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

DELORES CHRISTINE POPMA, in her
capacity as Personal Representative of
the Estate of SUSAN RENE POPMA,

Plaintiff,

v.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, INC., a foreign corporation;
SANTA FE NATURAL TOBACCO
COMPANY, 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; MARKET DEVELOPMENT &
MANAGEMENT, INC., an Oregon
corporation; NOLZ, LLC d/b/a CLYDE'S
UNION SERVICE; PLAID PANTRIES,
INC., an Oregon corporation; PLAID
PANTRY, INC., an Oregon corporation;
H.V. TALEBI, INC., an Oregon corporation;
ESAU CORPORATION, an Oregon
corporation,

Defendants.

Case No.

COMPLAINT
(Product Liability; Negligence and
Fraud)

CLAIM FOR \$18,750,000.00

FEE AUTHORITY
ORS 21.160(1)(e) - \$1,178.00

CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION

JURY TRIAL REQUESTED

Plaintiff alleges:

GENERAL ALLEGATIONS AND REMEDIES SOUGHT

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1.

Delores Christine Popma is the duly appointed Personal Representative of the Estate of Susan Rene Popma (hereinafter “the Estate”), who died on June 23, 2018, at age 46.

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 Susan Rene Popma.

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 Susan Rene Popma.

4.

Santa Fe Natural Tobacco Company (“Santa Fe”) is a foreign corporation engaged in the design, manufacture, sale, marketing and distribution of cigarettes for consumption in Oregon and sold cigarettes consumed by Susan Rene Popma.

5.

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 Susan Rene Popma.

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1
2 Covington & Burling L.L.P. (“CB”) is a foreign limited liability partnership engaged in
3 providing legal services throughout the United States and Oregon. CB has provided legal services to
4 Philip Morris and RJ Reynolds, either directly or indirectly, in support of the distribution and sale of
5 cigarettes in the state of Oregon, cigarettes consumed by Susan Rene Popma.

7.

7
8 Greenspoon Marder LLP (“GM”) is a foreign limited liability partnership engaged in providing
9 legal services throughout the United States and Oregon, including through its office in Multnomah
10 County, Oregon. GM is the successor by merger to, and assumed the liabilities of, Jacob, Medinger &
11 Finnegan, LLP, which provided legal services to Philip Morris and RJ Reynolds, either directly or
12 indirectly, in support of the distribution and sale of cigarettes in the state of Oregon, cigarettes
13 consumed by Susan Rene Popma.

8.

14
15 Womble Bond Dickinson (US) LLP (“WBD”) is a foreign limited liability partnership engaged
16 in providing legal services throughout the United States and Oregon. WBD is the result of the merger
17 of Bond Dickinson LLP, and Womble Carlyle Sandridge & Rice, LLP, which provided legal services
18 to Philip Morris and RJ Reynolds, either directly or indirectly, in support of the distribution and sale of
19 cigarettes in the state of Oregon, cigarettes consumed by Susan Rene Popma.

9.

21
22 Market Management & Development, Inc. is an Oregon Corporation that owns and operates
23 Colton Market and is engaged in the sale of cigarettes manufactured and sold by defendants, Philip
24 Morris, R.J. Reynolds, and Santa Fe, and sold cigarettes consumed by Susan Rene Popma.

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10.

1
2 Nolz, LLC, is an Oregon corporation that conducts business as Clyde's Union Service and is
3 engaged in the sale of cigarettes manufactured and sold by defendants, Philip Morris, R.J. Reynolds
4 Tobacco Company, and Santa Fe, and sold cigarettes consumed by Susan Rene Popma.

11.

6 Plaid Pantries, Inc. and Plaid Pantry, Inc. are Oregon Corporations engaged in the sale of
7 cigarettes manufactured and sold by defendants, Philip Morris, R.J. Reynolds, and Santa Fe, and sold
8 cigarettes consumed by Susan Rene Popma.

12.

10 H.V. Talebi, Inc. is an Oregon Corporation that conducts business as a 7-Eleven franchisee and
11 is engaged in the sale of cigarettes manufactured and sold by defendants, Philip Morris, R.J. Reynolds,
12 and Santa Fe, and sold cigarettes consumed by Susan Rene Popma.

13. 14.

15 ESAU Corporation is an Oregon Corporation that conducts business as a 7-Eleven franchisee
16 and is engaged in the sale of cigarettes manufactured and sold by defendants, Philip Morris, R.J.
17 Reynolds, and Santa Fe, and sold cigarettes consumed by Susan Rene Popma.

18. 14.

19 Susan Rene Popma was diagnosed in February 2018 with lung cancer and suffered her
20 untimely death on June 23, 2018 as a result of tobacco smoke from the following brands of cigarettes to
21 which she was addicted:

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1 Marlboro Red (1991-1995), (1996-2012) and (2016-2017) manufactured and sold by Philip
2 Morris;

3 Camel (1996-2002) manufactured and sold by R.J. Reynolds; and

4 Natural American Spirit (1996-2002) manufactured and sold by Santa Fe.

5 15.

6 At all times material, RJ Reynolds, Philip Morris, Santa Fe and other cigarette
7 manufacturers purposefully and intentionally designed cigarettes to be highly addictive. They
8 added ingredients such as ammonia and diammonium-phosphate to “free-base” nicotine and
9 manipulated levels of nicotine and pH in smoke to make cigarettes more addictive, better tasting,
10 and easier to inhale. They also deliberately manipulated and/or added compounds in cigarettes such
11 as arsenic, polonium-210, tar, methane, methanol, carbon monoxide, nitrosamines, butane,
12 formaldehyde, tar, carcinogens, and other deadly and poisonous compounds to cigarettes.

14 16.

15 The cigarette products designed, manufactured, advertised, marketed, distributed and/or sold by
16 RJ Reynolds, Philip Morris, and Santa Fe when used as intended, were more likely than not to induce
17 in foreseeable users, such as Susan Rene Popma, a state of addiction, habituation, habit formation
18 and/or dependence characterized by the user's inability to terminate or restrict their chronic use.

19 17.

