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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SUZETTE LYNCH, in her capacity as
Personal Representative of the Estate of
DERRICK J. LYNCH,

Plaintiff,

v.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, INC., a foreign corporation;
SHOOK, HARDY & BACON L.L.P., a
foreign limited liability partnership;
COVINGTON & BURLING L.L.P. , a
foreign limited liability partnership;
GREENSPOON MARDER LLP, a foreign
limited liability partnership; WOMBLE BOND
DICKINSON (US) LLP, a foreign limited liability
partnership; PLAID PANTRIES, INC., an
Oregon corporation; PLAID PANTRY,
INC., an Oregon corporation; WSCO
PETROLEUM CORP., an Oregon
corporation, 7-ELEVEN, Inc. a foreign
corporation, and TYGGER INC., an Oregon
corporation,

Defendants.

Case No.

COMPLAINT
(Fraud; Product Liability and
Negligence)

CLAIM FOR \$18,750,000.00

FEE AUTHORITY
ORS 21.160(1)(e)

CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION

JURY TRIAL REQUESTED

Plaintiff alleges:

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GENERAL ALLEGATIONS AND REMEDIES SOUGHT

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1.

Suzette Lynch is the duly appointed Personal Representative of the Estate of Derrick J. Lynch (hereinafter “the Estate”), who died on June 27, 2018, at age 53.

2.

Philip Morris USA, Inc. (“Philip Morris”) is a foreign corporation engaged in the design, manufacture, sale, marketing and distribution of cigarettes for consumption in Oregon and sold cigarettes consumed by Derrick J. Lynch.

3.

R.J. Reynolds Tobacco Company, Inc., (“RJ Reynolds”) is a foreign corporation engaged in the design, manufacture, sale, marketing and distribution of cigarettes for consumption in Oregon and sold cigarettes consumed by Derrick J. Lynch.

4.

Shook, Hardy & Bacon L.L.P. (“SHB”), is a foreign limited liability partnership engaged in providing legal services throughout the United States and Oregon. SHB provided legal services to Philip Morris and RJ Reynolds, either directly or indirectly, in support of the distribution and sale of cigarettes in the state of Oregon, including cigarettes consumed by Derrick J. Lynch.

5.

Covington & Burling L.L.P. (“CB”) is a foreign limited liability partnership engaged in providing legal services throughout the United States and Oregon. CB has provided legal services to Philip Morris and RJ Reynolds, either directly or indirectly, in support of the distribution and sale of cigarettes in the state of Oregon, cigarettes consumed by Derrick J. Lynch.

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6.

Greenspoon Marder LLP (“GM”) is a foreign limited liability partnership engaged in providing legal services throughout the United States and Oregon, including through its office in Multnomah County, Oregon. GM is the successor by merger to, and assumed the liabilities of, Jacob, Medinger & Finnegan, LLP, which provided legal services to Philip Morris and RJ Reynolds, either directly or indirectly, in support of the distribution and sale of cigarettes in the state of Oregon, cigarettes consumed by Derrick J. Lynch.

7.

Womble Bond Dickinson (US) LLP (“WBD”) is a foreign limited liability partnership engaged in providing legal services throughout the United States and Oregon. WBD is the result of the merger of Bond Dickinson LLP, and Womble Carlyle Sandridge & Rice, LLP, which provided legal services to Philip Morris and RJ Reynolds, either directly or indirectly, in support of the distribution and sale of cigarettes in the state of Oregon, cigarettes consumed by Derrick J. Lynch.

8.

Plaid Pantries, Inc. and Plaid Pantry, Inc. are Oregon Corporations engaged in the sale of cigarettes manufactured and sold by defendants Philip Morris and RJ Reynolds and sold cigarettes consumed by Derrick J. Lynch.

9.

WSCO Petroleum Corp. is an Oregon Corporation engaged in the sale of cigarettes manufactured and sold by defendants Philip Morris and RJ Reynolds and sold cigarettes consumed by Derrick J. Lynch.

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1
2 7-ELEVEN, Inc. is a foreign corporation engaged in the sale of cigarettes manufactured and
3 sold by defendants Philip Morris and RJ Reynolds. Tygger Inc. operates or operated at all times
4 material, a retail franchise of 7-ELEVEN, Inc., through an assumed business name, 7-ELEVEN
5 STORE NO. 14504, located at 7330 North Saint Louise Avenue, Portland, Oregon and engaged in the
6 sale of cigarettes manufactured and sold by defendants Philip Morris and RJ Reynolds and sold
7 cigarettes consumed by Derrick J. Lynch.

11.

9
10 Derrick J. Lynch was diagnosed in December 2017 with tongue cancer and ultimately died
11 from on June 27, 2018, caused by tobacco smoke from the following brands of cigarettes to which he
12 was addicted:

13 Winston (1982-1990s) manufactured and sold by R.J. Reynolds Tobacco Company, Inc.;

14 Marlboro (1990s-2002) manufactured and sold by Philip Morris USA, Inc.; and

15 Camel Filter (2002-2006 and 2012-2017) manufactured and sold by R.J. Reynolds Tobacco
16 Company, Inc.

12.

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

13.

1
2 The cigarette products designed, manufactured, advertised, marketed, distributed and/or sold by
3 Philip Morris and RJ Reynolds, when used as intended, were more likely than not to induce in
4 foreseeable users, such as Derrick J. Lynch, a state of addiction, habituation, habit formation and/or
5 dependence characterized by the user's inability to terminate or restrict their chronic use.

14.

7 At all times material to this action, the cigarette manufacturers, including but not limited to
8 Philip Morris, R.J. Reynolds Tobacco Company, as successor in interest to the United States
9 tobacco business of Lorillard Tobacco Company and also Brown & Williamson Tobacco
10 Corporation who is the successor by merger to The American Tobacco Company, British
11 American Tobacco, Lorillard Inc., Lorillard Tobacco Company, and Liggett Group LLC, Vector
12 Group Ltd., their predecessors, successors, agents and/or alter-egos (hereinafter referred to as
13 "cigarette manufacturers") knew the following:
14

- 15 a. That smoking cigarettes greatly increased the risk of a smoker developing COPD,
16 bladder cancer, tongue cancer, lung cancer, laryngeal cancer, emphysema, pharyngeal
17 cancer, heart disease, other forms of cancer, suffering a stroke and/or sustaining other
18 injuries and/or damage to the lungs, respiratory system, immune system, genetic makeup
19 and other related physical conditions when used as intended;
- 20 b. That the diseases and/or injuries listed above would be more likely experienced if users
21 such as Derrick J. Lynch did not restrict their intake of Defendants' cigarettes, or if they
22 began to use such products at an early age;
- 23 c. That use of the products as intended was more likely than not to lead to addiction,
24 habituation, physical and/or psychological dependence, particularly if begun at an early
25 age;
- 26 d. That termination or limitation of use would be exceedingly difficult if consumption was
initiated and that this difficulty would increase as cumulative consumption increased;
- e. That developing knowledge before and after 1970 demonstrated that previous users are
at great risk of harm, as set forth above, and should seek medical monitoring;

