

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

JOSE SANTANA, as Personal Representative
of the Estate of TOMASA SANTANA,

Plaintiff,

CASE NO.: 2019-037329-CA-01

vs.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation; LIGGETT
GROUP, LLC., a Florida Limited Liability
Company; and PUBLIX SUPER MARKETS, INC.,
a Florida Corporation,

Defendants.

_____ /

FIRST AMENDED COMPLAINT

COMES NOW, JOSE SANTANA, Plaintiff, herein, as Personal Representative of the Estate of TOMASA SANTANA, files this First Amended Complaint against the Defendants, PHILIP MORRIS USA, INC., a foreign corporation, R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, as successor in interest to the United States tobacco business of LORLLARD TOBACCO COMPANY (LORILLARD); and BROWN & WILLIAMSON TOBACCO CORPORATION (B&W) who is also the successor by merger to the THE AMERICAN TOBACCO COMPANY (AMERICAN) (hereinafter "R.J REYNOLDS TOBACCO COMPANY"); LIGGETT GROUP, LLC., a Foreign Limited Liability, and PUBLIX SUPER MARKETS, INC., a Florida Corporation, and allege as follows:

PARTIES & JURISDICTION

1. At all times material Plaintiff, JOSE SANTANA, was and is a resident of Miami-Dade County, Florida.
2. At all times material Plaintiff was, and is, the spouse of the decedent TOMASA SANTANA and is, or will be, duly appointed as the Personal Representatives of TOMASA SANTANA's Estate.
3. Plaintiff, JOSE SANTANA and the Decedent, TOMASA SANTANA, were married on September 19, 1986.
4. This is an action for wrongful death pursuant to Florida's Wrongful Death Act as a result of the Decedent's death on or about January 28, 2018 or in the alternative, pursuant to Section 46.021, Florida Statutes seeking survival damages action.
5. This action is brought on behalf of the Decedent's survivors and Estate. The potential beneficiaries of a recovery by Plaintiff in this action and the relationship to the Decedent are as follows:

<u>Potential Beneficiary</u>	<u>Relationship</u>
Jose Santana	Spouse

6. At all times material, the Decedent smoked Virginia Slims, a filtered cigarette, that was designed, manufactured, advertised, marketed, distributed and/or sold by Defendant, PHILIP MORRIS USA, INC.
7. The Decedent smoked Virginia Slims cigarettes distributed and/or sold by PUBLIX SUPER MARKETS, INC a Florida corporation.
8. Defendant, PHILIP MORRIS USA, INC., is authorized to do and/or doing business within the jurisdiction of this Court, duly organized, created and existing under and by virtue of the laws of Virginia with its principal place of business in the State of Virginia that

conducts business in every county within the State of Florida and did so during all times relevant to this action. At all times material to this cause of action, said Defendant engaged in the design, manufacture, advertisement, marketing, distribution and/or sale of the cigarette products including but not limited to Virginia Slims, (hereinafter also referred to as Defendant's cigarette product) which the Decedent smoked and inhaled which caused and/or substantially contributed to the development of her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer. Service of process over this Defendant may be had through its registered agent, Capitol Corporate Services, Inc., 515 E Park Ave, 2nd Fl, Tallahassee, FL 32301 and/or through service upon an officer or agent of this Defendant located at the Defendant's principal place of business.

9. Defendant, R.J. REYNOLDS TOBACCO COMPANY, is authorized to do and/or doing business within the jurisdiction of this Court, duly organized, created and existing under and by virtue of the laws of North Carolina, with its principal place of business in the State of North Carolina that conducts business in every county within the State of Florida and did so during all times relevant to this action. At all times material to this cause of action, said Defendant engaged in the design, manufacture, advertisement, marketing, distribution and/or sale of the cigarette products. At all times material to this cause of action, said Defendant along with LORILLARD, BROWN & WILLIAMSON and AMERICAN engaged in the design, manufacture, advertisement, marketing, distribution and/or sale of the cigarette products, (hereinafter also referred to as Defendant's cigarette product) which caused and/or substantially contributed to the development of Decedent's COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer. Service of process over this Defendant may be had through its registered agent,

Corporation Service Company, 1201 Hays Street, Tallahassee, FL, 32301 and/or through service upon an officer or agent of this Defendant located at the Defendant's principal place of business.

10. Defendant, LIGGETT GROUP LLC, (f/k/a LIGGETT GROUP, INC., f/k/a BROOKE GROUP, LTD., Inc., f/k/a LIGGETT & MEYERS TOBACCO COMPANY), is a limited liability company authorized to do and/or doing business within the jurisdiction of this Court, duly organized, created and existing under and by virtue of the laws of Delaware with its principal place of business located in the State of North Carolina. Defendant, LIGGETT GROUP LLC has one or more Florida citizens as a member, making it a Florida citizen for the purposes of federal diversity jurisdiction. At all times material to this cause of action, said Defendant engaged in the design, manufacture, advertisement, marketing, distribution and/or sale of the cigarette product. Service of process over this Defendant may be had through this Defendant's registered agent or through service upon an officer or agent of this Defendant located at the Defendant's principal place of business.
11. Defendant, PUBLIX SUPER MARKETS, INC., is a corporation authorized to do business within the jurisdiction of this Court, duly organized, created and existing under and by virtue of the laws of Florida with its principal place of business located in the State of Florida. Defendant distributed and/or sold cigarettes which the Decedent smoked and inhaled which caused and/or substantially contributed to causing the development of her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer. Service of Process over this Defendant may be had through this Defendant's registered agent specified in the style of this case or through service upon an officer or agent of this Defendant located at the Defendant's principal place of business specified in the style of this case.

12. On or about January 28, 2018, TOMASA SANTANA died in Miami-Dade County, Florida from her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer as a result of smoking cigarettes designed, manufactured, advertised, marketed, distributed and/or sold by the Defendants named herein.
13. Plaintiff, JOSE SANTANA, seeks damages in excess of the sum of THIRTY THOUSAND AND NO/100 (\$30,000.00) DOLLARS.
14. The wrongful conduct herein alleged, occurred, at least in part and/or the damages complained of by Plaintiff, JOSE SANTANA, were sustained in the county where the above styled Court sits or the Defendants herein reside in the county where the above styled Court sits and thus venue of this action properly lies in this Court pursuant to Florida law.
15. Plaintiff resides in the State of Florida and/or one or more of the Defendants against whom this action is brought resides in the county where the above styled Court sits and thus venue of this action properly lies in this Court pursuant to Florida law.
16. The Plaintiff would further show that Defendants, at all times material to this cause of action, through their agents, alter-egos, officers and representatives, operated, conducted, engaged in and carried on a business venture in this state and/or maintained an office or agency in this state; committed a tortious act within the state by allowing the Decedent to be exposed to an unreasonably dangerous product, to-wit: cigarette and/or cigarettes smoke. Defendants failed to take any reasonable precautions or to exercise reasonable care to adequately or sufficiently warn the Decedent, or other persons similarly situated, of the risks, dangers and harm, to-wit: the contracting of the diseases of lung cancer, laryngeal cancer, emphysema, COPD, heart disease, other forms of cancer, and other diseases and/or injuries to which she was exposed to by smoking cigarettes, resulting from the ordinary and foreseeable use of said products, and

said tortious conduct is continuing and presently existing; caused injuries and death, which arose out of the acts and/or omissions which occurred inside and outside of the State of Florida during the relevant period of time, at which time Defendants were engaged in solicitation or service activities within the State of Florida, resulting in the death of the Decedent. Therefore jurisdiction properly lies in this Court, as to Plaintiff's action, pursuant to Florida law.

17. The cigarette products designed, manufactured, advertised, marketed, distributed and/or sold by Defendants herein, when used as intended, were more likely than not to induce in foreseeable users, such as the Decedent, a state of addiction, habituation, habit formation and/or dependence characterized by the user's inability to terminate or restrict their chronic use.
18. At all times material to this action, the cigarette manufacturers, including but not limited to PHILIP MORRIS USA, INC., a foreign corporation, R.J. REYNOLDS TOBACCO COMPANY, a foreign corporation, as successor in interest to the United States tobacco business of LORILLARD TOBACCO COMPANY; and also BROWN & WILLIAMSON TOBACCO CORPORATION who is the successor by merger to the THE AMERICAN TOBACCO COMPANY, BRITISH AMERICAN TOBACCO, LIGGETT GROUP LLC, VECTOR GROUP LTD., LORILLARD INC., LORILLARD TOBACCO COMPANY, their predecessors, successors, agents and/or alter-egos (hereinafter referred to as "cigarette manufacturers") knew or should have known the following:
 - A. that smoking cigarettes greatly increased the risk of a smoker developing lung cancer, laryngeal cancer, emphysema, COPD, heart disease, other forms of cancer, suffering a stroke and/or sustaining other injuries and/or damages to the lungs, respiratory system, immune system, genetic makeup and other related physical conditions when used as intended;

- B. that the diseases and/or injuries listed above would be more likely experienced if users such as the Decedent did not restrict their intake of Defendants' cigarettes, or if they began to use such products at an early age;
- C. that use of the products as intended was more likely than not to lead to addiction, habituation, physical and/or psychological dependence, particularly if begun at an early age;
- 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;
- F. that cigarette sellers could develop a reasonably safe dose for foreseeable users;
- G. that there were feasible improvements in design, composition, or manufacture of cigarettes such as to materially decrease the foreseeable risk to users such as the Decedent;
- H. that switching to or continuing to smoke 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;
- 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.