20 At all times material to this action, the cigarette manufacturers, including but not limited to
21 Philip Morris, R.J. Reynolds Tobacco Company, as successor in interest to the United States
22 tobacco business of Lorillard Tobacco Company and also Brown & Williamson Tobacco
23 Corporation who is the successor by merger to The American Tobacco Company, British
24 American Tobacco, Lorillard Inc., Lorillard Tobacco Company, Santa Fe, and Liggett Group LLC,

1 Vector Group Ltd., their predecessors, successors, agents and/or alter-egos (hereinafter referred to
2 as "cigarette manufacturers") knew the following:

- 3 a. That smoking cigarettes greatly increased the risk of a smoker developing COPD,
4 bladder cancer, lung cancer, laryngeal cancer, emphysema, pharyngeal cancer, heart
5 disease, other forms of cancer, suffering a stroke and/or sustaining other injuries and/or
6 damage to the lungs, respiratory system, immune system, genetic makeup and other
7 related physical conditions when used as intended;
- 8 b. That the diseases and/or injuries listed above would be more likely experienced if users
9 such as Susan Rene Popma did not restrict their intake of Defendant's cigarettes, or if
10 they began to use such products at an early age;
- 11 c. That use of the products as intended was more likely than not to lead to addiction,
12 habituation, physical and/or psychological dependence, particularly if begun at an early
13 age;
- 14 d. That termination or limitation of use would be exceedingly difficult if consumption was
15 initiated and that this difficulty would increase as cumulative consumption increased;
- 16 e. That developing knowledge before and after 1970 demonstrated that previous users are
17 at great risk of harm, as set forth above, and should seek medical monitoring;
- 18 f. That cigarette sellers could develop a reasonably safe dose for foreseeable users;
- 19 g. That there were feasible improvements in design, composition, or manufacture of
20 cigarettes such as to materially decrease the foreseeable risk to users such as the Susan
21 Rene Popma;
- 22 h. That switching to or continuing to smoke filtered, low tar, low nicotine and/or "light"
23 cigarettes would not be less hazardous because smokers would smoke more and/or alter
24 their smoking habits such that their intake of tar, nicotine and other harmful substances
25 would not be reduced; and
- 26 i. That the Federal Trade Commission ("FTC") method of measuring "tar & nicotine"
levels underestimated and did not accurately reflect the levels of tar and nicotine actually
delivered to an actual smoker.

18.

23 Defendants, Philip Morris and R.J. Reynolds, along with other tobacco manufacturers, and
24 their predecessors in interest engaged in a civil conspiracy to deceive the American and Oregon public,
25 especially smokers and prospective smokers, about the dangers of smoking cigarettes, including so-

1 called “filter”, “light”, and “low tar” cigarettes, as well as the addictive qualities of nicotine so as to
2 maintain and increase the sales of cigarettes. Each of these defendants is responsible and liable at law
3 for all overt acts of that conspiracy.

4 19.

5 The tobacco industry pushed its “open question” position that it would maintain for decades
6 -- that cigarette smoking was not a proven cause of lung cancer or other diseases; that cigarettes
7 were not injurious to health; and that more research on smoking and health issues was needed
8 before a conclusion could be reached. From the start of the conspiracy, the participating companies
9 told the public they accepted “an interest in people’s health as a basic responsibility, paramount to
10 every other consideration in our business” and pledged “aid and assistance to the research effort into
11 all phases of tobacco use and health.” The companies promised that they would fulfill the
12 obligations they had undertaken in the Frank Statement by funding independent research through
13 entities such as the Tobacco Industry Research Committee (“TIRC”), the Tobacco Institute (“TI”),
14 Council for Tobacco Research (“CTR”), and others.

16 20.

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

25 ///

21.

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

22.

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

Conspiratorial Involvement by Defendants' Lawyers

23.

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

24.

Philip Morris USA Inc., R.J. 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, formed the Committee of Counsel and/or the Counsel of Six (hereafter “CC”), whose purpose was to oversee, organize, operate, and execute a conspiracy to conceal and misrepresent the harms and addictive nature of cigarettes.

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1
2 Beginning in the 1950s, Philip Morris USA Inc., R.J. Reynolds Tobacco Company, British
3 American Tobacco Company, American Tobacco Company, Lorillard Tobacco Company, Brown
4 & Williamson Tobacco Company, and Liggett Group LLC, through the CC, also retained outside
5 counsel to assist them in their conspiratorial activities, which included fraudulently concealing
6 and/or misrepresenting the harms of smoking and its addictive nature to the public.

26.

7
8 Philip Morris, RJ Reynolds and their co-conspirators retained as outside counsel several law
9 firms, including, Shook Hardy Bacon (“SHB”), Covington & Burling (“COVB”), Jacob Medinger
10 & Finnegan (“JMF”), Womble Carlyle (“WOM”), Cabell Medinger Forsyth & Decker “(CMFD”),
11 and others.

27.

12
13 Beginning in the 1950s, and continuing during the relevant time periods, the CC and the
14 outside law firms (hereafter “Lawyers”) conspired with Philip Morris, RJ Reynolds and their other
15 co-conspirators and acted as agents, servants, representatives and/or employees of Philip Morris, RJ
16 Reynolds and their co-conspirators in furtherance of the conspiracy.

28.

17
18 The Lawyers played a central role in creating, sustaining, and perpetuating Philip Morris, RJ
19 Reynolds, and the tobacco industry’s conspiracy, including but not limited to the following:
20

- 21
- 22 a. The Lawyers directed “scientists” as to what research they should and should not undertake;
 - 23 b. The Lawyers were involved at every level of alleged scientific “research” pursued by
24 Defendants and the tobacco industry;
 - 25 c. The Lawyers devised and carried out document destruction policies and took shelter
26 behind baseless assertions of attorney client privilege;

- 1 d. The Lawyers oversaw domestic smoking and health projects;
- 2 e. The Lawyers also worked with and coached scientists on how to be possible witness in
- 3 litigation, how to speak at legislative hearings, how to serve as consultants, and how to
- 4 conduct specific supposed research;
- 5 f. The Lawyers screened international scientists in order to eliminate those with views
- 6 opposing the conspiracy;
- 7 g. The Lawyers hid the source of the money used for special projects to make them appear
- 8 more acceptable to the public; and
- 9 h. The Lawyers ensured that Philip Morris, RJ Reynolds, and the tobacco industry did not
- 10 directly support legitimate projects related to smoking and health, and instead directed
- 11 the companies toward supporting alternative projects including junk science, attacks on
- 12 legitimate public health research, and research of scientifically implausible alternative
- 13 causation theories for smoking-related diseases.

14 29.

15 The Lawyers were also crucial to the development of mis-direction research that Philip

16 Morris, RJ Reynolds, and the tobacco industry funded through their selection of Directors for the

17 Center for Tobacco Research (CTR) Scientific Advisory Board (SAB) who imposed unnecessary

18 limits on the research funded by CTR.

19 30.

