 should know that they are of another standard, quality, grade, style or model.

25 *****

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

27 510. Upon information and belief, Defendants knowingly violated NRS 598.0915 by
28 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” which falsely assured the public, the American government, and VERA LEE GEIST, that would purportedly “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and health, and reveal to the public the results of their alleged “objective” research;
- i. falsely assuring the public that TIRC/CTR was an “objective” research committee when internal company documents reveals that TIRC/CTR functioned not for the promotion of scientific goals, but for public relations, politics, and positioning for litigation;
- j. sponsoring, being quoted in, and helping publish articles to mislead the public including but not limited to the following: “Smoke-Cancer Tie Termed Obscure”

(1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);

- k. responding to the 1964 Surgeon General Report which linked cigarette smoking to health, by falsely assuring the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements;
- l. advertising and promoting cigarettes on television and radio as safe and glamorous, to the extent that cigarette advertising was the number one most heavily advertised product on television;
- m. making knowingly false and misleading statements during a governmental hearing, including stating that, “there is absolutely no proof that cigarettes are addictive;”
- n. purposefully targeting children yet openly in press releases falsely claiming, “We don’t advertise to children . . . Some straight talk about smoking for young people;”
- o. responding the 1988 United States Surgeon General’s report that nicotine is the drug in tobacco that causes addiction, by issuing press releases stating, “Claims that cigarettes are addictive is irresponsible and scare tactics;”
- p. lying under oath before the United States Congress in 1994 that it was their opinion that it had not been proven that cigarettes were addictive, caused disease, or caused one single person to die.

511. Defendants’ conduct was the actual and proximate or legal cause of VERA LEE GEIST’S injuries and death. Plaintiff has sustained damages consisting of the loss of VERA LEE

1 GEIST'S love, companionship, comfort, affection, society, and moral support, and have suffered great
2 emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars (\$15,000.00).

3 As Verna Lee Geist's heir, Plaintiff seeks these damages pursuant to NRS 41.085(4).

4 512. As a further actual and proximate or legal result of Defendants' conduct, Verna Lee
5 Geist endured pain, suffering, and/or disfigurement. As Verna Lee Geist's heir, Plaintiff seeks
6 general damages for this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an amount
7 in excess of Fifteen Thousand Dollars (\$15,000.00).
8

9 513. As a further actual and proximate or legal result of Defendants' conduct, Verna Lee
10 Geist's estate incurred special damages, to include medical expenses and funeral expenses, in an
11 amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of Verna
12 Lee Geist's Estate, Timothy A. Geist seeks these special damages pursuant to NRS 41.085(5).
13

14 514. Defendant's 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 anyone in the community.

17 515. 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. As personal representative of
20 Verna Lee Geist's estate, Timothy A. Geist seeks exemplary and punitive damages pursuant
21 to NRS 41.085(5).
22

23 516. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
24 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
25 employees, agents, and/or servants, as set forth herein.

26 517. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
27 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
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attorney's fees and costs of suit.

TWELTH CLAIM FOR RELIEF

(VIOLATION OF DECEPTIVE TRADE PRACTICES ACT – NRS 598.0903)

Timothy A. Geist as Administrator of the Estate of Verna Lee Geist Against Defendants R.J. Reynold, Liggett, and Philip Morris

518. Plaintiff repeats and realleges the allegations contained in paragraphs 1-286 and 287-517 and incorporate the same herein by reference.

519. Plaintiff, TIMOTHY A. GEIST, brings this claim as Administrator of the Estate of VERNA LEE GEIST pursuant to NRS 41.100.

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

521. 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 present.

522. Plaintiff brings 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.

523. 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

1 representation as to the sponsorship, approval, status, affiliation or connection of a
2 person therewith.

3 7. Represents that goods or services for sale or lease are of a particular standard, quality
4 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.