DECEDENT TOMASA SANTANA'S SMOKING HISTORY

- 19. The Decedent, TOMASA SANTANA, was born in 1956 in Havana, Cuba. She later moved to Los Angeles, California in 1970 and then to Miami, Florida in 1982 where she remained until her death in 2018.
- 20. The Decedent began smoking filtered cigarettes in approximately 1972, at the age of sixteen (16).
- 21. The Decedent smoked Virginia Slims cigarettes from 1972 through 2015.
- 22. The Decedent became a regular daily smoker on or about 1975.
- 23. From 1972 to 1985, the Decedent smoked approximately one to one and one-half (1-1/2) packs per day of Virginia Slims cigarettes.

24. From 1985 to 2015, the Decedent smoked approximately two (2) packs per day of Virginia Slims cigarettes.

**HISTORICAL ALLEGATIONS OF THE DEFENDANTS' UNLAWFUL
CONDUCT GIVING RISE TO THE LAWSUIT**

25. Prior to 1900, lung cancer was virtually unknown as a cause of death in the United States. By 1935, there were an estimated 4,000 lung cancer deaths annually, and by 1945 that figure had almost tripled.
26. By the 1920s, scientists were beginning to investigate the relationship between the concomitant rise in cigarette consumption and lung cancer, and to focus on the health consequences of smoking.
27. By the end of the 1940s and early 1950s, far more evidence linking smoking to disease began to appear, ranging from the ground-breaking statistical studies of two eminent British statisticians, Bradford Hill and Sir Richard Doll, to the Graham and Wynder studies at Washington University, to animal research studies pointing to the carcinogenicity of cigarettes.
28. The mainstream media began to pay attention to the growing scientific literature and report on the scientists' findings. For example, in 1953, Readers Digest, which was at the time one of the most popular publications in the country, published a series of articles titled "Cancer by the Carton" which relayed the scientific findings of Drs. Wynder and Graham. The magazine quoted one of the conclusions they reached in their American Cancer Society study which had been published in the American Medical Association's Journal of May 27, 1950 ("JAMA"), namely that "Excessive and prolonged use of tobacco, especially cigarettes, seems to be an important factor in the induction of bronchogenic carcinoma." Such mainstream media publicity in popular magazines such as Time, Life, and Reader's Digest triggered understandable public concern.
29. In short, by 1953, there had been a very substantial rise in the annual per capita consumption of cigarettes and the number of deaths attributable to lung cancer; scientists were more and

more convinced that a relationship existed between cigarette smoking and lung cancer; and the public was growing increasingly aware of and anxious about both developments.

30. In December 1953, Paul M. Hahn, President of American Tobacco Co., (American), sent telegrams to the presidents of the seven other major tobacco companies and one tobacco growers organization, inviting them to meet and develop an industry response to counter the negative publicity generated by the studies linking cigarette smoking and lung cancer. The telegrams were sent to: Edward A. Darr, President of Defendant Reynolds; Benjamin F. Few, President of Defendant Liggett; William J. Halley, President of Lorillard Tobacco Co., (Lorillard); Timothy V. Hartnett, President of Brown & Williamson Tobacco Co., (B&W); O. Parker McComas, President of Defendant Philip Morris; Joseph F. Cullman, Jr., President of Benson & Hedges; J.B. Hutson, President of Tobacco Associates, Inc.; and J. Whitney Peterson, President of United States Tobacco Co..
31. Executives from every tobacco company listed above, with the exception of Liggett, met in New York City at the Plaza Hotel on December 14, 1953. The executives discussed (i) the negative publicity from the recent articles in the media, (ii) responding to the problem by jointly engaging a public relations counsel, and (iii) removing health themes from advertising. They also discussed Liggett's decision not to attend the meeting because "in the course of time the whole thing would blow over." The executives also authorized the five members of the group who had their offices in New York to engage the services of Hill & Knowlton on behalf of the whole committee; to meet with John Hill at the Plaza Hotel the next day, December 15th, to discuss the negative publicity problem; and to request that Hill & Knowlton, if it accepted the assignment, submit recommendations to the full committee at a subsequent meeting as to how to proceed. It is clear from all the surrounding circumstances that representatives of Hill & Knowlton had been contacted about taking on this assignment prior to December 14, 1953.
32. The tobacco company executives did not meet, as they have suggested, in an altruistic response to requests from the scientific community that the industry fund research on

smoking and health. Rather, they convened a strategy meeting of the highest company officials to formulate an industry-wide response (a) to the public's growing anxiety generated by the negative publicity about the direction of scientific research on cigarettes and cancer, and (b) to what they accurately understood to be a major threat to their corporations' economic future. While it is true that there was a recommendation "to do good science, independent science," the minutes of the meeting reveal that:

"It was recommended that this [research] group undertake to enlist the cooperation of the National Institutes of Health of the U.S. Public Health Service in working out a program of scientific investigation through which the facts in the present controversy would be developed. This was considered highly advisable in that it would give to the program an aspect of independence to the program to a degree not obtainable in any other way."

33. At the December 14, 1953 meeting, Paul Hahn of American and Timothy Hartnett of B&W told the other company presidents that they had taken definite steps to remove the health themes from the advertising programs on Pall Mall and Viceroy. Darr [of Reynolds] made the point that he could not concur in sponsoring an industry paid advertising campaign (if this is the course recommended by the Public Relations Counsel) as long as the health theme continued to be featured by any one of the companies represented on the committee. J. Whitney Peterson of United States Tobacco and Hartnett "expressed their agreement with Mr. Darr's views in this matter." Hill & Knowlton wanted to develop some understanding with the Defendants that

"none is going to seek a competitive advantage by inferring to its public that its product is less risky than others. (No claims that special filters or toasting, or expert selection of tobacco, or extra length in the butt, or anything else, makes a given brand less likely to cause you-know-what. No "Play-Safe-with-Luckies.)"

34. At the December 15, 1953 meeting, the participants were Paul Hahn of American, O.Parker McComas of Philip Morris, Joseph Cullman, Jr. of Benson & Hedges, J. Whitney Peterson of United States Tobacco, and representatives from Hill & Knowlton, including John Hill

and Bert Goss. Hill & Knowlton was told that the industry viewed the "problem [posed by the scientific studies] as being extremely serious and worthy of drastic action." According to a Hill & Knowlton memo dated December 22, 1953, the public relations firm was asked to develop suggestions for dealing with the public relations problem confronting the industry as a result of widely publicized assertions by a few medical research men regarding the link between cigarette smoking and lung cancer.

35. In an internal planning memoranda, Hill & Knowlton assessed their tobacco clients' problems in the following manner:

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

36. Ten days later, on December 24, 1953, Hill & Knowlton submitted a proposal regarding the tobacco industry's public relations campaign, recommending that the companies form a joint industry research committee that would sponsor independent scientific research on the health effects of smoking and announce the formation of the research committee nationwide as news and in advertisements. Hill & Knowlton also recommended that the companies fund objective research by scientists who were independent of the tobacco industry, and that an advisory board be established composed of a group of distinguished scientists from the fields of medicine, research and education "whose integrity is beyond question."

37. In fact, one of the questions posed by Hill & Knowlton to the Defendants was

"whether the companies considere[d] that their own advertising and competitive practices have been a principal factor in creating a health problem? The companies voluntarily admitted this to be the case even before the question was asked. They have informally talked over the problem and

will try to do something about it.”

38. Four days later, on December 28, 1953, another meeting was held at the Plaza Hotel and was attended by Paul Hahn of American; Edward Darr of Reynolds; Herbert A. Kent, Chairman of Lorillard; Timothy Hartnett of B&W; O. Parker McComas of Philip Morris; Joseph Cullman of Benson & Hedges; J.B. Hutson, President of Tobacco Associates, Inc.; J. Whitney Peterson of United States Tobacco; and three people from the public relations firm of Hill & Knowlton, John Hill, Bert Goss, and Richard Darrow. The attendees agreed on Tobacco Industry Research Committee (“TIRC”) as the official name of the research committee; chose Paul Hahn as temporary chairman of the committee; agreed that the search should begin immediately for a qualified director who, together with the companies’ research directors, would recommend members for the research advisory board; and reviewed and accepted the Hill & Knowlton proposal regarding the tobacco industry’s public relations campaign. The attendees also agreed on a mission statement for the new organization which stated that its “purposes and objectives” were to aid and assist research into tobacco use and health, and particularly into the alleged relationship between the use of tobacco and lung cancer, and to make available to the public factual information on this subject.
39. Hill & Knowlton played a major role in creating, refining, and implementing the strategies adopted by the participants at the December meetings.
40. Following Hill & Knowlton’s advice, the formation and purpose of TIRC was announced on January 4, 1954, in a full-page advertisement called “A Frank Statement to Cigarette Smokers” published in 448 newspapers throughout the United States. All sponsoring cigarette manufacturers and other tobacco industry entities were clearly identified.
41. The Frank Statement was subscribed to by the following domestic cigarette and tobacco product manufacturers, organizations of leaf tobacco growers, and tobacco warehouse associations that made up TIRC: American by Paul Hahn, President; B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip Morris by O. Parker McComas, President; Defendant, Reynolds by Edward A. Darr, President; Benson &

Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S. Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company, Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton, General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson, President.