20 Additionally, the outside Lawyers went so far as to take over access to a database of

21 documents created by RJR's Research and Development division. The outside Lawyers banned the

22 tobacco companies and their in-house counsel from accessing these documents in order to conceal

23 the documents through a false assertion of alleged attorney work-product privilege.

24 31.

25 Further, the Lawyers played a major role in Philip Morris, RJ Reynolds and their co-

26 conspirators' witness development plans to perpetuate the conspiracy's "open question" position.

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32.

As a result of the conduct of Defendants, which caused the injuries and death of Susan Rene Popma, she and her estate incurred economic damages for medical expenses and funeral and burial expenses in the amount of \$750,000.00.

33.

As a result of the conduct of the Defendants which caused the wrongful death of Susan Rene Popma, her beneficiaries have been deprived of the services, companionship, society, support, love, affection and guidance of Susan Rene Popma for the remainder of her natural life. The Estate of Susan Rene Popma has suffered additional damages for physical pain and suffering of Susan Rene Popma from the onset of the symptoms of her lung cancer and her diagnosis in or about February 2018, until her death on June 23, 2018. Therefore, the Estate and Susan Rene Popma's beneficiaries are entitled to recover reasonable compensation for noneconomic damages in the amount of \$18,000,000.00.

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

34.

Plaintiff incorporates the allegations of paragraphs 1 through 33 above.

35.

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

36.

Beginning at an exact time unknown to the Plaintiff, and continuing today, the cigarette manufacturers, including Defendants herein, have carried out, and continue to carry out a campaign designed to deceive the public, Susan Rene Popma, 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:

- 1 a. The results of their own research into the health dangers posed by smoking cigarettes,
2 including but not limited to the results of mouse skin painting experiments which
3 proved that Defendants' cigarettes did in fact contain carcinogenic materials;
- 4 b. Their failure to conduct adequate testing to determine whether cigarette smoking did
5 lead to cancer and other diseases;
- 6 c. The importance of animal experiments in determining the ability of cigarettes to
7 cause disease in humans;
- 8 d. The importance of epidemiological evidence in determining the ability of cigarettes to
9 cause disease in humans;
- 10 e. The addictive and dependence producing nature of nicotine as contained in cigarette
11 smoke;
- 12 f. The risks of contracting cancer, including but not limited to lung cancer and throat
13 cancer, from smoking cigarettes;
- 14 g. The dose-response relationship between various carcinogenic substances contained in
15 cigarette smoke and the risk of contracting cancer, including but not limited to lung
16 cancer;
- 17 h. That reducing the number of cigarettes smoked per day would greatly reduce the risk
18 of contracting a cigarette related disease;
- 19 i. That smoking in excess of 5 cigarettes per day would likely lead to an addiction to or
20 dependence on nicotine;
- 21 j. The use of ammonia technology and/or certain tobacco blends to boost the pH of the
22 cigarette smoke so as to increase the ratio of the "free base" form of nicotine (which
23 is more easily absorbed by the smoker) to the acid salt form of nicotine (which is less
24 readily absorbed) so as to allow for greater absorption of nicotine by the smoker at
25 lower levels of total dose;
- 26 k. The use of tobacco high in nitrosamines, a potent carcinogen not found in green
tobacco leaf but created during the tobacco curing process;
- l. The lack of credible scientific studies linking other human endeavors such as air
pollution, viruses and/or road tar to the increasing rate of lung cancer in this country;
- m. That cessation of smoking, while reducing the risk of contracting certain cigarette
related diseases, does not eliminate all risk;

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- 1 n. That cigarette smoking permanently alters certain receptor sites in the brain for
2 nicotine making it more likely such individual will become or continue to be addicted
3 to and/or dependent upon nicotine;
- 4 o. That use of mild tobaccos, re-constituted tobacco, tobacco casings and flavorants in
5 the manufacture of Defendants' cigarettes led to a cigarette less likely to trigger the
6 smoker's own biological self defense mechanisms, the smoke of which was easier to
7 inhale, inhale more deeply and hold in the lungs for a longer period of time which
8 resulted in increased doses of carcinogens, such as PAHs and nitrosamines, and
9 nicotine for the smoker even at lower levels of machine measured tar and nicotine
10 yields;
- 11 p. That smoke from Defendants' cigarette products caused damage to a smoker's
12 respiratory tract, including but not limited to the ciliary escalator system utilized by
13 the body to remove foreign particles from the lungs increasing the risk of the smoker
14 of contracting various respiratory ailments including but not limited to lung cancer,
15 bronchitis and pneumonia;
- 16 q. That the carcinogens in cigarette smoke lead to the development of genetic mutations
17 within the lungs of smokers making such smokers more likely to develop lung cancer
18 when exposed to carcinogens, tumor promoters and/or tumor initiators including but
19 not limited to those such as PAHs and nitrosamines found within cigarette smoke.
- 20 r. That switching to filtered, low tar, low nicotine and/or "light" cigarettes would not be
21 less hazardous because smokers would smoke more and/or alter their smoking habits
22 such that their intake of tar, nicotine and other harmful substances would not be reduced;
- 23 s. That the Federal Trade Commission ("FTC") method of measuring "tar & nicotine"
24 levels underestimated and did not accurately reflect the levels of tar and nicotine actually
25 delivered to an actual smoker; and
- 26 t. By 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. The word "filter" implies filtration of the smoke and therefore relative safety.
However, 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.

37.

23 The cigarette manufacturers, including Defendants herein, have concealed vast amounts of
24 knowledge and made literally hundreds of misrepresentations to Susan Rene Popma and others
25 similarly situated over the course of the last 65 years regarding the health hazards of cigarettes and

1 their addictive nature. Plaintiff is unable to allege in full all such knowledge that the cigarette
2 manufacturers and their co-conspirators, THE TOBACCO INSTITUTE, INC. ("TI") formed in
3 1958, TOBACCO INDUSTRY RESEARCH COMMITTEE ("TIRC") formed in 1954, and
4 COUNCIL for TOBACCO RESEARCH ("CTR") formed in 1964 and previously known as the
5 TIRC, as well as attorneys and law firms retained by the cigarette manufacturers have withheld, or
6 misrepresented over the last almost 65 years both because she does not have access to this
7 information, and because to allege each and every such concealment and misrepresentation of
8 material fact herein would entail hundreds of pages of pleadings. Indeed, it is the cigarette
9 manufacturers themselves, including Defendants herein, which have this knowledge and
10 information, and are in the best position to know the contents of each and every such concealed fact
11 and each misrepresentation and/or false statement.
12

13 38.