- 1 f. That cigarette sellers could develop a reasonably safe dose for foreseeable users;
- 2 g. That there were feasible improvements in design, composition, or manufacture of
3 cigarettes such as to materially decrease the foreseeable risk to users such as the Derrick
4 J. Lynch;
- 5 h. That switching to or continuing to smoke filtered, low tar, low nicotine and/or "light"
6 cigarettes would not be less hazardous because smokers would smoke more and/or alter
7 their smoking habits such that their intake of tar, nicotine and other harmful substances
8 would not be reduced; and
- 9 i. That the Federal Trade Commission ("FTC") method of measuring "tar & nicotine"
10 levels underestimated and did not accurately reflect the levels of tar and nicotine actually
11 delivered to an actual smoker.

12 15.

13 Philip Morris and RJ Reynolds, along with other tobacco manufacturers, and their predecessors
14 in interest engaged in a civil conspiracy to deceive the American and Oregon public, especially
15 smokers and prospective smokers, about the dangers of smoking cigarettes, including so-called "filter",
16 "light", and "low tar" cigarettes, as well as the addictive qualities of nicotine so as to maintain and
17 increase the sales of cigarettes. Philip Morris and RJ Reynolds are responsible and liable at law for all
18 overt acts of that conspiracy.

19 16.

20 The tobacco industry pushed its "open question" position that it would maintain for decades
21 -- that cigarette smoking was not a proven cause of lung cancer or other diseases; that cigarettes
22 were not injurious to health; and that more research on smoking and health issues was needed
23 before a conclusion could be reached. From the start of the conspiracy, the participating companies
24 told the public they accepted "an interest in people's health as a basic responsibility, paramount to
25 every other consideration in our business" and pledged "aid and assistance to the research effort into
26 all phases of tobacco use and health." The companies promised that they would fulfill the
obligations they had undertaken in the Frank Statement by funding independent research through

1 entities such as the Tobacco Industry Research Committee (“TIRC”), the Tobacco Institute (“TI”),
2 Council for Tobacco Research (“CTR”), and others.

3 17.

4 The companies made many promises over the decades to smokers, such as: agreeing to
5 “stop business tomorrow” if they thought their products were harming smokers; stating they had a
6 “special responsibility to help scientists determine the facts about tobacco use and health”; “the
7 industry accepted this responsibility in 1954 by establishing the Tobacco Industry Research
8 Committee”; promising to work with the United States Surgeon General and support research into
9 questions about tobacco and health; and if there were any bad elements discovered in cigarettes, the
10 manufacturers would remove them.

11 18.

12
13 Despite the cigarette manufacturers’ public statements, internally they were fully aware, that
14 they were making false and misleading promises to the public that would never come to fruition.

15 19.

16 The cigarette manufacturers were also intentionally manipulating ingredients in cigarettes,
17 such as different types of tobacco and nicotine, to make them easier to inhale and more addictive.

18 **Conspiratorial Involvement by Defendants’ Lawyers**

19 20.

20
21 Throughout the conspiracy, Philip Morris, RJ Reynolds, and their co-conspirators utilized
22 attorneys – both in-house and outside counsel – to further their conspiracy to conceal and
23 misrepresent the harms of smoking cigarettes, including so-called “filter”, “light”, and “low tar”
24 cigarettes, as well as the addictive qualities of nicotine. Philip Morris, RJ Reynolds, and their co-
25 conspirators engaged in a fraud with these attorneys both before any litigation was contemplated,

1 and once litigation against the tobacco companies began.

2 21.

3 Philip Morris USA Inc., R.J. Reynolds Tobacco Company, British American Tobacco
4 Company, American Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco
5 Company, and Liggett Group LLC, collectively and through their general counsel, formed the
6 Committee of Counsel and/or the Counsel of Six (hereafter “CC”), whose purpose was to oversee,
7 organize, operate, and execute a conspiracy to conceal and misrepresent the harms and addictive nature
8 of cigarettes.

9 22.

10 Beginning in the 1950s, Philip Morris USA Inc., R.J. Reynolds Tobacco Company, British
11 American Tobacco Company, American Tobacco Company, Lorillard Tobacco Company, Brown
12 & Williamson Tobacco Company, and Liggett Group LLC, through the CC, also retained outside
13 counsel to assist them in their conspiratorial activities, which included fraudulently concealing
14 and/or misrepresenting the harms of smoking and its addictive nature to the public.

15 23.

16 Philip Morris, RJ Reynolds and their co-conspirators retained as outside counsel several law
17 firms, including, Shook Hardy Bacon (“SHB”), Covington & Burling (“COVB”), Jacob Medinger
18 & Finnegan (“JMF”), Womble Carlyle (“WOM”), Cabell Medinger Forsyth & Decker “(CMFD”),
19 and others.

20 24.

21 Beginning in the 1950s, and continuing during the relevant time periods, the CC and the
22 outside law firms (hereafter “Lawyers”) conspired with Philip Morris, RJ Reynolds, and their other
23 co-conspirators and acted as agents, servants, representatives and/or employees of Philip Morris, RJ

1 Reynolds, and their co-conspirators in furtherance of the conspiracy.

2 25.

3 The Lawyers played a central role in creating, sustaining, and perpetuating Philip Morris, RJ
4 Reynolds, and the tobacco industry's conspiracy, including but not limited to the following:

- 5 a. The Lawyers directed "scientists" as to what research they should and should not
6 undertake;
- 7 b. The Lawyers were involved at every level of alleged scientific "research" pursued by
8 Defendants and the tobacco industry;
- 9 c. The Lawyers devised and carried out document destruction policies and took shelter
10 behind baseless assertions of attorney client privilege;
- 11 d. The Lawyers oversaw domestic smoking and health projects;
- 12 e. The Lawyers also worked with and coached scientists on how to be possible witness in
13 litigation, how to speak at legislative hearings, how to serve as consultants, and how to
14 conduct specific supposed research;
- 15 f. The Lawyers screened international scientists in order to eliminate those with views
16 opposing the conspiracy;
- 17 g. The Lawyers hid the source of the money used for special projects to make them appear
18 more acceptable to the public; and
- 19 h. The Lawyers ensured that Philip Morris, RJ Reynolds, and the tobacco industry did not
20 directly support legitimate projects related to smoking and health, and instead directed
21 the companies toward supporting alternative projects including junk science, attacks on
22 legitimate public health research, and research of scientifically implausible alternative
23 causation theories for smoking-related diseases.