42. The Frank Statement set forth the industry's "open question" position that it would maintain for more than forty years -- that cigarette smoking was not a proven cause of lung cancer; that cigarettes were not injurious to health; and that more research on smoking and health issues was needed. In the Frank Statement, the participating companies accepted "an interest in people's health as a basic responsibility, paramount to every other consideration in our business" and pledged "aid and assistance to the research effort into 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 TIRC, free from any industry influence.

The "Frank Statement" in its entirety stated as follows:

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

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive should be disregarded or lightly dismissed. At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.

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

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

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

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

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

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

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

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

43. The issuance of the "Frank Statement to Cigarette Smokers," was an effective public relations step. By promising the public that the industry was absolutely committed to its good health, the Frank Statement allayed the public's concerns about smoking and health, reassured smokers, and provided them with an effective rationale for continuing to smoke.
44. TIRC focused its energies and resources in two areas -- public relations and scientific research. First, it served as a sophisticated public relations unit for Defendants, especially in relation to growing public concern about the risks of smoking, by repeatedly attacking scientific studies that demonstrated the harms of cigarette smoke and insisting on the notion of an "open question" regarding cigarette smoking and health. Second, it developed a scientific research program that focused on basic processes of disease rather than evaluating the risks and harms associated with smoking -- the very subject that the industry had pledged

to pursue through TIRC. From the outset, the dual functions of TIRC were intertwined, with the scientific program of TIRC always subservient to the goals of public relations.

45. Defendants' denials of the link between smoking and disease kept away many excellent researchers. In an October 1969 memorandum to Ross R. Millhiser of Philip Morris, Helmut Wakeham, Vice President and Director of Research for Philip Morris, expressed concern that the efforts of the tobacco industry through CTR and the American Medical Association have failed to involve the best investigators. "At the beginning of our support of smoking and health research, this failure may have been connected with our consistent denial of the statistics and our continued assertion that there is nothing to the cigarette causation hypothesis."
46. A year later, Wakeham again discussed CTR's strategy of frequent and public denials, in a December 1970 memorandum to Joseph Cullman, Chairman of Philip Morris and Chairman of the Executive Committee of the Tobacco Institute: "It has been stated that CTR is a program to find out the 'truth about smoking and health.' What is truth to one is false to another. CTR and the Industry have publicly and frequently denied what others find as 'truth.' Let's face it. We are interested in evidence which we believe denies the allegation that cigarette smoking causes cancer."
47. Virtually none of the research funded by TIRC/CTR centered on immediate questions relating to carcinogenesis and tobacco that could resolve the question of the harms brought about by cigarette smoking. Although some TIRC/CTR-funded researchers explored alternative hypotheses, TIRC/CTR did not typically pursue direct research on cigarettes and disease. Rather than addressing the constituents in tobacco smoke and their demonstrated effect on the human body, TIRC/CTR directed the majority of its resources to alternative theories of the origins of cancer centering on genetic factors and environmental risks. The major thrust of TIRC/CTR was to emphasize that human cancers were complex processes, difficult to study and difficult to understand, and to focus on the "need for more research." Although research funded by the Scientific Advisory Board (SAB) was irrelevant to the

immediate questions associated with tobacco smoking and health, it did “create the appearance of [Defendants] devoting substantial resources to the problem without the risk of funding further ‘contrary evidence.’”

48. During a four-week visit to the United States in 1958, the three British scientists who met with representatives of TIRC and TIRC’s SAB, as well as representatives of American, Liggett, and Philip Morris, reported that “Liggett & Meyers stayed out of TIRC originally because they doubted the sincerity of TIRC’s motives and believed that the organization was too unwieldy to work efficiently. They remain convinced that their misgivings were justified. In their opinion TIRC has done little if anything constructive, the constantly reiterated ‘not proven’ statements in the face of mounting contrary evidence has thoroughly discredited TIRC, and the SAB of TIRC is supporting almost without exception projects which are not related directly to smoking and lung cancer.”
49. The Defendants knew that the TIRC/CTR was funding research concerning cancer as a general issue, rather than the relationship of smoking to cancer.
50. In January 1968, Addison Yeaman, B&W Vice President and General Counsel, wrote: “Review of SAB’s current grants indicates that a very sizable number of them are for projects in what might be called ‘basic research’ without specific orientation to the problem of the relationship of the use of tobacco to human health.”
51. In addition, Defendants appreciated the delays associated with the basic research approach. Janet Brown, outside counsel for American, explained CTR’s strategy of undertaking only basic research funding, as opposed to funding questions directly related to tobacco and health to Cy Hetsko, Vice President and General Counsel for American, and Addison Yeaman, Vice President and General Counsel for B&W, at a January 1968 meeting. The rationale was that basic research kept alive the Defendants’ open question argument on causation. Yeaman summarized Brown’s position as: “First, we maintain the position that the existing evidence of a relationship between the use of tobacco and health is inadequate to justify research more closely related to tobacco, and Secondly, that the study of the disease keeps constantly alive

the argument that, until basic knowledge of the disease itself is further advanced, it is scientifically inappropriate to devote the major effort to tobacco.”

THE LAWYERS & LAW FIRMS CONSPIRATORIAL INVOLVEMENT

52. All times material each of the Defendants, and collectively through their industry organizations, the TIRC, CTR, TI, CIAR, Philip Morris External Research Program (PMERP), and their public relations company Hill & Knowlton retained outside counsel to facilitate, execute, and operate a massive conspiracy to conceal, and or misrepresent the harms of smoking and its addictive nature to the American public beginning in 1953 and continued through at least 2009.
53. At all times material the law firms of Shook Hardy Bacon, Covington Burling, Jones Day, Jacob Medinger & Finnegan, Womble Carlyle, Cabell Medinger Forsyth & Decker hereinafter referred to as “Lawyers” were some of the law firms that were involved in conspiracy described herein.
54. At all times material the Lawyers were co-conspirators of the Defendants and acting as agents, servant, representatives and or employees of the Defendants and further acting in the course and scope of their agency or employment, during the time period beginning in 1953 and through at least 2009.
55. At all times material to this action, and at every stage throughout the time period described, in this Complaint, the Lawyers played an absolutely central role in the creation and perpetuation of the conspiracy and the implementation of its fraudulent schemes.
56. David Hardy, partner at Shook, Hardy & Bacon, played a major role in Defendants’ witness development plans to perpetuate the conspiracy’s “open question” position.
57. For example, shortly after joining Brown & Williamson Tobacco Co., as Vice President of Research and Development in 1989, Jeffrey Wigand, as part of his orientation, was required to go to Kansas City, Missouri to meet for three days with lawyers from the law firm of Shook Hardy & Bacon for an orientation session. At the session Wigand was "coached by lawyers regarding the company line on smoking and health, and addiction."

The company line was "[t]hat causation had not been proven and that nicotine had not been shown to be addictive."

58. Wigand described the orientation session as follows:

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

59. Another example of the lawyers' involvement, in 1990, BAT held a series of mandatory training sessions about writing and document creation for company scientists. "The sessions were called 'caution in writing' seminars and at Brown & Williamson they were presented by lawyers, predominantly from Shook, Hardy & Bacon." At the seminars, scientists were instructed by lawyers "on how to sanitize the documents they created." The scientists were told "how to avoid writing documents with contentious words and topics." The contentious words included words like "safer," "addictive," "disease," and "cancer."

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

61. In November 1967, at the direction of outside lawyers David Hardy of Shook, Hardy & Bacon, and Ed Jacobs of Cabell, Medinger, Forsyth & Decker, the Tiderock Corporation, the Tobacco Institute's public relations firm, prepared an action plan titled "The Cigarette Controversy." The action plan proposed to influence public opinion by creating specific

initiatives to re-open the "open question" cigarette controversy. The program called for the creation of a position paper for intra-industry use as well as one for distribution to the media and public. The plan included targeted categories for mailings such as the medical profession, scientists, communicators (press, radio, and television), educators, top public figures, and 10,000 top corporate presidents. It also detailed the publication of magazine articles.