14 The Defendants, along other cigarette manufacturers and the Council for Tobacco
15 Research (CTR), The Tobacco Industry Research Committee (TIRC) and Tobacco Institute (TI),
16 along with attorneys and law firms retained by the Defendant, unlawfully agreed to conceal, omit
17 and misrepresent, and did in fact conceal, omit, and misrepresent, information regarding the
18 health effects of cigarettes and or their addictive nature with the intention that smokers and the
19 public would rely on this information to their detriment so as to maintain and increase the sales
20 of cigarettes. The Defendants agreed to execute the scheme by performing the above-mentioned
21 unlawful acts and by doing lawful acts by unlawful means. Defendants are responsible and liable
22 at law for all overt acts of that conspiracy.
23

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39.

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

40.

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

41.

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

42.

The cigarette manufacturers continued their conspiratorial acts in furtherance of the conspiracy related to the harms of smoking including but not limited to the following acts:

- 1 a. They agreed falsely to represent to Susan Rene Popma and others similarly situated that
2 questions about smoking and health would be answered by an unbiased, and trustworthy
3 source;
- 4 b. They misrepresented and confused the facts about the health dangers of smoking,
5 including addiction. The cigarette manufacturers claimed, falsely, that there is
6 insufficient “objective” research to determine if cigarette smoking causes disease and
7 that cigarettes are not addictive;
- 8 c. The cigarette manufacturers, including Defendants herein, used lawyers to misdirect
9 what purported to be objective scientific research, yet maintained to Susan Rene Popma
10 and others similarly situated that such objective scientific research was being conducted
11 and that the results of such research would be made public;
- 12 d. To discourage meritorious litigation by plaintiffs injured due to cigarettes, they engaged
13 in “scorched earth” litigation tactics in combination with suppressing and distorting
14 evidence in order to protect the cigarette manufacturers, including Defendants herein,
15 existence and profits;
- 16 e. Marketing and/or advertising “filter” cigarettes as safer or less hazardous to health than
17 non-filtered cigarettes;
- 18 f. By designing, selling and marketing so called “Light” and “ultra lights” cigarettes as
19 being substantially lower in tar and nicotine than regular, or non-light cigarettes and
20 therefore healthier or safer for consumers. The cigarette manufacturers knew that the
21 system to measure the tar and nicotine was neither a valid nor reliable way to measure
22 the amount of tar and nicotine inhaled by an actual smoker. Notwithstanding same, the
23 Defendants marketed “Light” and “ultra lights” cigarettes to consumers as a safer
24 alternative. The cigarette manufacturers manipulated the design of cigarettes to produce
25 test results that were artificially low. Furthermore, the cigarette manufacturers knew
26 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;
- g. Marketing and/or advertising low tar cigarettes as safer or less hazardous to health;
- 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
instead of the banned light descriptors. These cigarettes are the same or substantially the

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

- 6 i. By continuing even today to fraudulently market and sell multiple brands as “filtered”
7 knowing that smokers wrongly believe that filtered cigarettes reduce the harms of
8 smoking. The word “filter” implies filtration of the smoke and therefore relative safety.
9 However, Defendants and the industry know filtered cigarettes provide no health benefit
10 as proven by numerous reliable epidemiologic studies that have shown that filtered
11 cigarettes are no safer than non-filtered cigarettes; and
- 12 j. Knowingly concealing from the public that filtered, low tar, lights and ultra lights
13 cigarettes were no safer or even less hazardous than other cigarettes.

14 43.

15 Despite their "promise" which purposely created the illusion that scientific research into the
16 dangers of smoking was being conducted, the results of which would be made public, Philip Morris,
17 RJ Reynolds and their co-conspirators concealed information regarding the lack of bona fide
18 research being done by the TIRC and CTR into the health hazards of smoking, and the lack of funds
19 being provided for research by the TIRC and CTR into the health hazards of cigarettes, which was
20 the purported purpose for which the TIRC and CTR were established.

21 44.

22 Joint industry efforts undertaken by the TIRC and the CTR were neither disinterested nor
23 objective. Industry documents show that CTR functioned not for the promotion of scientific goals,
24 but for the purposes of public relations, politics, and positioning for litigation. The TIRC and CTR
25 were used to support an industry strategy of denying or creating doubt that smoking causes disease.
26 This material information was withheld from Susan Rene Popma and the public.

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1 45.

2 The cigarette manufacturers knew that cigarettes were dangerous and addictive. It became
3 the practice, purpose and goal of the cigarette manufacturers to question any scientific research
4 which concluded that cigarettes were a health hazard. They did this through media campaigns,
5 mailings to doctors and other scientific professionals, and through testimony before governmental
6 bodies.

7 46.

8 The industry paid for advertisements in major newspapers to attack legitimate research.
9 For example, in 1969 the American Tobacco Company, a successor to R.J. Reynolds Tobacco
10 Company stated in the New York Times, “[w]e believe the anticigarette theory is a bum rap.”
11

12 47.

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

15 48.

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

18 49.

19 Philip Morris, RJ Reynolds and their co-conspirators continued to engage in a course of
20 conduct where they represented to the public many times throughout the years that they would
21 conduct research and disclose results to the public, while at the same time either hiding any
22 potentially damning results or not conducting bona fide research at all.
23

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5 50.

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

9 51.

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

13 52.

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

19 53.

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

24 54.

25 Defendants Philip Morris, RJ Reynolds and their co-conspirator cigarette manufacturers
26 claimed and misused the attorney-client privilege to improperly shield as many documents as
possible from disclosure and destroyed and/or refused to produce documents related to health issues

1 and plaintiffs' claims.

2 55.

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

8 56.

9 The aforementioned information and knowledge concealed and suppressed by the cigarette
10 manufacturers, including Defendants herein, and their co-conspirators was material information
11 which Defendants were under a duty to disclose and which they had assumed the duty of disclosing
12 through repeated public statements concerning tobacco and health, the need for more research, and
13 the open question about disease causation.

14 57.

15 The aforementioned information and knowledge concealed and suppressed by the cigarette
16 manufacturers, including Defendants herein, and their co-conspirators was concealed for the
17 purposes of inducing Susan Rene Popma to smoke, fail to quit or fail to reduce consumption for the
18 Defendants' own pecuniary gain.

19 58.

20 The aforementioned acts, false statements and misrepresentations which were made and
21 caused to be made by the cigarette manufacturers, including Defendants herein, and their co-
22 conspirators were made and caused to be made with knowledge of their falsity and in reckless
23 disregard of the truth.

59.