5 ****

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

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

- 10 a. making countless publicized appearances on television and radio disingenuously
11 denying cigarettes were addictive and claimed smoking was a matter of free choice and
12 smokers could quit smoking if they wanted to;
- 13 b. representing to the public that it was not known whether cigarettes were harmful or
14 caused disease;
- 15 c. falsely advertising and promoting cigarettes as safe, not dangerous, and not harmful;
- 16 d. falsely advertising and promoting "filtered" and "light" cigarettes as "low tar" and "low
17 nicotine" through print advertisements in magazines and newspapers throughout the
18 1950s, 1960s, 1970s, 1980s, 1990s, and even into the 2000s;
- 19 e. falsely representing that questions about smoking and health would be answered by an
20 allegedly unbiased, trustworthy source;
- 21 f. misrepresenting and confusing facts about health hazards of cigarettes and addiction;
- 22 g. creating a made up "cigarette controversy;"
- 23 h. taking out a full page advertisement called the "Frank Statement to Cigarette Smokers"
24 which falsely assured the public, the American government, and VERA LEE GEIST,
25 that would purportedly "safeguard" the health of smokers, support allegedly
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“disinterested” research into smoking and health, and reveal to the public the results of their alleged “objective” research;

- i. falsely assuring the public that TIRC/CTR was an “objective” research committee when internal company documents reveals that TIRC/CTR functioned not for the promotion of scientific goals, but for public relations, politics, and positioning for litigation;
- j. sponsoring, being quoted in, and helping publish articles to mislead the public including but not limited to the following: “Smoke-Cancer Tie Termed Obscure” (1955), “Study of Smoking is Inconclusive” (1956), “Cigarette Threat Called Unproven,” (1962), “Tobacco Spokesmen Dispute Lung Study” (1962), “Tobacco Cancer Scare Fading in Smoke Ring (1964), and “Smokers Assured In Industry Study” (1962);
- k. responding to the 1964 Surgeon General Report which linked cigarette smoking to health, by falsely assuring the public that (i) cigarettes were not injurious to health, (ii) the industry would cooperate with the Surgeon General, (iii) more research was needed, and (iv) if there were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those elements;
- l. advertising and promoting cigarettes on television and radio as safe and glamorous, to the extent that cigarette advertising was the number one most heavily advertised product on television;
- m. making knowingly false and misleading statements during a governmental hearing, including stating that, “there is absolutely no proof that cigarettes are addictive;”
- n. purposefully targeting children yet openly in press releases falsely claiming, “We don’t advertise to children . . . Some straight talk about smoking for young people;”

1 o. responding the 1988 United States Surgeon General's report that nicotine is the drug
2 in tobacco that causes addiction, by issuing press releases stating, "Claims that
3 cigarettes are addictive is irresponsible and scare tactics;"

4 p. lying under oath before the United States Congress in 1994 that it was their opinion
5 that it had not been proven that cigarettes were addictive, caused disease, or caused one
6 single person to die.
7

8 525. Defendants' conduct is an actual and proximate or legal cause of VERNA LEE
9 GEIST'S injuries. VERNA LEE GEIST thereby experienced great pain, and anxiety her body and
10 mind. VERNA LEE GEIST sustained injuries and damages in an amount in excess of Fifteen
11 Thousand Dollars (\$15,000.00), for which Plaintiff, TIMOTHY A. GEIST, as Administrator of the
12 Estate of VERNA LEE GEIST, now seeks recovery pursuant to NRS 41.100.
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14 526. As a further actual and proximate or legal result of Defendant's conduct VERNA LEE
15 GEIST underwent medical treatment and incurred past medical and/or incidental expenses. The exact
16 amount of such damages is unknown at this present time, but VERNA LEE GEIST suffered special
17 damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, TIMOTHY A. GEIST, as
18 Administrator of the Estate of VERNA LEE GEIST seeks recovery of these damages pursuant to NRS
19 41.100.
20

21 527. Defendants' conduct was despicable and so contemptible that it would be looked down
22 upon and despised by ordinary decent people and was carried on by Defendants with willful and
23 conscious disregard for the safety of anyone in the community.

24 528. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
25 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
26 example of Defendants, and to deter similar conduct in the future. As Administrator of the Estate of
27 VERNA LEE GEIST, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant to NRS
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1 41.100.