62. In a January 29, 1974 report concerning the progress made by Liggett in 1973 on Project TE 5001, James R. Newsome, an attorney with Shook, Hardy & Bacon, explained: "[future plans on this project will consist of screening a number of basic materials on both the cigarette filter and blend in an attempt to find which additive is most effective in producing a smoke able increased smoke pH cigarette."
63. In 1974, David Hardy of Shook, Hardy & Bacon advised British American Tobacco Co. (BATCo) against admitting to the public what its scientists knew internally -- that smoking causes disease. At the time, BATCo was considering placing a warning on cigarette packages sold in England -- with no government attribution -- that stated that smoking "causes lung cancer, bronchitis, heart disease." In a letter addressed to BATCo, Hardy advised that this admission of fact would impede the defense of smoking and health litigation in the United States. He wrote:

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

64. One year prior to the release of the 1979 Surgeon General's Report on Smoking and Health, Defendants started planning their response to what they expected it to say. That response included establishing a task force to write and publish a rebuttal paper. Rather than have scientists evaluate the evidence or the Report's findings, once they were issued, the Tobacco Institute assigned a public relations staff member to research, write, and edit the rebuttal paper. Anne Duffin was given this responsibility, under the direction and guidance of the law firm Shook, Hardy & Bacon. Other public relations staff members re-read and edited chapters of the document as it was drafted.
65. While internally, Shook, Hardy & Bacon advised the Defendants not to publicly admit what the industry already knew about the harms of smoking, publicly, they were drafting false and misleading statements. In 1981, for instance, the Tobacco Institute published a document titled "On Smoking -- 21 questions and answers," written by the law firm Shook, Hardy & Bacon, which stated:

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

66. As early as 1970, however, attorneys at Shook, Hardy & Bacon wrote a seven-page letter to B&W's General Counsel expressing concern that BAT Group research documents would be subject to discovery and that these documents "constitute a real threat to the continued success in the defense of smoking and health litigation."
67. A June 20, 1984 memorandum, written by Shook, Hardy & Bacon attorney Wendell L. Stone, summarizes the significance of CTR-funded nicotine research for industry clients. In his memorandum, Stone conceded that:

Of the three areas pertinent to Cipollone¹ (lung cancer, emphysema, and addiction) the abstracts and CTR commentary regarding

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

addiction are the most consistently adverse. Through the years, CTR has funded psychopharmacological and neuropharmacological studies which emphasize and leave clear the points that CTR views nicotine as a "psychoactive" or "psychotropic" drug (terms which CTR has used), and that the research approach most appropriate to studying smoking behavior involves the pharmacology of nicotine. Among the undesirable research claims which appear in abstracts which acknowledge CTR support: the identification of specific central nervous system structures (nicotine receptors) at which nicotine acts; effects of nicotine on a variety of different purported neurotransmitters involved in learning, memory, etc.; various behavioral effects of nicotine from which can be inferred central nervous system effects, some of which might be used to support assertions regarding "tolerance" and "withdrawal."

68. In a June 3, 1985 RJR document titled "Report on Medical and Scientific Issues -Addiction," the scientist authors attempted to examine current scientific literature to assist the industry with respect to the scientific consensus on nicotine addiction. As part of their review, the scientists reviewed literature compiled by the tobacco law firms of Jacob, Medinger & Finnegan, Shook, Hardy & Bacon, and Jones Day. The scientists wrote in their report that, "Both Mr. Wroblewski [Jacob, Medinger & Finnegan] and Mr. Serridge [Shook, Hardy & Bacon] warned, however, that there is very little literature favorable to the industry's position on addiction."

69. Shook, Hardy & Bacon pointed out the legal implications of the "unfavorable" Philip Morris internal nicotine research:

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

70. In a July 27, 1983 letter to the head of Philip Morris, Shook, Hardy & Bacon attorney Patrick Sigrid summarized the nicotine research being conducted by scientist and recommended its

suppression.

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

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

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

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

72. The 1994 Shook, Hardy & Bacon report acknowledges that, researcher, Victor DeNoble's research was suppressed: "[H]e was not allowed to publish the research regarding the effects of nicotine and acetaldehyde." This occurred "after a letter from Shook, Hardy to the Philip Morris Legal Department and discussions between [attorney] Alex Holtzman and [scientist] Jim Charles."
73. In a later section of the 1994 report, Shook, Hardy & Bacon described how nicotine research undermined Philip Morris's public position denying addiction, and could invite regulation by the FDA:

D. Why Was Research Stopped

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

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

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

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

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

74. None of the results or conclusions from the Philip Morris Nicotine Program or Behavioral Research Program were made public or were included in Philip Morris's and the industry's collective submission to the FDA in 1996. In fact, Volume III of the industry's "Comments" deny FDA assertions that research existed showing that nicotine is addictive.
75. CTR Special Projects were a separate category of research projects funded by CTR. Unlike the grant-in-aid category of research, CTR Special Projects were not screened by the CTR Scientific Advisory Board ("SAB"); instead the process was directed by the General Counsels of Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American, as well as attorneys at outside law firms including Jacob, Medinger & Finnegan, and Shook, Hardy & Bacon. The work was specifically commissioned for possible use in litigation.
76. The lawyers who coordinated, requested and monitored CTR Special Projects were not scientists and did not have scientific backgrounds. The lawyers wished to avoid the CTR SAB method of funding because the SAB evaluated its project-funding requests in part for scientific legitimacy, while the lawyers were focused on litigation and liability objectives

77. On September 26, 1977, Philip Morris's Assistant General Counsel, Alexander Holtzman, sent a warning to the company President, Joseph Cullman, informing him that the results from the Harvard Project had led Huber to the conclusion that exposure of rats to cigarette smoke for six months causes emphysema and that a paper announcing those results would be delivered at the American College of Chest Physicians meeting in October, 1977. Holtzman indicated that attorney William Shinn of Shook, Hardy & Bacon, under the direction of industry counsel at the Tobacco Institute, had been sent to modify Huber's views on the results of his research. The attorney did not succeed in altering Dr. Huber's interpretation of the results of his study. The Tobacco Institute prepared a press release to mitigate the damage in the event Huber's interpretation received any media attention.
78. In 1980, Huber sought to continue his smoking and health research on animals at a time when he was making significant progress, but Defendants cut off funding for his research at Harvard and denied his request for funding after he moved later that year to the University of Kentucky. In a 1980 meeting, Defendants' attorneys told Huber that the reason funding for his research had been discontinued was because he was "getting too close to some things." The attorneys included Lee Stanford from Shook, Hardy & Bacon.
79. When Huber was subpoenaed by the State of Texas to testify in its case against the Defendants in 1997, lawyers for Defendants, including Robert McDermott at Jones Day and Lee Stanford at Shook, Hardy & Bacon, contacted him and urged him "to keep the faith, to hold the line." The attorneys implied to Huber that he did not "fully appreciate the full weight of Shook, Hardy & Bacon and Jones Day" representatives of the tobacco industry. The calls caused Huber to fear for the safety and financial security of his family. Huber perceived a clear message: Defendants wanted to keep him silent.
80. The TRC was re-named the Tobacco Advisory Council ("TAC") on August 31, 1978. Various members of the conspiracy participated in the TAC, including BATCo, RJR, and Philip Morris, John Rupp of Covington & Burling and Don Hoel of Shook, Hardy & Bacon. The last TAC meetings occurred in May of 1999.

81. CTR Special Project funding ended sometime around 1990. Thereafter, Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American continued to jointly fund research projects on behalf of the conspiracy through Lawyers Special Accounts. For example, on March 2, 1990, Stevens sent a letter to Patrick Sirridge of Shook, Hardy & Bacon, enclosing a check for \$46,461, which represented Lorillard's share of joint funding for Theodor Sterling, a long-time CTR Special Projects grantee. Stevens noted "that this is no longer a CTR project, but is now being funded directly by the Companies and administered as a Special Research Project through your firm."
82. Arthur Stevens, Senior Vice President and General Counsel of Lorillard, and William Allinder, also of Lorillard, wanted to know if Lorillard could "participate in funding through a Shook, Hardy special account the work of a Georgetown pathologist, Bennett Jensen." Jensen had received CTR Special Project funding in 1988, and now faced problems at Georgetown because of his ties to the tobacco industry. Shook, Hardy & Bacon proposed to: "give him \$40,000 – not for specific research...or with an eye to publication but solely in order to maintain a good relationship with him and secure his continue help in making contact with other scientists."
83. A June 28, 1988 memorandum addressed to Toss Sollis, Assistant General Counsel of PM, from Donald Hoel, attorney with Shook, Hardy & Bacon, described the central role played by Shook, Hardy, & Bacon with respect to INFOTAB (International Tobacco Information Center/Centre International d'Information Du Tabac, registered in Geneva, Switzerland). Hoel stated:

SHB, as counsel to PM and other international manufacturers, was instrumental in the founding of INFOTAB to help strengthen and coordinate the activities of the various national manufacturers associations. The firm remains active in the operation of INFOTAB. It monitors the meetings and clears the draft minutes of the INFOTAB Board of Directors and the Global Issues Working Party, as well as INFOTAB workshops.