1
2 The aforementioned acts, false statements and misrepresentations were made and caused to
3 be made by the cigarette manufacturers, including Defendants herein, and their co-conspirators for
4 the purpose of inducing Susan Rene Popma and others similarly situated to rely on such false
5 statements and misrepresentations so as to induce persons such as Susan Rene Popma to smoke, fail
6 to quit or fail to reduce consumption.

7
8 60.

9 Susan Rene Popma did not know that Defendants' representations were false and reasonably
10 relied on, and suffered as a result of Defendants' misrepresentations.

11 61.

12 Susan Rene Popma and others similarly situated justifiably relied upon the cigarette
13 manufacturers, including the Defendants herein, the tobacco industry, the TIRC and the CTR to
14 disseminate knowledge and information which they possessed regarding the health hazards of
15 cigarettes, especially after the industry chose to repeatedly and publicly deny the harms of smoking
16 and the addictive nature of cigarettes/nicotine. Susan Rene Popma, before and during the course of
17 her smoking history heard some of these false and misleading statements and/or similar statements
18 made directly or indirectly by the Defendants, believed some or all of the Defendants' false and
19 misleading statements and relied to her detriment and smoked and continued to smoke cigarettes
20 based on such false and misleading statements. The aforementioned information and knowledge
21 concealed and misrepresented by the cigarette manufacturers, including Defendants herein, and their
22 co-conspirators was concealed for the purposes of inducing Susan Rene Popma to smoke, fail to
23 quit or reduce consumption. Susan Rene Popma was unaware of the extent of the danger of the
24 Defendants' cigarette products, the addictive nature of Defendants' cigarette products, and that
25

1 light, low tar, low nicotine and filtered cigarettes were just as dangerous as unfiltered cigarettes. The
2 knowledge and information concealed and misrepresented by the cigarette manufacturers, including
3 the Defendants herein, which had superior knowledge regarding the health aspects of cigarettes than
4 Susan Rene Popma.

5 62.

6 During differing time periods of Susan Rene Popma's smoking, she heard, read and saw
7 statements and advertisements by the Defendants, and their co-conspirators, agents and
8 representatives, including, but not limited to: that smoking was not harmful or addictive, smoking
9 had not been proven to be harmful or addictive, and other similar statements; and that light, low tar
10 and filter cigarettes were less harmful. Susan Rene Popma believed the statements, began and
11 continued to smoke, and/or made decisions regarding the cigarette brands she smoked based on
12 those statements and advertisements.
13

14 63.

15 As a direct and proximate result of the aforementioned concealment and misrepresentation
16 of material information by the cigarette manufacturers, including Defendants herein, and their co-
17 conspirators, Susan Rene Popma, smoked and/or continued to smoke Defendants' cigarette products
18 which caused her to develop injuries, including but not limited to lung cancer, in addition to other
19 related physical conditions which resulted in and directly caused her to suffer severe bodily injuries
20 and her untimely death.
21

22 **SECOND CLAIM FOR RELIEF – FRAUD**
23 **(Manufacturer – Defendant Santa Fe)**

24 64.

25 Plaintiff incorporates the allegations of paragraphs 1 through 63 above.

26 ///

65.

This count applies to the following Defendant ONLY: Santa Fe.

66.

Defendant has carried out and continues to carry out a campaign designed to deceive the public, Susan Rene Popma, physicians, the government and others as to the true dangers of smoking its cigarettes. Defendant has carried out such scheme by concealing and misrepresenting the following:

- a. The addictive and dependence producing nature of nicotine as contained in cigarette smoke;
- b. The risks of contracting cancer, including but not limited to lung cancer and other cancers, from smoking cigarettes;
- c. The use of tobacco high in nitrosamines, a potent carcinogen not found in green tobacco leaf but created during the tobacco curing process;
- d. That cessation of smoking, while reducing the risk of contracting certain cigarette related diseases, does not eliminate all risk;
- e. That cigarette smoking permanently alters certain receptor sites in the brain for nicotine making it more likely such individual will become or continue to be addicted to and/or dependent upon nicotine;
- f. That use of mild tobaccos, re-constituted tobacco, and blending of tobacco in the manufacture of Defendant's cigarettes led to a cigarette less likely to trigger the smoker's own biological self defense mechanisms, the smoke of which was easier to inhale, inhale more deeply and hold in the lungs for a longer period of time which resulted in increased doses of carcinogens, such as PAHs and nitrosamines, and nicotine for the smoker even at lower levels of machine measured tar and nicotine yields;
- g. 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 such that their intake of tar, nicotine and other harmful substances would not be reduced;
- h. That the Federal Trade Commission ("FTC") method of measuring "tar & nicotine" levels underestimated and did not accurately reflect the levels of tar and nicotine actually delivered to an actual smoker; and

- 1 i. By continuing even today to fraudulently market and sell multiple brands as “filtered”
2 knowing that smokers wrongly believe that filtered cigarettes reduce the harms of
3 smoking. The word “filter” implies filtration of the smoke and therefore relative safety.
4 However, Defendants and the industry know filtered cigarettes provide no health benefit
5 as proven by numerous reliable epidemiologic studies that have shown that filtered
6 cigarettes are no safer than non-filtered cigarettes.
- 7 j. By marketing such cigarettes as “natural”, “organic” or “100% organic” and implying
8 they were therefore safer than other cigarettes when there was no competent, reliable,
9 scientific evidence that natural or organic tobacco is safer or less harmful than other
10 tobacco;
- 11 k. By marketing such cigarettes as “additive free” and implying they were therefore safer
12 than other cigarettes when there was no competent, reliable, scientific evidence that
13 additive free tobacco is safer or less harmful than other tobacco;
- 14 l. By designing, selling and marketing so called “Light” and “ultra lights” cigarettes as
15 being substantially lower in tar and nicotine than regular, or non-light cigarettes and
16 therefore healthier or safer for consumers. Defendant knew that the system to measure
17 the tar and nicotine was neither a valid nor reliable way to measure the amount of tar
18 and nicotine inhaled by an actual smoker. Notwithstanding same, Defendant marketed
19 “Light” and “ultra lights” cigarettes to consumers as a safer alternative. Defendant
20 manipulated the design of cigarettes to produce test results that were artificially low.
21 Furthermore, Defendant knew that “Light” and “ultra lights” cigarette smokers may
22 compensate to obtain the same level of tar or nicotine as non-light cigarettes either by
23 taking more puffs on each cigarette, by taking larger, longer or deeper puffs, or by
24 smoking more cigarettes.

25 67.

26 Defendant concealed, omitted and misrepresented, information regarding the health
effects of cigarettes and their addictive nature with the intention that smokers and the public
would rely on this information to their detriment so as to maintain and increase the sales of
cigarettes.