24 26.

25 The Lawyers were also crucial to the development of mis-direction research that Philip
26 Morris, RJ Reynolds, and the tobacco industry funded through their selection of Directors for the
Center for Tobacco Research (CTR) Scientific Advisory Board (SAB) who imposed unnecessary
limits on the research funded by CTR.

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PAGE 9 – COMPLAINT

27.

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2 Additionally, the outside Lawyers went so far as to take over access to a database of
3 documents created by RJR's Research and Development division. The outside Lawyers banned the
4 tobacco companies and their in-house counsel from accessing these documents in order to conceal
5 the documents through a false assertion of alleged attorney work-product privilege.

28.

7 Further, the Lawyers played a major role in Philip Morris, RJ Reynolds, and their co-
8 conspirators witness development plans to perpetuate the conspiracy's "open question" position.

29.

10 As a result of the conduct of Defendants, which caused the injuries and subsequent death of
11 Derrick J. Lynch, he and his estate incurred economic damages for loss of income sustained by the
12 Derrick J. Lynch during the period between the onset of the symptoms of his tongue cancer and his
13 diagnosis in or about December 2017, until his death on June 27, 2018, pecuniary loss to the estate,
14 pecuniary loss to Derrick J. Lynch's survivors, and medical expenses and funeral and burial expenses,
15 all in the amount of \$750,000.00.

30.

18 As a result of the conduct of the Defendants which caused the wrongful death of Derrick J.
19 Lynch, his beneficiaries have been deprived of the services, companionship, society, support, love,
20 affection and guidance of Derrick J. Lynch for the remainder of his natural life. The Estate of Derrick
21 J. Lynch has suffered additional damages for physical pain and suffering of Derrick J. Lynch from the
22 onset of the symptoms of his tongue cancer and his diagnosis in or about December 2017, until his
23 death on June 27, 2018. Therefore, the Estate and Derrick J. Lynch's beneficiaries are entitled to
24 recover reasonable compensation for noneconomic damages in the amount of \$18,000,000.00.

FIRST CLAIM FOR RELIEF – FRAUD
(Manufacturers – Defendants Philip Morris and RJ Reynolds)

31.

Plaintiff incorporates the allegations of paragraphs 1 through 30 above.

32.

This count applies to the following Defendants ONLY: Philip Morris and RJ Reynolds.

33.

Beginning at an exact time unknown to the Plaintiff and Decedent, and continuing today, the cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a campaign designed to deceive the public, Derrick J. Lynch, physicians, the government and others as to the true dangers of smoking cigarettes. Defendants and other cigarette manufacturers carried out such scheme by concealing and misrepresenting their knowledge concerning:

- a. The results of their own research into the health dangers posed by smoking cigarettes, including but not limited to the results of mouse skin painting experiments which proved that Defendants' cigarettes did in fact contain carcinogenic materials;
- b. Their failure to conduct adequate testing to determine whether cigarette smoking did lead to cancer and other diseases;
- c. The importance of animal experiments in determining the ability of cigarettes to cause disease in humans;
- d. The importance of epidemiological evidence in determining the ability of cigarettes to cause disease in humans;
- e. The addictive and dependence producing nature of nicotine as contained in cigarette smoke;
- f. The risks of contracting cancer, including but not limited to lung cancer and throat cancer, from smoking cigarettes;
- g. The dose-response relationship between various carcinogenic substances contained in cigarette smoke and the risk of contracting cancer, including but not limited to lung cancer;

- 1 h. That reducing the number of cigarettes smoked per day would greatly reduce the risk
of contracting a cigarette related disease;
- 2 i. That smoking in excess of 5 cigarettes per day would likely lead to an addiction to or
3 dependence on nicotine;
- 4 j. The use of ammonia technology and/or certain tobacco blends to boost the pH of the
5 cigarette smoke so as to increase the ratio of the "free base" form of nicotine (which
6 is more easily absorbed by the smoker) to the acid salt form of nicotine (which is less
7 readily absorbed) so as to allow for greater absorption of nicotine by the smoker at
8 lower levels of total dose;
- 9 k. The use of tobacco high in nitrosamines, a potent carcinogen not found in green
10 tobacco leaf but created during the tobacco curing process;
- 11 l. The lack of credible scientific studies linking other human endeavors such as air
12 pollution, viruses and/or road tar to the increasing rate of lung cancer in this country;
- 13 m. That cessation of smoking, while reducing the risk of contracting certain cigarette
14 related diseases, does not eliminate all risk;
- 15 n. That cigarette smoking permanently alters certain receptor sites in the brain for
16 nicotine making it more likely such individual will become or continue to be addicted
17 to and/or dependent upon nicotine;
- 18 o. That use of mild tobaccos, re-constituted tobacco, tobacco casings and flavorants in
19 the manufacture of Defendants' cigarettes led to a cigarette less likely to trigger the
20 smoker's own biological self defense mechanisms, the smoke of which was easier to
21 inhale, inhale more deeply and hold in the lungs for a longer period of time which
22 resulted in increased doses of carcinogens, such as PAHs and nitrosamines, and
23 nicotine for the smoker even at lower levels of machine measured tar and nicotine
24 yields;
- 25 p. That smoke from Defendants' cigarette products caused damage to a smoker's
26 respiratory tract, including but not limited to the ciliary escalator system utilized by
the body to remove foreign particles from the lungs increasing the risk of the smoker
of contracting various respiratory ailments including but not limited to lung cancer,
bronchitis and pneumonia;
- q. That the carcinogens in cigarette smoke lead to the development of genetic mutations
within the lungs of smokers making such smokers more likely to develop lung cancer
when exposed to carcinogens, tumor promoters and/or tumor initiators including but
not limited to those such as PAHs and nitrosamines found within cigarette smoke.
- r. That switching to filtered, low tar, low nicotine and/or "light" cigarettes would not be
less hazardous because smokers would smoke more and/or alter their smoking habits

1 such that their intake of tar, nicotine and other harmful substances would not be reduced;

2 s. That the Federal Trade Commission ("FTC") method of measuring "tar & nicotine"
3 levels underestimated and did not accurately reflect the levels of tar and nicotine actually
4 delivered to an actual smoker; and

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

11 34.