All materials prepared by INFOTAB on smoking and health issues, including briefing documents sent to national manufacturers associations and presentations by the INFOTAB staff, are cleared by SHB in order to protect the member association and member companies. SHB also approves all public relations campaigns, tactics and strategies which address smoking and health issues

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

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

85. In 1990, INFOTAB also issued an INFOTAB publication titled “Children & Smoking -- The Balanced View” that addressed various World Health Organization claims. It stated that tobacco is not addictive, and that there were inconsistent findings as to whether smoking causes low birth weight, birth defects, and delayed mental and physical development in infancy.
86. Meanwhile, and at various times during which litigation and federal regulatory activities were pending, Defendants improperly sought to conceal research material behind the attorney-client privilege and the work product doctrine in order to avoid discovery. To accomplish that purpose, Defendants’ lawyers exercised extensive control over joint industry and individual company scientific research and often vetted scientific documents. For example, correspondence with an institute or an individual regarding CTR special projects was not turned over to CTR, but was instead kept at the law firm generating the letters. Moreover, Don Hoel of Shook, Hardy & Bacon believed that such correspondence was never even provided to CTR nor produced in any litigation.
87. Many of the actions to suppress information were joint efforts by all of the Defendants through the Committee of Counsel, (which was comprised of the general counsel for the defendants), through other joint organizations, or through Defendants’ law firms, including Covington & Burling and Shook, Hardy & Bacon, which often represented one or more of

the Defendants.

INFLUENCE OF DEFENDANTS' CONDUCT ON TOMASA SANTANA

88. The Decedent, TOMASA SANTANA, was influenced by Defendants' statements, advertising and related conduct. Because of Defendants' conduct described above, the Decedent began smoking when she was a teenager because she watched television advertisements for, inter alia, Virginia Slims and other cigarette brands created by the Defendant. Specifically, the Decedent watched television advertisements on family shows such as I Love Lucy (which advertised Philip Morris) and the Beverly Hillbillies (which advertised Winston). The Decedent was persuaded at an early age by the glamour, allure, and attraction of cigarette smoking. She relied on the portrayal of cigarette smoking as glamorous because those statements and advertisements omitted the fact that cigarettes contain nicotine and that smoking cigarettes was a dangerous and highly addictive activity.
89. Throughout the mid to late 1960s, the Decedent saw television and magazine advertisements for cigarettes with people in white coats who appeared to be doctors and/or other medical professionals advocating smoking cigarettes. The Decedent smoked filtered cigarettes because she truly believed they were safer. The statements in these advertisements about filters, as well as the word "filters" which was on each pack she purchased, shaped the Decedent's understanding of the health effects of smoking and encouraged the Decedent to smoke filtered cigarettes. In fact, the Decedent began, and continued, smoking filtered and cigarettes due to her reliance on the statements therein.
90. Being a young woman in the 1970s during the Women's Liberation Movement, the Decedent was attracted to empowering advertisements from Virginia Slims cigarettes. She believed ads that pointed out that women were different from men "biologically" and thus required a

cigarette "slimmer than the fat cigarettes men smoke." The Decedent saw these different ads and understood the term "biologically" different and "slimmer" to mean that the Virginia Slim cigarette offered a healthier alternative.

91. Acting on the information supplied by Defendants that omitted important facts, such as that nicotine was addictive and that smoking causes cancer, COPD, heart disease, and other diseases, the Decedent began and continued to smoke Virginia Slims cigarettes.
92. Relying on the above referenced ads of the illusion of filtered cigarettes, the Decedent continued to smoke believing that it was safe to do so. She believed and relied to her detriment on all of the false advertisements that she saw. The Decedent saw these different ads and relied on the portrayal of the filtered cigarette as safer because those statements and advertisements omitted the fact that unfiltered cigarettes were no safer than filtered cigarettes. The Decedent relied on all of the Defendants' advertisements and continued to smoke filtered cigarettes believing it was not harmful. Due to her reliance on the advertisements, her continued smoking caused her to develop COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer.
93. As a proximate cause of smoking Virginia Slims cigarettes designed, manufactured, advertised, marketed, distributed and/or sold by PHILIP MORRIS USA, INC., the Decedent contracted smoking-related diseases - COPD, laryngeal cancer, nasopharyngeal cancer, and oral cavity cancer – which were diagnosed on or about 2014 to 2015 which resulted in her death.

COUNT I: PRE 1969 NEGLIGENCE & STRICT LIABILITY
FAILURE TO WARN CLAIMS

94. This count applies ONLY to PHILIP MORRIS USA, INC.
95. All of the allegations contained in paragraphs 1 through 93 are realleged herein.
96. The allegations in the Count relate only to pre July 1st 1969 conduct by PHILIP MORRIS USA, INC.
97. The Decedent was a consumer and smoked the Defendant's Virginia Slims cigarettes, and began smoking by smoking cigarettes manufactured by PHILIP MORRIS that had no warnings that nicotine was addictive, that cigarettes were designed to deliver an addictive dose of nicotine, or that cigarette smoking caused diseases such as cancer and COPD.
98. The Defendant failed to use reasonable care, which is the care that a reasonably careful designer, manufacturer, seller, supplier would use under like circumstances. The Defendant was required to give appropriate warnings about particular risks of the Virginia Slims cigarette product which the Defendant knew or should have known are involved in the reasonably foreseeable uses of the Virginia Slims cigarette product.
99. The Defendant negligently failed to warn about particular risks involved in the use of the Virginia Slims cigarette products and said failures to warn was a legal cause of the loss, injury or damage and death of the Decedent as more fully described herein.
100. The Virginia Slims cigarette products are defective, and posed a foreseeable risks of harm from the Virginia Slims cigarette product could have been reduced or avoided by providing reasonable instructions or warnings, and the failure to provide those instructions or warnings makes the Virginia Slims cigarette product unreasonably dangerous.
101. The foreseeable risks of harm from the Virginia Slims cigarette product could have been reduced or avoided by providing reasonable instructions or warnings and the failure to

provide those warnings made the Virginia Slims cigarette product unreasonably dangerous and, if so, whether that failure was a legal cause of the loss, injury or damage and death of the Decedent.

102. Defendant was negligent in all of the following respects, same being the proximate cause of the Decedent's injuries and death which acts:

- A. prior to July 1, 1969 in failing to warn and/or adequately warn foreseeable users, such as the Decedent, of the dangerous characteristics of cigarette products in that Defendant failed to warn foreseeable users that they could develop fatal injuries including, but not limited to, COPD, heart disease and various forms of cancer, as a result of smoking and/or inhaling smoke from Defendant's Virginia Slims cigarette products which could result in death;
- B. prior to July 1, 1969 in failing to adequately warn foreseeable users, such as the Decedent, of the extent of the dangers to one's health of smoking and/or inhaling smoke from Defendant's Virginia Slims cigarette products and of the gravity of the risk and extent of danger that foreseeable users expose themselves to by smoking and/or inhaling smoke from Defendant's Virginia Slims cigarette products;
- C. prior to July 1, 1969 in failing to warn foreseeable users, such as the Decedent, to restrict their intake of cigarette smoke and in failing to provide guidelines on amount of consumption and reasonable safe dosage so as to reduce and/or eliminate the danger to the Decedent and others similarly situated;
- D. prior to July 1, 1969 in failing to warn foreseeable users, such as the Decedent, that the use of cigarettes would more likely than not lead to addiction, habituation and/or dependence;
- E. prior to July 1, 1969 in failing to warn foreseeable users, such as the Decedent, that quitting and/or limiting use would be extremely difficult if consumption was initiated at an early age and as cumulative consumption increased;
- F. prior to July 1, 1969 in failing to disclose to consumers of cigarettes, such as the Decedent, the results of scientific research conducted by and/or known to Defendant which indicated that Virginia Slims cigarettes may be dangerous, defective and/or addictive;
- G. prior to July 1, 1969 in failing to advise the Decedent and others similarly situated in the general community, whom the Defendant knew and/or should have known, and/or could have known, had been exposed to the inhalation of the Virginia Slims cigarette smoke resulting from the ordinary and foreseeable use of said cigarette products, to cease all future exposure to the inhalation of all types of other fumes, smoke, dust and fibers, to keep dust and fibers on work clothes and tools away

from the home environment, to be examined by a medical specialist to determine the nature and the extent of any and all disease caused by such exposure and inhalation and to receive any available medical treatment for such diseases;

- H. did not provide an adequate warning prior to July 1, 1969 of the potential harm that might result from exposure to said products and, alternatively, did not have adequate instructions for safe use of the Virginia Slims products;
 - I. prior to July 1, 1969 did not have warnings to persons, such as the Decedent, who had been, or reasonably may have been, exposed to Defendant's Virginia Slims cigarette products, of their disease potential, the proper steps to take to reduce the harmful effects of previous exposure, the need to have periodic chest x-rays and medical examinations including the giving of a detailed medical history regarding previous exposure, and the need to have immediate and vigorous medical treatment for any and all respiratory problems;
103. The Decedent, unaware of the defective and unreasonably dangerous condition of the Defendant's Virginia Slims cigarette products, and at a time when such products were being used for the purposes for which they were intended, was exposed to and breathed smoke from Defendant's Virginia Slims cigarette products.
104. Defendant knew that its Virginia Slims cigarette products would be used without inspection for defects, and by placing them on the market, represented that they would be safe.
105. The Decedent was unaware of the hazards and defects in the Virginia Slims cigarette products of the Defendant, to-wit: That exposure to said products would cause the Decedent to develop cigarette smoking related disease(s) and or cause death which made said products unsafe for use.
106. The defects and failure to warn as described above in the Virginia Slims cigarettes caused the Decedent to purchase, consume and inhale the Virginia Slims cigarettes, resulting in sustained and repeated nicotine use² which caused her to become addicted to nicotine, and further resulted in a direct and proximate cause of the Decedent contracting COPD,

² The phrase "sustain repeated nicotine use," is meant to describe the behavior of smoking cigarettes on a daily or regular basis.

laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cancer which led to her death.