68.

Defendant concealed and misrepresented facts, information and knowledge about the health
dangers of smoking, including addiction, through fraudulent statements, false statements and/or
misrepresentations of material facts. Defendant concealed its actual knowledge concerning its own

1 negative health and addiction research results and its manipulation and control of the nicotine
2 content of its products to create and perpetuate smokers' addiction to cigarettes.

3 69.

4 Defendant promoted its fraudulent message through different forms of available media,
5 including newspapers, magazines, direct marketing, and the internet.

6 70.

7 The aforementioned information and knowledge concealed and suppressed by the
8 Defendant was material information which Defendant was under a duty to disclose and which it had
9 assumed the duty of disclosing through repeated public statements concerning "natural", "additive
10 free", "organic", "filter", "light", and "low tar" cigarettes.

11 71.

12 The aforementioned acts, false statements and misrepresentations which were made and
13 caused to be made by the Defendant were made and caused to made with knowledge of their falsity
14 and in reckless disregard of the truth.

15 72.

16 The aforementioned acts, false statements and misrepresentations were made and caused to
17 be made by the Defendant for the purpose of inducing Susan Rene Popma and others similarly
18 situated to rely on such false statements and misrepresentations so as to induce persons such as
19 Susan Rene Popma to smoke, fail to quit or fail to reduce consumption for the Defendant's own
20 pecuniary gain.

21 73.

22 Susan Rene Popma did not know that Defendant's representations were false and reasonably
23 relied on and suffered as a result of Defendant's misrepresentations.

74.

1
2 Susan Rene Popma and others similarly situated justifiably relied upon the Defendant to
3 disseminate knowledge and information which it possessed regarding the health hazards of
4 cigarettes, especially after it chose to promote them as “natural”, “additive free” and “organic,” thus
5 implying they were a safer alternative to other cigarettes. Susan Rene Popma, before and during the
6 course of her smoking history heard some of these false and misleading statements and/or similar
7 statements made directly or indirectly by the Defendant, believed some or all of the Defendant’s
8 false and misleading statements and relied to her detriment and smoked and continued to smoke its
9 cigarettes based on such false and misleading statements. The aforementioned information and
10 knowledge concealed and misrepresented by the Defendants was concealed for the purposes of
11 inducing Susan Rene Popma to smoke, fail to quit or reduce consumption. Susan Rene Popma was
12 unaware of the extent of the danger of the Defendant’s cigarette products, the addictive nature of
13 Defendant’s cigarette products, and that light, low tar, low nicotine and filtered cigarettes were just
14 as dangerous as unfiltered cigarettes. The knowledge and information were concealed and
15 misrepresented by the Defendants which had superior knowledge regarding the health aspects of
16 cigarettes than Susan Rene Popma.
17

75.

18
19 During differing time periods of Susan Rene Popma’s smoking, she heard, read and saw
20 statements and advertisements by Defendant, and its agents and representatives, including, but not
21 limited to: that smoking “natural”, “additive free” and “organic” cigarettes were not harmful or
22 addictive, and other similar statements; and that light, low tar and filter cigarettes were less harmful.
23 Susan Rene Popma believed the statements, began and continued to smoke, and/or made decisions
24 regarding the cigarette brands she smoked based on those statements and advertisements.
25

76.

As a direct and proximate result of the aforementioned concealment and misrepresentation of material information by Defendant, Susan Rene Popma, smoked and/or continued to smoke Defendant’s cigarette products which caused her to develop injuries, including but not limited to lung cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and her untimely death.

THIRD CLAIM FOR RELIEF – FRAUD
(Law Firms – Defendants Shook, Hardy & Bacon L.L.P., Covington & Burling L.L.P., Greenspoon Marder LLP, and Womble Bond Dickinson (US) LLP)

77.

Plaintiff incorporates the allegations of paragraphs 1 through 63 above.

78.

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

79.

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

80.

The defendant law firms’ actions and participation in the furtherance of the conspiracy crossed their ethical and legal role and or responsibilities as attorneys and constituted unlawful and tortious conduct.

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81.

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

82.

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

83.

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

84.

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

85.

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

- a. Controlling the research conducted by Philip Morris, RJ Reynolds, and their co-conspirators and outside consultants in order to prevent any negative research from being published regarding cigarettes;

- b. Identifying what research that Philip Morris, RJ Reynolds, and their co-conspirators would need to fabricate in order to counter emerging research that threatened the conspiracy;
- c. Establishing entire areas of research that were not be performed by Philip Morris, RJ Reynolds, and their co-conspirators own internal researchers to avoid negative research against cigarettes;
- d. Misdirecting research to focus on other causes of smoking related diseases to deflect from cigarette smoking causation of disease;
- e. Directing Philip Morris, RJ Reynolds, and their co-conspirators to fund scientific research characterized as “not worth a damn” while also outright refusing to entertain proposals from credible groups with scientific positions contrary to that;
- f. Identifying and establishing relationships with “friendly” scientific witnesses, subsidizing their research with grants from tobacco funded vehicles, and hiding the relationship between those witnesses and the industry;
- g. Directing Philip Morris, RJ Reynolds, and their co-conspirators to pay scientists that had previously received industry funding, in order to prevent them from going public with negative findings;
- h. Devising and carrying out document destruction to protect the conspiracy;
- i. Designing and controlling organizations to hide negative industry documents behind the guise of work product privilege;
- j. Coaching Philip Morris, RJ Reynolds, and their co-conspirators to respond to public inquiries without exposing misrepresentations or omissions;
- k. Making their own misrepresentations to the public about the scientific evidence on smoking and health;
- l. Attacking credible scientific evidence with the research the law firms directed Philip Morris, RJ Reynolds, and their co-conspirators to engineer.

86.

The defendant law firms concealed and misrepresented the harms and addictive nature of smoking in concert with, and at the direction of, Philip Morris, RJ Reynolds, and their co-conspirators. The defendant law firms’ ultimate goal was to enable Philip Morris, RJ Reynolds,

1 and their co-conspirators to maximize the sale of cigarette products throughout the United States,
2 including cigarette products sold in Oregon to consumers, including Susan Rene Popma.

3 87.

4 The defendant law firms' concerted efforts to conceal and misrepresent the harms and
5 addictive nature of smoking cigarettes, even if separately considered from Philip Morris, RJ
6 Reynolds, and their co-conspirators' fraud, was fraudulent and resulted in harm to Susan Rene
7 Popma.

8 88.

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

13 89.