12 The cigarette manufacturers, including Defendants herein, have concealed vast amounts of
13 knowledge and made literally hundreds of misrepresentations to Derrick J. Lynch and others
14 similarly situated over the course of the last 65 years regarding the health hazards of cigarettes and
15 their addictive nature. Plaintiff is unable to allege in full all such knowledge that the cigarette
16 manufacturers and their co-conspirators, THE TOBACCO INSTITUTE, INC. ("TI") formed in
17 1958, TOBACCO INDUSTRY RESEARCH COMMITTEE ("TIRC") formed in 1954, and
18 COUNCIL for TOBACCO RESEARCH ("CTR") formed in 1964 and previously known as the
19 TIRC, as well as attorneys and law firms retained by the cigarette manufacturers have withheld, or
20 misrepresented over the last almost 65 years both because she does not have access to this
21 information, and because to allege each and every such concealment and misrepresentation of
22 material fact herein would entail hundreds of pages of pleadings. Indeed, it is the cigarette
23 manufacturers themselves, including Defendants herein, which have this knowledge and
24 information, and are in the best position to know the contents of each and every such concealed fact
25 and each misrepresentation and/or false statement.

26 35.

The Defendants, along other cigarette manufacturers and the Council for Tobacco

1 Research (CTR), The Tobacco Industry Research Committee (TIRC) and Tobacco Institute (TI),
2 along with attorneys and law firms retained by the Defendants, unlawfully agreed to conceal,
3 omit and misrepresent, and did in fact conceal, omit, and misrepresent, information regarding the
4 health effects of cigarettes and or their addictive nature with the intention that smokers and the
5 public would rely on this information to their detriment so as to maintain and increase the sales
6 of cigarettes. The Defendants agreed to execute the scheme by performing the above-mentioned
7 unlawful acts and by doing lawful acts by unlawful means. The Defendants are responsible and
8 liable at law for all overt acts of that conspiracy.

9
10 36.

11 Phillip Morris USA, R.J. Reynolds, and later Liggett Group LLC along with other entities
12 including the TIRC (CTR), TI and persons including their in-house lawyers and outside retained
13 counsel entered into a conspiracy in the 1950s to conceal the harms of smoking cigarettes.

14 37.

15 The cigarette manufacturers, including Defendants herein, carried out their campaign of
16 concealment and misrepresentation by concealing and misrepresenting facts, information and
17 knowledge about the health dangers of smoking, including addiction, through fraudulent statements,
18 false statements and/or misrepresentations of material facts. They concealed their actual knowledge
19 concerning their own negative health and addiction research results and their manipulation and
20 control of the nicotine content of their products to create and perpetuate smokers' addiction to
21 cigarettes. The success of their conspiracy depended upon the concerted action of the cigarette
22 manufacturers (in a so-called "gentleman's agreement"), for otherwise the revelation by one
23 company of what it knew about the health consequences of smoking, the availability of a "safe" or
24 "safer" cigarette and the addictive nature of the manufacturers' cigarette would have thwarted the

1 conspiracy.

2 38.

3 The cigarette manufacturers, including Defendants herein, through their employees, agents
4 and representatives made numerous public statements from 1953 through 2000 directly denying the
5 actual health harms and addictive nature of smoking cigarettes.

6 39.

7 The cigarette manufacturers, including Defendants herein, continued their conspiratorial acts
8 in furtherance of the conspiracy related to the harms of smoking including but not limited to the
9 following acts:

- 10 a. They agreed falsely to represent to Derrick J. Lynch and others similarly situated that
11 questions about smoking and health would be answered by an unbiased, and trustworthy
12 source;
- 13 b. They misrepresented and confused the facts about the health dangers of smoking,
14 including addiction. The cigarette manufacturers claimed, falsely, that there is
15 insufficient “objective” research to determine if cigarette smoking causes disease and
16 that cigarettes are not addictive;
- 17 c. The cigarette manufacturers, including Defendants herein, used lawyers to misdirect
18 what purported to be objective scientific research, yet maintained to Derrick J. Lynch
19 and others similarly situated that such objective scientific research was being conducted
20 and that the results of such research would be made public;
- 21 d. To discourage meritorious litigation by plaintiffs injured due to cigarettes, they engaged
22 in “scorched earth” litigation tactics in combination with suppressing and distorting
23 evidence in order to protect the cigarette manufacturers, including Defendants herein,
24 existence and profits;
- 25 e. Marketing and/or advertising “filter” cigarettes as safer or less hazardous to health than
26 non-filtered cigarettes;
- f. By designing, selling and marketing so called “Light” and “ultra lights” cigarettes as
being substantially lower in tar and nicotine than regular, or non-light cigarettes and
therefore healthier or safer for consumers. The cigarette manufacturers 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” and “ultra lights” cigarettes to consumers as a safer

1 alternative. The cigarette manufacturers manipulated the design of cigarettes to produce
2 test results that were artificially low. Furthermore, the cigarette manufacturers knew
3 that “Light” and “ultra lights” 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;

- 4 g. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- 5 h. By continuing to fraudulently market and sell “mild”, “low tar”, and “light” cigarettes
6 through 2010 despite knowing they were no safer than full flavor cigarettes and knowing
7 consumers perceived them as safer. The cigarette manufacturers, including Defendants
8 herein, were ultimately prohibited by Congress from marketing “mild”, “low tar”, and
9 “light” cigarettes when Congress passed the Family Smoking Prevention and Tobacco
10 Control Act, Public Law 111-31 (June 22, 2009), which became effective on June 22,
11 2010. Despite the congressional ban, the cigarette manufacturers, including Defendants
12 herein, have continued to market and sell even today the same “mild”, “low tar”, and
13 “light” cigarettes, only now these cigarettes are marketed with a new coloring scheme
instead of the banned light descriptors. These cigarettes are the same or substantially the
same cigarettes as the pre-prohibition cigarettes. Consumers often perceive the color
descriptors on packaging as suggesting less harmful to smoke than regular or full flavor
brands. The cigarette manufacturers, including Defendants herein, is thus able to
continue fraudulently misrepresenting the “light”, “low tar” and “mild” cigarette
marketing the ban was designed to prevent;
- 14 i. By continuing even today to fraudulently market and sell multiple brands as “filtered”
15 knowing that smokers wrongly believe that filtered cigarettes reduce the harms of
16 smoking. The word “filter” implies filtration of the smoke and therefore relative safety.
17 However, the Defendants and the industry know filtered cigarettes provide no health
benefit as proven by numerous reliable epidemiologic studies that have shown that
filtered cigarettes are no safer than non-filtered cigarettes; and
- 18 j. 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 40.

21 Despite their "promise" which purposely created the illusion that scientific research into the
22 dangers of smoking was being conducted, the results of which would be made public, Philip Morris,
23 RJ Reynolds, and their co-conspirators concealed information regarding the lack of bona fide
24 research being done by the TIRC and CTR into the health hazards of smoking, and the lack of funds
25 being provided for research by the TIRC and CTR into the health hazards of cigarettes, which was

1 the purported purpose for which the TIRC and CTR were established.

2 41.