107. As a further direct and proximate result of the Virginia Slims cigarettes, defects and the Defendant's failure to warn as described herein, the Decedent, TOMASA SANTANA, developed, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-listed count, should the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's Personal Representatives demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representatives may be legally or equitable entitled.

COUNT II: NEGLIGENCE (Manufacturer)

108. This count applies ONLY to PHILIP MORRIS USA, INC.
109. All of the allegations contained in paragraphs 1 through 93 are realleged herein.
110. Defendant had a duty to the Decedent to provide a reasonably safe cigarette in design and manufacture and to warn of the harms of smoking cigarettes and its addictive nature.
111. The cigarette products complained of, Virginia Slims, were designed, manufactured, advertised, marketed, distributed and/or sold by Defendant, which the Decedent used and smoked in her daily life as mentioned above.
112. The Decedent alleges that she was exposed to Defendant's products as a smoker and/or bystander. Each exposure to such cigarette products of the Defendant, caused the Decedent to inhale smoke from said products which caused her to develop COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and death. Each exposure to such products was harmful and caused or contributed substantially to the Decedent's aforementioned injuries and subsequent death. The Decedent's aforementioned injuries and death arose out of, were connected to and incidental to the design, manufacture, advertisement, marketing, distribution and/or sale by Defendant of its cigarette products.
113. The Decedent was exposed to and did inhale smoke from Virginia Slims cigarettes products which were designed, manufactured, advertised, marketed, distributed and/or sold by Defendant.
114. The damages of the Decedent are the direct and proximate cause of the negligence of the Defendant, in that it produced, sold and otherwise placed into the stream of intrastate and

interstate commerce, Virginia Slims cigarette products which the Defendant knew, or, in the exercise of ordinary care should have known, were deleterious and highly harmful to the Decedent's health and well-being. The Defendant, prior to selling and/or distributing its cigarette products, to which the Decedent was exposed, knew that exposure to cigarette smoke was harmful to human beings and that it could cause injuries including, but not limited to, COPD, heart disease and/or various forms of cancer and/or result in death. The Defendant also knew that the Decedent and others similarly situated would use and be exposed to its cigarette products in such a way as to cause the Decedent to inhale the smoke from said products.

115. Defendant's Virginia Slims cigarette products contained latent characteristics and/or latent functional defects at the time they were manufactured and at the time the Decedent was exposed to them in that said products contained tar, nicotine and other harmful substances which the Defendant knew or in the exercise of reasonable care, should have known would cause injuries including, but not limited to, COPD, heart disease and/or various forms of cancer and/or result in death, to those, such as the Decedent who used and/or was exposed to them.
116. Defendant knew that its Virginia Slims cigarette products would be used by and around the Decedent without inspection for defects and that any such inspection would not have advised the Decedent of the fact that the Defendant's cigarette products could cause the injuries which she suffered as well as her subsequent death. Such facts made Defendant's cigarette products unreasonably dangerous in that the Decedent was not apprised of, could not and would not contemplate the danger and/or the extent of the danger of contracting the aforementioned injuries as a result of her exposure to the inhalation of the cigarette smoke of

the Defendant's cigarette products which she used or was exposed to.

117. At all times material to this action, the Defendant knew or should have known the following:
- A. that smoking cigarettes greatly increased the risk of a smoker developing COPD, heart disease, various forms of cancer, suffering a stroke and/or sustaining other injuries and/or damages to the lungs, respiratory system, immune system, genetic makeup and other related physical conditions when used as intended;
 - B. that the diseases and/or injuries listed above would be more likely experienced if users such as the Decedent did not restrict their intake of Defendant's cigarettes, or if they began to use such products at an early age;
 - C. that use of the products as intended was more likely than not to lead to addiction, habituation, physical and/or psychological dependence, particularly if begun at an early age;
 - 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;
 - F. that cigarette sellers could develop a reasonably safe dose for foreseeable users;
 - G. that there were feasible improvements in design, composition, or manufacture of cigarettes such as to materially decrease the foreseeable risk to users such as the Decedent;
 - H. that switching to or continuing to smoke 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;
 - 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.
118. The Plaintiff alleges that there were methods of design and manufacture available and/or known to the Defendant and unknown to the Decedent which could have been used by the Defendant in the design and manufacture of its cigarette products to which the Decedent was exposed to make such products less dangerous. Defendant was in the business of designing, manufacturing, advertising, marketing, distributing and/or selling cigarette products during the times pertinent to this suit, and knew that the Decedent and others similarly situated would come in contact with their cigarette products, and would be exposed to the inhalation of the smoke from said products which resulted in the development of fatal and life

threatening injuries including, but not limited to, COPD, heart disease and various forms of cancer.

119. The Defendant's Virginia Slims cigarette products to which the Decedent was exposed were used in the manner in which they were intended or reasonably foreseeable to the Defendant.
120. The Defendant's Virginia Slims cigarette products failed to perform as safely as an ordinary cigarette consumer, such as the Decedent would expect. Specifically, the cigarettes smoked by the Decedent caused her to develop COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer as a result of her inhalation of cigarette smoke from the Defendant's Virginia Slims cigarette products.
121. Each of the Defendant's Virginia Slims cigarette products suffered from a manufacturing and design defect in that they contained arsenic, carcinogens, toxic chemicals, toxic gases, nicotine, tars and other substances which the Defendant knew or should have known were extremely harmful to human beings in that exposure to such substances causes injuries and death, and for which there were available materials to substitute and/or manufacturing methods to reduce and/or eliminate these substances in the design and manufacture of the product.
122. The Virginia Slims cigarettes manufactured by the Defendant are a highly engineered product and not simply tobacco rolled in paper. The dangerous properties present in cigarettes manufactured by Defendants' and smoked by the Decedent were greatly in excess of the risk posed by smoking dried tobacco leaves that had not been processed and by Defendants and designed to have an addictive level of nicotine.
123. Defendant breached their duty of reasonable care to the Decedent by designing, marketing and manufacturing a defective cigarette product. The Virginia Slims cigarettes designed,

marketed and manufactured by the Defendant are not merely defective because they contain nicotine or that the by-product of the smoke contain carcinogens. The Virginia Slims cigarettes are defective by design in the following acts and omissions:

- A. failure to design and manufacture Virginia Slims products that were not addictive;
- B. failure to design and manufacture Virginia Slims tobacco products that did not contain an unreasonable level of nicotine;
- C. failure to warn the smoking consumers of the addictive nature of nicotine when said Defendant knew or should have known of nicotine's addictive nature;
- D. failure to take any reasonable precautions or exercise reasonable care to adequately or sufficiently reduce or remove the level of nicotine in cigarettes so that smokers would have the ability to quit;
- E. failure to act on existing research of a safer design that was readily available to Defendant, so that smokers could purchase a nicotine-free cigarette;
- F. failure to utilize accurate measurements as to levels of true nicotine yield and tar in "low tar" in Virginia Slims cigarettes;
- G. failure to provide the smoking public with information known solely by the Defendant as to the health risks involved in smoking Virginia Slims cigarettes and the addictive nature of nicotine;
- H. failure to remove and recall tobacco products from their marketplace upon learning that Virginia Slims cigarettes were addictive and poisonous and caused serious illnesses and death to smokers and those in the vicinity of cigarette smoke;
- I. The Defendant did not simply take tobacco leaves and rolled them in paper. If that were the case, the smoke from those cigarettes would be too harsh to inhale and not likely to cause serious illnesses. The Defendant specifically engineered Virginia Slims cigarettes to be inhalable. The harshness of smoke is measured by its pH level. The Defendant precisely control the pH level of the smoke produced by their cigarettes, in order to make the smoke inhalable.
- J. The pH levels in the smoke from Virginia Slims cigarettes are not arrived at arbitrarily. The Defendant carefully design and engineer the pH to the levels they desire. The Defendant manipulate the pH levels in Virginia Slims smoke so that it is not too harsh, and allow smokers to more easily inhale the smoke.
- K. Designing the cigarettes to be inhalable is key design feature, which allows the smoke to be ingested into the respiratory system. The smoke carries nicotine a chemical compound as well as carcinogens into the lungs. The nicotine travel through the blood stream and eventually crosses over the blood brain barrier and the nicotine compounds from the smoke are metabolized and attach to nicotinic receptors in the brain, which causes a chemical reaction and releases several neurotransmitters that act as a reward system to the body and is instrumental in sustaining repeated nicotine use. This process and chain of events is well known to the Defendant and is the reason the Defendant designed Virginia Slims cigarettes to be inhalable.
- L. Introducing chemicals and additives into the design of Virginia Slims cigarettes to make the inhalation process of smoke more palatable.