14 The defendant law firms knew or had reason to know that their fraudulent conduct,
15 whether occurring in or outside the State of Oregon, and that of Philip Morris, RJ Reynolds, and
16 their co-conspirators, were broadly directed throughout the United States, including to the State
17 of Oregon, and would have a substantial effect on consumers located in Oregon, including Susan
18 Rene Popma.

19 90.

20 As a direct and foreseeable result of the law firms' fraudulent conduct in assisting Philip
21 Morris, RJ Reynolds, and their co-conspirators conceal and misrepresent the health effects and
22 addictive nature of cigarettes, consumers in Oregon, including Susan Rene Popma, were not
23 aware of the true harms and addictive nature of cigarettes. Nor were such consumers aware that
24

1 so-called “filter”, “light” and “low tar” cigarettes were not any safer than regular cigarettes.
2 Susan Rene Popma, and other similarly situated Oregonian consumers, justifiably relied on
3 Philip Morris, RJ Reynolds, and their co-conspirators, as well as their agents, such as the law
4 firms herein, as alleged in Count I above.

5 91.

6 As a direct and proximate result of the aforementioned concealment and
7 misrepresentation of material information by the law firms on behalf of Philip Morris, RJ
8 Reynolds, and their co-conspirators, Susan Rene Popma, smoked and/or continued to smoke
9 cigarette products which caused her to develop injuries, including but not limited to lung cancer,
10 in addition to other related physical conditions which resulted in and directly caused her to suffer
11 severe bodily injuries and her untimely death.
12

13 **FOURTH CLAIM FOR RELIEF - PRODUCTS LIABILITY**
14 **(Manufacturers – Defendants Philip Morris, RJ Reynolds, and Santa Fe)**

15 92.

16 Plaintiff incorporates the allegations of paragraphs 1 through 91 above.

17 93.

18 This count applies to the following Defendants ONLY: Philip Morris, RJ Reynolds, and
19 Santa Fe.

20 94.

21 At all material times, Defendants designed, distributed, marketed, advertised, supplied and sold
22 the Marlboro Red, Camel, and Natural American Spirit cigarettes which caused Susan Rene Popma’s
23 lung cancer, in addition to other related physical conditions, and her untimely death.

24 ///

25 ///

26 PAGE 31 – COMPLAINT

95.

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

96.

At all material times, cigarettes including Marlboro Red, Camel, and Natural American Spirit, sold by Defendants were defective and unreasonably dangerous and, in a condition not contemplated by ultimate consumer, in ways including, but not limited to, one or more of the following respects:

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

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5 97.

6 The Defendants' Marlboro Red, Camel, and Natural American Spirit cigarette products were
7 unreasonably dangerous because a less dangerous design and/or modification was economically and
8 scientifically feasible.

9 98.

10 Susan Rene Popma was unaware of the hazards and defects in the cigarette products of the
11 Defendants, to-wit: That exposure to said products would cause her to develop cigarette related
12 disease(s) which made said products unsafe for use.

13 99.

14 As a direct and proximate result of the aforementioned product defects, Susan Rene Popma
15 suffered injuries, including but not limited to lung cancer, in addition to other related physical
16 conditions which resulted in and directly caused her to suffer severe bodily injuries and her
17 untimely death.

18 **FIFTH CLAIM FOR RELIEF – NEGLIGENCE**
19 **(Manufacturer – Defendants Philip Morris, RJ Reynolds, and Santa Fe)**

20 100.

21 Plaintiff incorporates the allegations of paragraphs 1 through 99 above.

22 101.

23 This count applies to the following Defendants ONLY: Philip Morris, RJ Reynolds, and
24 Santa Fe.

25 102.

26 The products complained of, Marlboro Red, Camel, and Natural American Spirit cigarettes,
were designed, manufactured, advertised, marketed, distributed and/or sold by Defendants which
Susan Rene Popma used and smoked in her daily life.

103.

1
2 Plaintiff alleges Susan Rene Popma was exposed to Defendants' Marlboro Red, Camel, and
3 Natural American Spirit cigarette products as a smoker and/or bystander. Each exposure to such
4 products caused Susan Rene Popma to inhale smoke from said products which caused her to
5 develop lung, in addition to other related physical conditions, and led to her untimely death. Each
6 exposure to such products was harmful and caused or contributed substantially to Susan Rene
7 Popma's aforementioned injuries. Susan Rene Popma's aforementioned injuries and death arose out
8 of, were connected to and incidental to the design, manufacture, advertisement, marketing,
9 distribution and/or sale by Defendants of their cigarette products.
10

104.

11
12 The aforementioned damages are directly and proximately caused by the negligence of the
13 Defendants, in that they produced, sold and otherwise placed into the stream of intrastate and
14 interstate commerce, cigarette products which the Defendants knew, or, in the exercise of ordinary
15 care should have known, were deleterious and highly harmful to Susan Rene Popma's health and
16 well-being. The Defendants, prior to selling and/or distributing their cigarette products, to which
17 Susan Rene Popma was exposed, knew that exposure to cigarette smoke was harmful to human
18 beings and that it could cause injuries including, but not limited to, COPD, bladder cancer, lung
19 cancer, laryngeal cancer, emphysema, heart disease, other forms of cancer, and result in death. The
20 Defendants also knew that Susan Rene Popma and others similarly situated would use and be
21 exposed to their cigarette products in such a way as to cause Susan Rene Popma to inhale the smoke
22 from said products.
23

24 ///

25 ///

1
2 Plaintiff alleges that there were methods of design and manufacture available and/or known
3 to Defendants and unknown to Susan Rene Popma which could have been used by Defendants in
4 the design and manufacture of Marlboro Red, Camel, and Natural American Spirit cigarette products
5 to which she was exposed to make such products less dangerous. Defendants were in the business
6 of designing, manufacturing, advertising, marketing, distributing and/or selling cigarette products
7 during the times pertinent to this suit, and knew that Susan Rene Popma and others similarly
8 situated would come in contact with its cigarette products, and would be exposed to the inhalation
9 of the smoke from said products which resulted in the development of fatal and life threatening
10 injuries including, but not limited to, COPD, lung cancer, and other life threatening diseases.
11 Defendant was negligent in all of the following respects, same being the foreseeable cause of Susan
12 Rene Popma's injuries and death, which acts of negligence have continued to the present time:
13