2 529. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
3 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
4 employees, agents, and/or servants, as set forth herein.
5

6 530. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
7 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
8 attorney's fees and costs of suit.
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THIRTEENTH CLAIM FOR RELIEF

(WRONGFUL DEATH)

Timothy A. Geist as Personal Representative of the Estate of Verna Lee Geist and Timothy A. Geist as Heir of Verna Lee Geist Against Defendants, C-Cigarettes Cheaper, LLC; Marwan Mediati d/b/a C-Cigarettes Cheaper; and Christine Mediati d/b/a/ C-Cigarettes Cheaper

531. Plaintiff repeats and realleges the allegations contained in paragraphs 1-286 and incorporates the same herein by reference.

532. Plaintiff brings this wrongful death claim based on a strict liability claim against Defendants C-Cigarettes Cheaper, LLC; Marwan Mediati d/b/a C-Cigarettes Cheaper; and Christine Mediati d/b/a/ C-Cigarettes Cheaper

533. Plaintiff, TIMOTHY A. GEIST, is the heir of VERNA LEE GEIST.

534. Plaintiff, TIMOTHY A. GEIST, brings this cause of action pursuant to NRS 41.085(4), as heir of VERNA'S Estate.

535. Plaintiff, TIMOTHY A. GEIST, is the Personal Representative of the Estate of VERNA LEE GEIST.

536. Plaintiff brings this claim pursuant to 41.085(5) as the Personal Representative of the Estate of VERNA LEE GEIST.

537. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER, are in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

538. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER, sold cigarettes to the public, including Decedent, VERNA LEE GEIST.

1 539. The aforesaid products were distributed, sold and/or otherwise placed into the stream of
2 commerce by Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-
3 CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER.

4 540. Defendants , C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-
5 CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER'S,
6 defective and unreasonably dangerous cigarettes reached VERNA LEE GEIST without substantial
7 change from that in which such products were when within the possession of Defendants.
8

9 541. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-
10 CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER'S
11 cigarettes were dangerous beyond the expectation of the ordinary user/consumer when used as
12 intended or in a manner reasonably foreseeable by Defendants.
13

14 542. The nature and degree of danger of Defendants, C-CIGARETTES CHEAPER, LLC,
15 MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-
16 CIGARETTES CHEAPER'S cigarettes were dangerous beyond the expectation of the ordinary
17 consumer, including VERNA LEE GEIST, when used as intended or in a reasonably foreseeable
18 manner.
19

20 543. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-
21 CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER'S
22 cigarettes were unreasonably dangerous because a less dangerous design and/or modification was
23 economically and scientifically feasible.

24 544. Defendants' conduct was the actual and proximate or legal cause of VERNA LEE
25 GEIST'S injuries and death. Plaintiff has sustained damages consisting of the loss of VERNA LEE
26 GEIST'S love, companionship, comfort, affection, society, and moral support, and has suffered great
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1 emotional and psychological loss, all in amount in excess of Fifteen Thousand Dollars (\$15,000.00).

2 As VERNA LEE GEIST'S heir, Plaintiff seeks these damages pursuant to NRS 41.085(4).

3 545. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
4 GEIST endured pain, suffering, and/or disfigurement. As VERNA LEE GEIST'S heir, Plaintiff seeks
5 general damages for this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an amount
6 in excess of Fifteen Thousand Dollars (\$15,000.00).
7

8 546. As a further actual and proximate or legal result of Defendants' conduct, VERNA LEE
9 GEIST'S estate incurred special damages, to include medical expenses and funeral expenses, in an
10 amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of VERNA
11 LEE GEIST'S Estate, TIMOTHY A. GEIST seeks these special damages pursuant to NRS 41.085(5).
12

13 547. Defendant's conduct was despicable and so contemptible that it would be looked down
14 upon and despised by ordinary decent people and was carried on by Defendants with willful and
15 conscious disregard for the safety of anyone in the community.

16 548. 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. As personal representative of
19 VERNA LEE GEIST'S estate, TIMOTHY A. GEIST seeks exemplary and punitive damages pursuant
20 to NRS 41.085(5).
21

22 549. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
23 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its
24 employees, agents, and/or servants, as set forth herein.