- M. Introducing chemicals and additives into the design of Virginia Slims cigarettes which allows a chemical reaction to occur to free the nicotine compounds and accelerate the effects, potency and speed of the nicotine delivery to the body.
- N. Introducing chemicals, additives and flavoring into the design of Virginia Slims cigarettes to make the taste of the cigarette smoke more palatable.
- O. The Defendant closely regulate the amount of nicotine in their Virginia Slims cigarettes. This is also a key design feature. Although nicotine does occur naturally in tobacco leaves, the Defendant's use several design methods to ensure that each cigarette produced contains a certain amount of nicotine by weight. Some of those design methods include, temperature controlled leaf curing, leaf growing, harvesting, leaf selection and blending different types of tobacco leaves. These manufacturing and design processes are important because the Defendant have extensively studied what amount of nicotine per cigarette is necessary to sustain repeated nicotine use by its customers. The Defendant use these manufacturing and design methods to carefully manipulate Virginia Slims cigarettes with specific levels of nicotine, in order allow its customers sustain repeated nicotine use.
- P. in designing and developing cigarette products that were more mild, had better taste and contained nicotine so that foreseeable users, such as the Decedent, would find smoking Defendant's Virginia Slims products pleasurable which in turn would lead the Decedent, and others similarly situated, to begin smoking and/or to increase consumption;
- Q. in failing to develop and utilize alternative design, manufacturing methods and/or materials to reduce and/or eliminate harmful materials and/or characteristics from the Virginia Slims cigarette products Defendant designed, manufactured, advertised, marketed, distributed and/or sold;
- R. in continuing to manufacture, distribute and sell Virginia Slims cigarettes products when Defendant knew at the time of said manufacture, distribution and/or sale that such products could cause, and in fact were more likely to cause, injuries including, but not limited to, COPD, heart disease and/or various forms of cancer and ultimately death to foreseeable users, such as the Decedent, when used as intended;
- S. in concealing information while affirmatively misrepresenting to the Decedent 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 and otherwise, that the cigarette products manufactured, distributed and/or sold were safe and/or not proven to be dangerous in their ordinary and foreseeable use, which material misrepresentations induced the Decedent to unknowingly use and/or continue to use Defendant's Virginia Slims cigarette products herself and expose herself to the hazards of developing disease and/or suffering injuries including, but not limited to, COPD, heart disease and/or various forms of cancer which could lead to death;
- T. in failing to test and/or adequately test Defendant's Virginia Slims cigarette

products before offering them for sale and use by the Decedent, and other persons similarly situated;

- U. in failing to remove and recall all of said Virginia Slims cigarette products from the stream of commerce and the marketplace upon ascertaining that said products would cause COPD, heart disease, and various forms of cancer, some or all of which are permanent and fatal;
 - V. in manipulating, failing to reduce and/or eliminating nicotine from Defendant's Virginia Slims cigarette products to prevent the, who was addicted to the nicotine in Defendant's cigarette products, from quitting and/or reducing consumption;
 - W. in including nicotine, or artificially high levels of nicotine, in Defendant's Virginia Slims cigarette products to prevent the Decedent and other persons similarly situated from quitting and/or reducing consumption; and/or,
 - X. in utilizing 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.
 - Y. by designing and manufacturing their cigarettes including Virginia Slims to be inhalable and thus unreasonably dangerous.
 - Z. by placing additives and ingredients in cigarettes including Virginia Slims to making them easier to inhale and addictive.
124. As a direct and proximate result of Defendants' negligence, the Decedent, TOMASA SANTANA, developed, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-listed count, should the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's

Personal Representatives demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representatives may be legally or equitable entitled.

COUNT III: STRICT LIABILITY (Manufacturer)

125. This count applies ONLY to PHILIP MORRIS USA, INC.
126. All of the allegations contained in paragraphs 1 through 93 are realleged herein.
127. Defendant, PHILIP MORRIS USA, INC, has been a designer, manufacturer, advertiser, distributor and/or seller of cigarette products including Virginia Slims cigarettes and related family brands respectively.
128. The Virginia Slims cigarettes products complained of were cigarette products designed, manufactured, advertised, distributed and/or sold by Defendant and used by and/or in the vicinity of the Decedent.
129. The aforesaid Virginia Slims cigarette products were distributed, supplied, sold and/or otherwise placed into the stream of commerce, and/or caused to be placed into the stream of commerce, by the Defendant.
130. Plaintiff alleges that the Decedent was exposed to Defendant's Virginia Slims cigarette products over many years during which time smoke from Defendant's cigarette products were inhaled by the Decedent which caused her to develop COPD, laryngeal cancer,

nasopharyngeal cancer, brain cancer, and oral cavity cancer and/or other injuries which resulted in her death.

131. At the time the Defendant designed, manufactured, advertised, marketed, distributed and/or sold the aforesaid Virginia Slims cigarette products, such products were expected to, and did, reach the Decedent in a condition without substantial change from that in which such products were when within the possession of the Defendant.
132. The Defendant's Virginia Slims cigarette products were in a condition unreasonably dangerous to users and/or bystanders, such as the Decedent, and said products were expected to, and did, reach the Decedent without substantial change affecting that condition.
133. The Defendant's Virginia Slims cigarette products were, by reason of their design, in a condition unreasonably dangerous to users and/or bystanders, such as the Decedent, and said products were expected to, and did, reach the Decedent without substantial change affecting that condition.
134. The Defendant's Virginia Slims cigarette products were unreasonably dangerous because of their design in that the risk of danger to users and/or bystanders, such as the Decedent, outweighed the benefits.
135. The Defendant's Virginia Slims cigarette products were dangerous beyond the expectation of the ordinary user/consumer/bystander when used as intended or in a manner reasonably foreseeable by the Defendant. Defendant shaped the reasonable and ordinary consumer's expectations through its advertising, statements to the public, research documents it made public, and through the statements, advertising and research released by by the entities who subscribed to the Frank Statement, which are identified above.
136. The Defendant's Virginia Slims cigarette products were unreasonably dangerous because a

less dangerous design and/or modification was economically and scientifically feasible.

137. The Virginia Slims cigarettes designed, marketed and manufactured by the Defendant are not merely defective because they contain nicotine or that the by-product of the smoke contains carcinogens. The Virginia Slims cigarettes are defective by design including but not limited to the following ways:

- A. failure to design and manufacture Virginia Slims products that were not addictive;
- B. failure to design and manufacture Virginia Slims tobacco products that did not contain an unreasonable level of nicotine;
- C. failure to warn the smoking consumers of the addictive nature of nicotine when said Defendant knew or should have known of nicotine's addictive nature;
- D. failure to take any reasonable precautions or exercise reasonable care to adequately or sufficiently reduce or remove the level of nicotine in Virginia Slims cigarettes so that smokers would have the ability to quit;
- E. failure to utilize a safer design that was readily available to Defendant, so that smokers could purchase a nicotine free cigarette;
- F. failure to utilize accurate measurements as to levels of true nicotine yield and tar in "low tar" in Virginia Slims cigarettes;
- G. failure to provide the smoking public with information known solely by the Defendant as to the health risks involved in smoking Virginia Slims cigarettes and the addictive nature of nicotine;
- H. failure to remove and recall tobacco products from their marketplace upon learning that Virginia Slims cigarettes were addictive and poisonous and caused serious illnesses and death to smokers and those in the vicinity of cigarette smoke;
- I. The Defendant did not simply take tobacco leaves and rolled them in paper. If that were the case, the smoke from those cigarettes would be too harsh to inhale and not likely to cause serious illnesses. The Defendant specifically engineered Virginia Slims cigarettes to be inhalable. The harshness of smoke is measured by its pH level. The Defendant precisely control the pH level of the smoke produced by their cigarettes, in order to make the smoke inhalable.
- J. The pH levels in the smoke from Virginia Slims cigarettes are not arrived at arbitrarily. The Defendant carefully design and engineer the pH to the levels they desire. The Defendant manipulate the pH levels in Virginia Slims smoke so that it is not too harsh, and allow smokers to more easily inhale the smoke.
- K. Designing the cigarettes to be inhalable is key design feature, which allows the smoke to be ingested into the respiratory system. The smoke carries nicotine a chemical compound as well as carcinogens into the lungs. The nicotine travel through the blood stream and eventually crosses over the blood brain barrier and the nicotine compounds from the smoke are metabolized and attach to nicotinic receptors in the brain, which causes a chemical reaction and releases several neurotransmitters that act as a reward system to the body and is instrumental in sustaining repeated nicotine use. This process and chain of events is well known to

the Defendant and is the reason the Defendant designed Virginia Slims cigarettes to be inhalable.