3 Joint industry efforts undertaken by the TIRC and the CTR were neither disinterested nor
4 objective. Industry documents show that CTR functioned not for the promotion of scientific goals,
5 but for the purposes of public relations, politics, and positioning for litigation. The TIRC and CTR
6 were used to support an industry strategy of denying or creating doubt that smoking causes disease.
7 This material information was withheld from the Decedent and the public.

8 42.

9 The cigarette manufacturers knew that cigarettes were dangerous and addictive. It became
10 the practice, purpose and goal of the cigarette manufacturers to question any scientific research
11 which concluded that cigarettes were a health hazard. They did this through media campaigns,
12 mailings to doctors and other scientific professionals, and through testimony before governmental
13 bodies.
14

15 43.

16 The industry paid for advertisements in major newspapers to attack legitimate research.
17 For example, in 1969 the American Tobacco Company, a predecessor to R.J. Reynolds Tobacco
18 Company stated in the New York Times, “[w]e believe the anticigarette theory is a bum rap.”
19

20 44.

21 The industry’s purpose was to give smokers what one industry executive called a
22 “crutch” that would justify their continued smoking.

23 45.

24 Rather than making their research public as they had represented, Defendants and the
25 industry publicly denied and suppressed the results of their research.

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46.

Philip Morris, RJ Reynolds, and their co-conspirators continued to engage in a course of conduct where they represented to the public many times throughout the years that they would conduct research and disclose results to the public, while at the same time either hiding any potentially damning results or not conducting bona fide research at all.

47.

Throughout the years, Philip Morris, RJ Reynolds, and their co-conspirators have continued to state that cigarettes were not dangerous, and they would either remove harmful constituents or stop making cigarettes altogether.

48.

Philip Morris, RJ Reynolds, and their co-conspirators continued to make these and similar statements well into the 1990s with the goal of convincing smokers to keep smoking, not reducing their smoking, and/or not quitting.

49.

Philip Morris, RJ Reynolds, and their co-conspirators promoted their message through a large number of press releases and statements and through less obvious methods, including influencing the content of apparently neutral articles and cultivating opinion leaders who would convey their message. Defendants and the tobacco industry communicated their message through all forms of available media, including newspapers, magazines, and television.

50.

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 relationships and that there was no proof that a specific tobacco component caused a specific

1 disease and that cigarette smoking was not addictive.

2 51.

3 Defendants Philip Morris, RJ Reynolds, and other co-conspirator cigarette manufacturers
4 claimed and misused the attorney-client privilege to improperly shield as many documents as
5 possible from disclosure and destroyed and/or refused to produce documents related to health issues
6 and plaintiffs' claims.

7 52.

8 During its four decade history the TIRC/CTR never acknowledged that smoking had been
9 proven to be a cause of cancer or other serious diseases in smokers while maintaining publicly
10 that smoking had not been proven to cause disease, even though the vast majority of CTR funded
11 scientists themselves believed that cigarette smoking was responsible for a wide range of serious,
12 and often, fatal diseases.

13 53.

14 The aforementioned information and knowledge concealed and suppressed by the cigarette
15 manufacturers, including Defendants herein, and their co-conspirators was material information
16 which the Defendants were under a duty to disclose and which it had assumed the duty of disclosing
17 through repeated public statements concerning tobacco and health, the need for more research, and
18 the open question about disease causation.
19

20 54.

21 The aforementioned information and knowledge concealed and suppressed by the cigarette
22 manufacturers, including Defendants herein, and their co-conspirators was concealed for the
23 purposes of inducing Derrick J. Lynch to smoke, fail to quit or fail to reduce consumption for the
24 Defendants' own pecuniary gain.
25

55.

1
2 The aforementioned acts, false statements and misrepresentations which were made and
3 caused to be made by the cigarette manufacturers, including Defendants herein, and their co-
4 conspirators were made and caused to be made with knowledge of their falsity and in reckless
5 disregard of the truth.

56.

6
7 The aforementioned acts, false statements and misrepresentations were made and caused to
8 be made by the cigarette manufacturers, including Defendants herein, and their co-conspirators for
9 the purpose of inducing Derrick J. Lynch and others similarly situated to rely on such false
10 statements and misrepresentations so as to induce persons such as Derrick J. Lynch to smoke, fail to
11 quit or fail to reduce consumption.
12

57.

13
14 Derrick J. Lynch did not know that Defendants' representations were false and reasonably
15 relied on, and suffered as a result of Defendants' misrepresentations.

58.

16
17 Derrick J. Lynch and others similarly situated justifiably relied upon the cigarette
18 manufacturers, including the Defendants herein, the tobacco industry, the TIRC and the CTR to
19 disseminate knowledge and information which they possessed regarding the health hazards of
20 cigarettes, especially after the industry chose to repeatedly and publicly deny the harms of smoking
21 and the addictive nature of cigarettes/nicotine. Derrick J. Lynch, before and during the course of his
22 smoking history heard some of these false and misleading statements and/or similar statements
23 made directly or indirectly by the Defendants, believed some or all of the Defendants' false and
24 misleading statements and relied to his detriment and smoked and continued to smoke cigarettes
25

1 based on such false and misleading statements. The aforementioned information and knowledge
2 concealed and misrepresented by the cigarette manufacturers, including Defendants herein, and its
3 co-conspirators was concealed for the purposes of inducing Derrick J. Lynch to smoke, fail to quit
4 or reduce consumption. Derrick J. Lynch was unaware of the extent of the danger of the
5 Defendants' cigarette products, the addictive nature of Defendants' cigarette products, and that
6 light, low tar, low nicotine and filtered cigarettes were just as dangerous as unfiltered cigarettes. The
7 knowledge and information concealed and misrepresented by the cigarette manufacturers, including
8 the Defendants herein, which had superior knowledge regarding the health aspects of cigarettes than
9 Derrick J. Lynch.

10
11 59.

12 During differing time periods of Derrick J. Lynch's smoking, he heard, read and saw
13 statements and advertisements by the Defendants, and their co-conspirators, agents and
14 representatives, including, but not limited to: that smoking was not harmful or addictive, smoking
15 had not been proven to be harmful or addictive, and other similar statements; and that light, low tar
16 and filter cigarettes were less harmful. Derrick J. Lynch believed the statements, began and
17 continued to smoke, and/or made decisions regarding the cigarette brands he smoked based on those
18 statements and advertisements.

19
20 60.

21 As a direct and proximate result of the aforementioned concealment and misrepresentation
22 of material information by the cigarette manufacturers, including Defendants herein, and its co-
23 conspirators, Derrick J. Lynch, smoked and/or continued to smoke Defendants' cigarette products
24 which caused him to develop injuries, including but not limited to tongue cancer, in addition to
25 other related physical conditions which resulted in and directly caused him to suffer severe bodily

1 injuries and his ultimately death.