- 14 a. In designing and developing cigarette products that were more mild, had better taste
15 and contained nicotine so that foreseeable users, such as Susan Rene Popma, would
16 find smoking Defendants' products pleasurable which in turn would lead Susan Rene
17 Popma, and others similarly situated, to begin smoking and/or to increase
18 consumption;
19
- 20 b. In failing to develop and utilize alternative design, manufacturing methods and/or
21 materials to reduce and/or eliminate harmful materials and/or characteristics from the
22 cigarette products Defendants designed, manufactured, advertised, marketed,
23 distributed and/or sold;
- 24 c. In continuing to manufacture, distribute and sell defective and unreasonably
25 dangerous cigarette products when Defendants knew at the time of said manufacture,
26 distribution and sale that such defective and unreasonably dangerous products could
cause, and foreseeably would cause injuries including, but not limited to, COPD,
emphysema, throat cancer, laryngeal cancer, lung cancer and/or other forms of cancer
to foreseeable users, such as Susan Rene Popma, when used as intended;
- d. In concealing information while affirmatively misrepresenting to Susan Rene Popma
and other members of the public in advertising, "informational" communications,
sponsorship of sports activities, concerts, and other events, testimony and public
statements by officers, agents and employees of the cigarette manufacturers, by labels

1 and otherwise, that the cigarette products manufactured, distributed and/or sold were
2 safe and/or not proven to be dangerous in their ordinary and foreseeable use, which
3 material misrepresentations induced Susan Rene Popma to unknowingly use and/or
4 continue to use Defendants' cigarette products and expose herself to the hazards of
developing disease and/or suffering injuries including, but not limited to, COPD,
bladder cancer, emphysema, throat cancer, laryngeal cancer, lung cancer and/or other
forms of cancer;

- 5 e. In failing to test and/or adequately test cigarette products before offering them for
6 sale and use by Susan Rene Popma, and other persons similarly situated;
- 7 f. Avoiding testing of tobacco, tobacco smoke and cigarettes in a way that would be likely to
8 show the relationship between human disease to smoking in order to allow defendants to
claim ignorance of the relationship between human disease and smoking;
- 9 g. In failing to remove and recall all of said defective and unreasonably dangerous
10 cigarette products from the stream of commerce and the marketplace upon
11 ascertaining that said defective and unreasonably dangerous products would cause
COPD, bladder cancer, emphysema, throat cancer, laryngeal cancer, lung cancer, lung
12 disorders, and various forms of cancer, some or all of which are permanent and fatal;
- 13 h. In manipulating, failing to reduce and/or failing to eliminate nicotine from cigarette
14 products to prevent Susan Rene Popma, who was addicted to the nicotine in the
cigarette products, from quitting and/or reducing consumption;
- 15 i. In failing to filter the harmful substances so that during ordinary use, such materials
16 would not be liberated into the air and/or breathed by the smoker such as Susan Rene
Popma;
- 17 j. In including nicotine, or artificially high levels of nicotine, in Defendants' cigarette
18 products to prevent Susan Rene Popma and other persons similarly situated from
quitting and/or reducing consumption;
- 19 k. In manipulating the levels of nicotine by a combination of design and manufacturing
20 processes and purposely regulating nicotine delivery in its cigarettes to specific levels
which it knew would create and maintain nicotine addiction in smokers;
- 21 l. In designing and manipulating the pH of natural tobacco smoke so as to make it milder,
22 more inhalable and a more effective vehicle for nicotine;
- 23 m. In utilizing tobacco and/or re-constituted tobacco that was high in nitrosamines,
24 nitrates, nicotine, carcinogens, and other substances deleterious, poisonous, and
highly harmful when alternative, less dangerous, materials were available to be used
25 in the manufacturing process;

26 ///

- 1 n. By designing and manufacturing its cigarettes to be inhalable and thus unreasonably
2 dangerous;
- 3 o. By placing additives and ingredients in cigarettes to making them easier to inhale and
4 addictive;
- 5 p. In selling and distributing products which they knew or should have known contained
6 addictive substances capable of and likely to induce irresistible physical and psychological
7 addiction when used in a foreseeable manner; and
- 8 q. In failing to manufacture and sell cigarettes without the characteristics described above
9 although it was capable of doing so, thus depriving Susan Rene Popma of the opportunity
10 to smoke a safer cigarette.

11 106.

12 As a direct and proximate result of the aforementioned negligence of the Defendants, Susan
13 Rene Popma suffered injuries, including but not limited to lung cancer, in addition to other related
14 physical conditions which resulted in and directly caused her to suffer severe bodily injuries and her
15 untimely death.

16 **SIXTH CLAIM FOR RELIEF - STRICT LIABILITY**
17 **(Distributor/Retailer – Defendants Market Management & Development, Inc.,**
18 **Robert A. Nolz, d/b/a as Clyde’s Union Service, Plaid Pantries, Inc.,**
19 **Plaid Pantry, Inc., H.V. Talebi, Inc., ESAU Corporation)**

20 107.

21 This count applies to the following Defendants ONLY: Market Management &
22 Development, Inc., Robert A. Nolz, d/b/a as Clyde’s Union Service, Plaid Pantries, Inc., Plaid Pantry,
23 Inc., H.V. Talebi, Inc., ESAU Corporation (“retailer defendants”).

24 108.

25 All of the allegations contained in paragraphs 1 through 106 are realleged herein.

26 ///

///

109.

1
2 The Marlboro Red, Camel, and Natural American Spirit cigarettes sold by the retailer
3 defendants were defectively designed, manufactured, and marketed for all of the reasons set forth
4 above.

110.

6 The dangerously defective cigarettes sold to Susan Rene Popma by the retailer defendants were
7 in the same condition as when they left the manufacturers and caused her to suffer injury and disease
8 including lung cancer and other related physical conditions, and her untimely death.

111.

10 As a direct and proximate result of the dangerously defective cigarettes sold by the retailer
11 defendants, Susan Rene Popma suffered injuries, including but not limited to lung cancer, in
12 addition to other related physical conditions which resulted in and directly caused her to suffer
13 severe bodily injuries and her untimely death.
14

15 **PUNITIVE DAMAGES**

112.

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

22 ///

23 ///

24 ///

25 ///

1 WHEREFORE, plaintiff prays for a judgment in favor of Susan Rene Popma against
2 Defendants, as follows:

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

7 DATED this 21st day of May, 2021.

8 **PAULSON COLETTI**

9 /s/ Jane Paulson
10 Jane Paulson, OSB No. 911804
11 Email: jane@paulsoncoletti.com
12 Of Attorneys for Plaintiff

13 **THE ALVAREZ LAW FIRM**

14 /s/ Alex Alvarez
15 Alex Alvarez
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17 Of Attorneys for Plaintiff (*Pro Hac Vice*)

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