25 550. The actions of Defendants have forced Plaintiff to retain counsel to represent him in
26 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
27 attorney's fees and costs of suit.
28

FOURTEENTH CLAIM FOR RELIEF

(STRICT PRODUCT LIABILITY)

**Timothy A. Geist as Administrator of the Estate of Verna Lee Geist
Against Defendants C-Cigarettes Cheaper, LLC; Marwan Mediati d/b/a C-Cigarettes
Cheaper; and Christine Mediati d/b/a/ C-Cigarettes Cheaper**

551. Plaintiff repeats and realleges the allegations contained in paragraphs 1-286 and 532-550 and incorporate the same herein by reference.

552. Plaintiff, TIMOTHY A. GEIST, brings this claim as Administrator of the Estate of VERNA LEE GEIST pursuant to NRS 41.100.

553. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER, are in the business of distributing, marketing, selling, or otherwise placing cigarette into the stream of commerce.

554. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER, sold cigarettes to the public, including Decedent, VERNA LEE GEIST.

555. The aforesaid products were distributed, sold and/or otherwise placed into the stream of commerce by Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER.

556. Defendant, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER'S, defective and unreasonably dangerous cigarettes reached VERNA LEE GEIST without substantial change from that in which such products were when within the possession of Defendants.

557. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-CIGARETTES CHEAPER, and CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER'S

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

3 558. The nature and degree of danger of Defendants, C-CIGARETTES CHEAPER, LLC,
4 MARWAN MEDIATi d/b/a C-CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-
5 CIGARETTES CHEAPER'S cigarettes were dangerous beyond the expectation of the ordinary
6 consumer, including VERA LEE GEIST, when used as intended or in a reasonably foreseeable
7 manner.
8

9 559. Defendants, C-CIGARETTES CHEAPER, LLC, MARWAN MEDIATI d/b/a C-
10 CIGARETTES CHEAPER, and/or CHRISTINE MEDIATI d/b/a/ C-CIGARETTES CHEAPER'S
11 cigarettes were unreasonably dangerous because a less dangerous design and/or modification was
12 economically and scientifically feasible.
13

14 560. Defendants' conduct is an actual and proximate or legal cause of VERA LEE
15 GEIST'S injuries. VERA LEE GEIST thereby experienced great pain, and anxiety her body and
16 mind. VERA LEE GEIST sustained injuries and damages in an amount in excess of Fifteen
17 Thousand Dollars (\$15,000.00), for which Plaintiff, TIMOTHY A. GEIST, as Administrator of the
18 Estate of VERA LEE GEIST, now seeks recovery pursuant to NRS 41.100.
19

20 561. As a further actual and proximate or legal result of Defendant's conduct VERA LEE
21 GEIST'S underwent medical treatment and incurred past medical and/or incidental expenses. The
22 exact amount of such damages is unknown at this present time, but VERA LEE GEIST suffered
23 special damages in excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff, TIMOTHY A. GEIST,
24 as Administrator of the Estate of VERA LEE GEIST seeks recovery of these damages pursuant to
25 NRS 41.100.

26 562. Defendants' conduct was despicable and so contemptible that it would be looked down
27 upon and despised by ordinary decent people and was carried on by Defendants with willful and
28

conscious disregard for the safety of anyone in the community.

563. 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. As Administrator of the Estate of Verna Lee Geist, Timothy A. Geist seeks exemplary and punitive damages pursuant to NRS 41.100.

564. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of its employees, agents, and/or servants, as set forth herein.

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

WHEREFORE, Plaintiff, Timothy A. Geist, individually, and as Administrator and Personal Representative of the Estate of Verna Lee Geist expressly reserving the right to amend this Complaint at the time of trial to include all items of damage not yet ascertained, demands judgment against Defendants, Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company, 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; C-Cigarettes Cheaper, LLC; Marwan Mediati d/b/a C-Cigarettes Cheaper; Christine Mediati d/b/a C-Cigarettes Cheaper; Does I-X; Roe Business Entities XI-XX, and each of them, as follows:

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

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

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

5. For reasonable attorneys' fees;

6. For costs of suit incurred;

7. For a jury trial on all issues so triable; and

8. For such other relief as to the Court seems just and proper.

DATED this 11th day of June 2020.

CLAGGETT & SYKES LAW FIRM

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of June 2020, I caused to be served a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** on the following person(s) by the following method(s) pursuant to NRCP 5(b) and NEFCR 9:

VIA E-SERVICE ONLY:

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/s/ Moises Garcia

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