2 **SECOND CLAIM FOR RELIEF - FRAUD**
3 **(Law Firms – Defendants Shook, Hardy & Bacon L.L.P., Covington & Burling L.L.P.,**
4 **Greenspoon Marder L.L.P., and Womble Bond Dickinson L.L.P.)**

5 61.

6 Plaintiff incorporates the allegations of paragraphs 1 through 60 above.

7 62.

8 This count applies to the following Defendants ONLY: Shook, Hardy & Bacon L.L.P.,
9 Covington & Burling L.L.P., Greenspoon Marder LLP, and Womble Bond Dickinson L.L.P.

10 63.

11 The Defendant law firms knew Philip Morris, RJ Reynolds, and its co-conspirators, were
12 concealing and misrepresenting the health effects and addictive nature of smoking cigarettes to
13 the public, government officials, and health authorities, but nevertheless continued to provide
14 them with substantial assistance and encouragement on carrying out the fraud.

15 64.

16 The Defendant law firms' actions and participation in the furtherance of the conspiracy crossed
17 their ethical and legal role and or responsibilities as attorneys and constituted unlawful and tortious
18 conduct.

19 65.

20 The Defendant law firms breached their ethical obligations as attorney, for Defendants
21 Philip Morris, RJ Reynolds, and the other co-conspirator cigarette manufacturer clients, knowing
22 that their tortious conduct was likely to cause injury and harm to third parties.

23 ///

24 ///

66.

1
2 The Defendant law firms, while holding themselves out as law firms, were not providing
3 legitimate legal representation to Defendants Philip Morris, RJ Reynolds, and the other co-
4 conspirator cigarette manufacturer clients, but instead participated fully and in all aspects of the
5 conspiracy.

67.

7 The Defendant law firms stopped being counsel and became co-conspirators.

68.

8
9 The Defendant law firms provided substantial assistance to Philip Morris, RJ Reynolds,
10 and other tobacco manufacturers in that they oversaw, directed, actively participated, and
11 managed the conspiracy in furtherance of the concealment and misrepresentation of the health
12 effects and addictive nature of smoking.

69.

13
14 The Defendant law firms were instrumental in carrying out the conspiracy to conceal and
15 misrepresent the health effects and addictive nature of smoking cigarettes, through various
16 means of assisting Philip Morris, RJ Reynolds, and their co-conspirators, including, but not
17 limited to, the following:
18

- 19
- 20 a. Controlling the research conducted by Philip Morris, RJ Reynolds, and their co-
21 conspirators and outside consultants in order to prevent any negative
22 research from being published regarding cigarettes;
 - 23 b. Identifying what research that Philip Morris, RJ Reynolds, and their co-
24 conspirators would need to fabricate in order to counter emerging research that
25 threatened the conspiracy;
 - 26 c. Establishing entire areas of research that were not be performed by Philip Morris,
RJ Reynolds, and its co-conspirators own internal researchers to avoid negative
research against cigarettes;

- 1 d. Misdirecting research to focus on other causes of smoking related diseases to
2 deflect from cigarette smoking causation of disease;
- 3 e. Directing Philip Morris, RJ Reynolds, and their co-conspirators to fund scientific
4 research characterized as “not worth a damn” while also outright refusing to
5 entertain proposals from credible groups with scientific positions contrary to that;
- 6 f. Identifying and establishing relationships with “friendly” scientific witnesses,
7 subsidizing their research with grants from tobacco funded vehicles, and hiding
8 the relationship between those witnesses and the industry;
- 9 g. Directing Philip Morris, RJ Reynolds, and their co-conspirators to pay scientists
10 that had previously received industry funding, in order to prevent them from
11 going public with negative findings;
- 12 h. Devising and carrying out document destruction to protect the conspiracy;
- 13 i. Designing and controlling organizations to hide negative industry documents
14 behind the guise of work product privilege;
- 15 j. Coaching Philip Morris, RJ Reynolds, and their co-conspirators to respond to
16 public inquiries without exposing misrepresentations or omissions;
- 17 k. Making their own misrepresentations to the public about the scientific evidence
18 on smoking and health; and
- 19 l. Attacking credible scientific evidence with the research the law firms directed
20 Philip Morris, RJ Reynolds, and their co-conspirators to engineer.

21 70.

22 The Defendant law firms concealed and misrepresented the harms and addictive nature of
23 smoking in concert with, and at the direction of, Philip Morris, RJ Reynolds, and their co-
24 conspirators. The Defendant law firms’ ultimate goal was to enable Philip Morris, RJ Reynolds,
25 and their co-conspirators to maximize the sale of cigarette products throughout the United States,
26 including cigarette products sold in Oregon to consumers, including Derrick J. Lynch.

71.

The Defendant law firms’ concerted efforts to conceal and misrepresent the harms and
addictive nature of smoking cigarettes, even if separately considered from Philip Morris, RJ

1 Reynolds, and their co-conspirators' fraud, was fraudulent and resulted in harm to Derrick J.
2 Lynch.

3 72.

4 The Defendant law firms were not simply providing traditional attorney-client assistance,
5 but were acting outside the scope of the attorney-client relationship in assisting, guiding, and
6 directing the fraud alongside and on behalf of Philip Morris, RJ Reynolds, and their co-
7 conspirators to conceal and misrepresent the harms and addictive nature of smoking cigarettes.

8 73.

9 The Defendant law firms knew or had reason to know that their fraudulent conduct,
10 whether occurring in or outside the State of Oregon, and that of Philip Morris, RJ Reynolds, and
11 their co-conspirators, were broadly directed throughout the United States, including to the State
12 of Oregon, and would have a substantial effect on consumers located in Oregon, including
13 Derrick J. Lynch.

14 74.

15 As a direct and foreseeable result of the law firms' fraudulent conduct in assisting Philip
16 Morris, RJ Reynolds, and their co-conspirators conceal and misrepresent the health effects and
17 addictive nature of cigarettes, consumers in Oregon, including Derrick J. Lynch, were not aware
18 of the true harms and addictive nature of cigarettes. Nor were such consumers aware that so-
19 called "filter", "light" and "low tar" cigarettes were not any safer than regular cigarettes. Derrick
20 J. Lynch, and other similarly situated Oregonian consumers, justifiably relied on Philip Morris,
21 RJ Reynolds, and their co-conspirators, as well as their agents, such as the law firms herein, as
22 alleged in Count I above.

23 ///

75.

As a direct and proximate result of the aforementioned concealment and misrepresentation of material information by the law firms on behalf of Philip Morris, RJ Reynolds, and their co-conspirators, Derrick J. Lynch, smoked and/or continued to smoke Philip Morris and RJ Reynolds' cigarette products which caused him to develop injuries, including but not limited to tongue cancer, in addition to other related physical conditions which resulted in and directly caused him to suffer severe bodily injuries and his untimely death.

**THIRD CLAIM FOR RELIEF - PRODUCTS LIABILITY
(Manufacturers – Defendants Philip Morris and RJ Reynolds)**

76.

Plaintiff incorporates the allegations of paragraphs 1 through 75 above.

77.

This count applies to the following Defendants ONLY: Philip Morris and RJ Reynolds.

78.

At all material times, Defendants designed, distributed, marketed, advertised, supplied and sold the Winston, Marlboro, and Camel Filter cigarettes which caused Derrick J. Lynch's tongue cancer, in addition to other related physical conditions, and his ultimately death.

79.

At the time Defendants designed, manufactured, advertised, marketed, distributed and sold the aforesaid cigarette products, such products were expected to, and did, reach Derrick J. Lynch in a condition without substantial change from the condition in which such products were when within the possession of Defendants.

80.

At all material times, cigarettes including Winston, Marlboro, and Camel Filter, sold by

1 Defendants were defective and unreasonably dangerous and, in a condition not contemplated by
2 ultimate consumer, in ways including, but not limited to, one or more of the following respects:

- 3 a. Defendants designed and manipulated the pH of natural tobacco smoke so as to make it
4 milder, more inhalable and a more effective vehicle for nicotine;
- 5 b. Defendants manipulated the levels of nicotine in their cigarettes by a combination of design
6 and manufacturing processes and purposely regulated nicotine in their cigarettes to specific
7 levels which they knew would create and maintain nicotine addiction in smokers;
- 8 c. Defendants placed additives in cigarettes for multiple purposes including, flavorings and
9 bronchodilators, to enhance the potency of the nicotine, and to make cigarettes easier to
10 inhale and addictive;
- 11 d. Defendants designed cigarettes to contain tar, nicotine, carcinogens, toxic gasses, and
12 other substances deleterious, poisonous, and highly harmful to Derrick J. Lynch and
13 similarly situated smokers, and continued to do so even after it became feasible to
14 design and manufacture reasonably comparable products not containing those
15 substances or containing less of them;
- 16 e. Defendants' design failed to filter the harmful substances so that during ordinary use,
17 such materials would not be liberated into the air and/or breathed by smokers such as
18 Derrick J. Lynch; and
- 19 f. Defendants' design utilized tobacco and/or re-constituted tobacco that was high in
20 nitrosamines, nitrates, nicotine, carcinogens, and other substances deleterious,
21 poisonous, and highly harmful when alternative, less dangerous, materials were
22 available to be used in the manufacturing process.

23 81.

24 The Defendants' Winston, Marlboro, and Camel Filter cigarette products were unreasonably
25 dangerous because a less dangerous design and/or modification was economically and scientifically
26 feasible.

82.

Derrick J. Lynch was unaware of the hazards and defects in the cigarette products of the
Defendants, to-wit: That exposure to said products would cause Derrick J. Lynch to develop
cigarette related disease(s) which made said products unsafe for use.

83.

As a direct and proximate result of the aforementioned product defects, Derrick J. Lynch suffered injuries, including but not limited to tongue cancer, in addition to other related physical conditions which resulted in and directly caused him to suffer severe bodily injury and his untimely death.

**FOURTH CLAIM FOR RELIEF – NEGLIGENCE
(Manufacturers – Defendants Philip Morris and RJ Reynolds)**

84.

Plaintiff incorporates the allegations of paragraphs 1 through 83 above.

85.

This count applies to the following Defendants ONLY: Philip Morris and RJ Reynolds.

86.

The products complained of, Winston, Marlboro, and Camel Filter cigarettes, were designed, manufactured, advertised, marketed, distributed and/or sold by the Defendants which Derrick J. Lynch used and smoked in his daily life.

87.

Plaintiff alleges Derrick J. Lynch was exposed to Defendants' Winston, Marlboro, and Camel Filter cigarette products as a smoker and/or bystander. Each exposure to such products caused Derrick J. Lynch to inhale smoke from said products which caused him to develop tongue cancer, in addition to other related physical conditions, and ultimately his death. Each exposure to such products was harmful and caused or contributed substantially to Derrick J. Lynch's aforementioned injuries. Derrick J. Lynch's aforementioned injuries arose out of, were connected to and incidental to the design, manufacture, advertisement, marketing, distribution and/or sale by the Defendants of their cigarette products.

88.

1
2 The aforementioned damages are directly and proximately caused by the negligence of the
3 Defendants, in that they produced, sold and otherwise placed into the stream of intrastate and
4 interstate commerce, cigarette products which the Defendants knew, or, in the exercise of ordinary
5 care should have known, were deleterious and highly harmful to Derrick J. Lynch's health and well-
6 being. The Defendants, prior to selling and/or distributing their cigarette products, to which Derrick
7 J. Lynch was exposed, knew that exposure to cigarette smoke was harmful to human beings and that
8 it could cause injuries including, but not limited to, COPD, bladder cancer, tongue cancer, lung
9 cancer, laryngeal cancer, emphysema, heart disease, other forms of cancer, and result in death. The
10 Defendant also knew that Derrick J. Lynch and others similarly situated would use and be exposed
11 to their cigarette products in such a way as to cause Derrick J. Lynch to inhale the smoke from said
12 products.
13

89.

14
15 Plaintiff alleges that there were methods of design and manufacture available and/or known
16 to the Defendants and unknown to Derrick J. Lynch which could have been used by Defendants in
17 their design and manufacture of Winston, Marlboro, and Camel Filter cigarette products to which he
18 was exposed to make such products less dangerous. Defendants were in the business of designing,
19 manufacturing, advertising, marketing, distributing and/or selling cigarette products during the
20 times pertinent to this suit, and knew that Derrick J. Lynch and others similarly situated would come
21 in contact with its cigarette products, and would be exposed to the inhalation of the smoke from said
22 products which resulted in the development of fatal and life threatening injuries including, but not
23 limited to, tongue cancer, and other life threatening diseases. Defendants were negligent in all of
24 the following respects, same being the foreseeable cause of Derrick J. Lynch's injuries, which acts
25

1 of negligence have continued to the present time:

- 2 a. In designing and developing cigarette products that were more mild, had better taste
3 and contained nicotine so that foreseeable users, such as Derrick J. Lynch, would find
4 smoking Defendants' products pleasurable which in turn would lead Derrick J.
5 Lynch, and others similarly situated, to begin smoking and/or to increase
6 consumption;
- 7 b. In failing to develop and utilize alternative design, manufacturing methods and/or
8 materials to reduce and/or eliminate harmful materials and/or characteristics from the
9 cigarette products Defendants designed, manufactured, advertised, marketed,
10 distributed and/or sold;
- 11 c. In continuing to manufacture, distribute and sell defective and unreasonably
12 dangerous cigarette products when the Defendants knew at the time of said
13 manufacture, distribution and sale that such defective and unreasonably dangerous
14 products could cause, and foreseeably would cause injuries including, but not limited
15 to, tongue cancer, COPD, emphysema, throat cancer, laryngeal cancer, lung cancer
16 and/or other forms of cancer to foreseeable users, such as Derrick J. Lynch, when used
17 as intended;
- 18 d. In concealing information while affirmatively misrepresenting to Derrick J. Lynch and
19 other members of the public in advertising, "informational" communications,
20 sponsorship of sports activities, concerts, and other events, testimony and public
21 statements by officers, agents and employees of the cigarette manufacturers, by labels
22 and otherwise, that the cigarette products manufactured, distributed and/or sold were
23 safe and/or not proven to be dangerous in their ordinary and foreseeable use, which
24 material misrepresentations induced Derrick J. Lynch to unknowingly use and/or
25 continue to use Defendants' cigarette products and expose himself to the hazards of
26 developing disease and/or suffering injuries including, but not limited to, COPD,
bladder cancer, tongue cancer, emphysema, throat cancer, laryngeal cancer, lung
cancer and/or other forms of cancer;
- e. In failing to test and/or adequately test cigarette products before offering them for
sale and use by Derrick J. Lynch, and other persons similarly situated;
- f. Avoiding testing of tobacco, tobacco smoke and cigarettes in a way that would be likely to
show the relationship between human disease to smoking in order to allow Defendants to
claim ignorance of the relationship between human disease and smoking;
- g. In failing to remove and recall all of said defective and unreasonably dangerous
cigarette products from the stream of commerce and the marketplace upon
ascertaining that said defective and unreasonably dangerous products would cause
COPD, bladder cancer, tongue cancer, emphysema, throat cancer, laryngeal cancer,
lung cancer, lung disorders, and various forms of cancer, some or all of which are
permanent and fatal;

- 1 h. In manipulating, failing to reduce and/or failing to eliminate nicotine from cigarette
2 products to prevent Derrick J. Lynch, who was addicted to the nicotine in the cigarette
3 products, from quitting and/or reducing consumption;
- 4 i. In failing to filter the harmful substances so that during ordinary use, such materials
5 would not be liberated into the air and/or breathed by the smoker such as Derrick J.
6 Lynch;
- 7 j. In including nicotine, or artificially high levels of nicotine, in Defendants' cigarette
8 products to prevent Derrick J. Lynch and other persons similarly situated from
9 quitting and/or reducing consumption;
- 10 k. In manipulating the levels of nicotine by a combination of design and manufacturing
11 processes and purposely regulating nicotine delivery in its cigarettes to specific levels
12 which it knew would create and maintain nicotine addiction in smokers;
- 13 l. In designing and manipulating the pH of natural tobacco smoke so as to make it milder,
14 more inhalable and a more effective vehicle for nicotine;
- 15 m. In utilizing tobacco and/or re-constituted tobacco that was high in nitrosamines,
16 nitrates, nicotine, carcinogens, and other substances deleterious, poisonous, and
17 highly harmful when alternative, less dangerous, materials were available to be used
18 in the manufacturing process;
- 19 n. By designing and manufacturing its cigarettes to be inhalable and thus unreasonably
20 dangerous;
- 21 o. By placing additives and ingredients in cigarettes to making them easier to inhale and
22 addictive;
- 23 p. In selling and distributing products which they knew or should have known contained
24 addictive substances capable of and likely to induce irresistible physical and psychological
25 addiction when used in a foreseeable manner; and
- 26 q. In failing to manufacture and sell cigarettes without the characteristics described above
although it was capable of doing so, thus depriving Derrick J. Lynch of the opportunity to
smoke a safer cigarette.

90.

As a direct and proximate result of the aforementioned negligence of the Defendants,
Derrick J. Lynch suffered injuries, including but not limited to tongue cancer, in addition to other
related physical conditions which resulted in and directly caused him to suffer severe bodily injuries

1 and his untimely death.

2 **FIFTH CLAIM FOR RELIEF - STRICT LIABILITY**
3 **(Distributor/Retailer – Defendants Plaid Pantries, Inc., Plaid Pantry, Inc., WSCO**
4 **Petroleum Corp., 7-Eleven, Inc., and 7-Eleven Store No. 14504)**

5 91.

6 This count applies to the following Defendants ONLY: Plaid Pantries, Inc., Plaid Pantry,
7 Inc., WSCO Petroleum Corp., 7-Eleven, Inc., and 7-Eleven Store NO. 14504. (“retailer
8 defendants”).

9 92.

10 All of the allegations contained in paragraphs 1 through 92 are realleged herein.

11 93.

12 The Winston, Marlboro, and Camel Filter cigarettes sold by the retailer defendants were
13 defectively designed, manufactured, and marketed for all of the reasons set forth above.

14 94.

15 The dangerously defective cigarettes sold to Derrick J. Lynch by the retailer Defendants were
16 in the same condition as when they left the manufacturers and caused him to suffer injury and disease
17 including tongue cancer and other related physical conditions, and his untimely death.

18 95.

19 As a direct and proximate result of the dangerously defective cigarettes sold by the retailer
20 Defendants, Derrick J. Lynch suffered injuries, including but not limited to tongue cancer, in
21 addition to other related physical conditions which resulted in and directly caused him to suffer
22 severe bodily injuries and his untimely death.

23 ///

24 ///

1 **PUNITIVE DAMAGES**

2 96.

3 Defendants have shown a reckless and outrageous indifference to a highly unreasonable risk of
4 harm, and have acted with a conscious indifference to the health, safety and welfare of others.
5 Defendants have misrepresented the health dangers and the safety and the addictiveness of their
6 cigarettes to maintain and increase its income and profits. Plaintiff will move at the appropriate time
7 for permission to add a claim for punitive damages based on Defendants’ misconduct.

8 WHEREFORE, plaintiff prays for a judgment in favor of Plaintiff against Defendants, as
9 follows:

- 10 1. Economic damages in the amount of \$750,000.00;
- 11 2. Non-economic damages in the amount of \$18,000,000.00;
- 12 3. Costs and disbursements incurred herein; and
- 13 4. Such further relief as this court deems just.

14 DATED this 11th day of June, 2021.

15 **PAULSON COLETTI**

16 /s/ Jane Paulson
17 Jane Paulson, OSB No. 911804
18 Email: jane@paulsoncoletti.com
Of Attorneys for Plaintiff

19 **THE ALVAREZ LAW FIRM**

20 /s/ Alex Alvarez
21 Alex Alvarez
22 Email: alex@talf.law
23 Of Attorneys for Plaintiff (*Pro Hac Vice*)

24 Trial Attorneys: Same

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