- L. Introducing chemicals and additives into the design of Virginia Slims cigarettes to make the inhalation process of smoke more palatable.
 - M. Introducing chemicals and additives into the design of Virginia Slims cigarettes which allows a chemical reaction to occur to free the nicotine compounds and accelerate the effects, potency and speed in which the nicotine is delivered to the body.
 - N. Introducing chemicals, additives and flavoring into the design of Virginia Slims cigarettes to make the taste of the cigarette smoke more palatable.
 - O. Defendant closely regulate the amount of nicotine in their Virginia Slims cigarettes. This is also a key design feature. Although nicotine does occur naturally in tobacco leafs, the Defendant's use several design methods to ensure that each cigarette produced contains a certain amount of nicotine by weight. Some of those design methods include, temperature controlled leaf curing, leaf growing, harvesting, leaf selection and blending different types of tobacco leafs. These design and manufacturing processes are important because the Defendant have extensively studied what amount of nicotine per cigarette is necessary to sustain repeated nicotine use by its customers. The Defendant use these design and manufacturing methods to carefully manipulate Virginia Slims cigarettes with specific levels of nicotine, in order allow its customers sustain repeated nicotine use.
138. Defendant's Virginia Slims cigarette products were further in a defective condition, unreasonably dangerous, in that those products:
- A. by design contained tar, nicotine, carcinogens, toxic gasses, and other substances deleterious, poisonous, and highly harmful to the Decedent;
 - B. contained tar, nicotine, carcinogens, toxic gasses, and other substances deleterious, poisonous, and highly harmful when and after it became feasible to design and manufacture reasonably comparable products not containing those substances or containing less of them;
 - C. failed to filter the harmful substances so that during ordinary use, such materials would not be liberated into the air and/or breathed by the smoker such as the Decedent herein;
 - D. through the use of filters, manufacturing methods, engineering methods and/or materials utilized were designed in such a way to make smoking Defendant's Virginia Slims cigarette products more tasteful, pleasurable and less likely to trigger the smoker's own biological self defense mechanisms which otherwise may have limited and/or altered the smoker's behavior in such a way that the smoker may have smoked less, inhaled less deeply or not at all;
 - E. 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; and/or,

- F. the nature and degree of the danger of Defendant's Virginia Slims cigarette products were beyond the expectation of the ordinary consumer when used as intended or in a reasonably foreseeable manner.
 - G. by designing and manufacturing their cigarettes including Virginia Slims to be inhalable and thus unreasonably dangerous.
 - H. by placing additives and ingredients in cigarettes including Virginia Slims to making them easier to inhale and addictive;
139. The Decedent, unaware of the defective and unreasonably dangerous condition of the Defendant's Virginia Slims cigarette products, and at a time when such products were being used for the purposes for which they were intended, was exposed to and breathed smoke from Defendant's cigarette products.
140. Defendant knew that its Virginia Slims cigarette products would be used without inspection for defects, and by placing them on the market, represented that they would be safe.
141. The Decedent was unaware of the hazards and defects in the Virginia Slims cigarette products of the Defendant, to-wit: That exposure to said products would cause the Decedent to develop cigarette smoking related disease(s) which made said products unsafe for use.
142. The defects described above in the Virginia Slims cigarettes caused the Decedent to inhale the Virginia Slims cigarettes, resulting in sustained and repeated nicotine use and further resulted in a direct and proximate cause of the Decedent's COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in her death.
143. As a direct and proximate result of the product defects as described herein, the Decedent TOMASA SANTANA, developed injuries, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily

injuries and her death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-listed count, should the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's Personal Representatives demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representatives may be legally or equitable entitled.

COUNT IV: FRAUDULENT CONCEALMENT (Manufacturer)

144. This count applies ONLY to PHILIP MORRIS USA, INC.
145. All of the allegations contained in paragraphs 1 through 93 are realleged herein.
146. The Defendant, through brilliant deception and artifice convinced the legal system, the American public, and the Decedent, that smokers smoked because they chose to do so. According to the Defendant, smoking is an adult choice that is made because of the pleasures associated with smoking cigarettes. The scientific truth, as conclusively revealed, in the March and April 1994 Congressional hearings, the Defendant's internal documents, and

independent research, is that regular smokers are drug/chemical addicts who are unable to stop smoking on their own.

147. The Defendant and through their co-conspirators made numerous public statements and advertisements, including but not limited to, that smoking had not been proven to be injurious to health, that filtered cigarettes were safe, safer or less hazardous than non-filtered cigarettes and other similar statements and or advertisements. At all times the Decedent saw, heard and believed numerous public statements and advertisements made by the Defendant and or their co-conspirators from the 1950s through at least 2009. The public statements and advertisements, covered several decades from the 1950s through at least 2009. The dissemination of these public statements and advertisements, were conveyed to the Decedent through different communication and media forms included but were not limited to, newspapers, magazines, billboards, sporting events, movies, concerts, radio, and television.
148. The Defendants and their predecessors carried out their campaign of concealment and never affirmatively retracted the many false statements and statements containing concealment and half-truth's about cigarettes in a manner that would retract the false statements and concealment and half truth's that these Defendants made over the decades during which the Decedent smoked and thereafter. The Defendants' fraudulent concealment can be said to have *started* is on January 4, 1954 with the publication of the "Frank Statement" in all of the major newspapers in the United States.
149. As of the year 2009, the Defendant, individually and/or collectively continued their fraud and/or conspiratorial acts related to the concealment of the harms of smoking cigarettes and its addictive nature, including but not limited to the following acts:
 - A. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
 - B. Marketing and/or advertising low tar cigarettes and/or low nicotine as safer or less

- hazardous to health;
 - C. Marketing and/or advertising lights and/or ultra-lights cigarettes as safer or less hazardous to health;
 - D. Knowingly concealing from the public that filtered, low tar, lights and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes.
150. As for an end date of that fraudulent concealment, the very earliest time the Defendants' fraudulent concealment can be said to have *ended* is on November 26, 2017 when each of the Defendants published the "Corrective Statements" in most of the major newspapers in the United States. Any statements or half-truths about the dangers of cigarettes that might have been made by the Defendants before November 26, 2017 never adequately retracted the breadth and scope of concealment that had occurred before that date. Thus, the concealment by each defendant and the industry as a whole, continued—at the very minimum—for 63 years.
151. Defendant and their co-conspirators, as mentioned herein, sustained a broad-based public campaign for many years disseminating misleading information and creating controversy over the adverse health effects of smoking cigarettes, and the addictive nature of smoking cigarettes, intending that current and potential smokers would rely on the misinformation.
152. At all times material to this action, including pre and post 1969, and through the time the Decedent quit smoking in 2015, the Decedent, TOMASA SANTANA, heard, saw, believed and relied to her detriment on many public statements, and/or advertising made by the Defendant and/or their co-conspirators, that smoking cigarettes had not been proven to be harmful or injurious to health, that lights, ultra-lights, low tar and nicotine, and filtered cigarettes were less harmful, less hazardous, and/or safe, and that cigarettes were not addictive. Defendant advertised filtered cigarettes as safer including, pre and post 1969, and continue through today to take a public position that filtered cigarettes are safer than convention non-filtered cigarettes.
153. Defendant advertised low tar and nicotine cigarettes as safer including, pre and post 1969, and continue through today, to take a public position that low tar and nicotine cigarettes are safer than convention non-filtered cigarettes.

154. At all times material to this action, including, pre and post 1969, the Decedent, TOMASA SANTANA, believed that low tar and nicotine cigarettes were safe, safer, and/or less harmful and hazardous than non-filtered cigarettes. The Decedent based her beliefs on pervasive misleading advertising campaigns by the Defendant and co-conspirators mentioned herein and their public statements.
155. Beginning when the Decedent began smoking in approximately 1972 and until the Decedent stopped smoking in 2015, the Virginia Slims cigarette manufacturers, including the Defendant herein, have carried out, and continue to carry out a campaign designed to deceive the public, the Decedent, physicians, the government and others as to the true dangers of smoking cigarettes. Defendant and other cigarette manufacturers carried out such scheme by concealing 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 Defendant's cigarettes did in fact contain carcinogenic materials;
 - B. their failure to conduct adequate testing to determine whether cigarette smoking did lead to COPD, heart disease, 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 COPD, heart disease and various forms of cancer, from smoking cigarettes;
 - G. the dose-response relationship between various carcinogenic substances contained in cigarette smoke and the risk of contracting COPD, heart disease and various forms of cancer;
 - H. that reducing the number of cigarettes smoked per day would greatly reduce the risk of contracting a cigarette related disease;
 - I. that smoking in excess of 5 cigarettes per day would likely lead to an addiction to or dependence on nicotine;
 - J. the use of ammonia technology and/or certain tobacco blends to boost the pH of

the cigarette smoke so as to increase the ratio of the "free base" form of nicotine (which is more easily absorbed by the smoker) to the acid salt form of nicotine (which is less readily absorbed) so as to allow for greater absorption of nicotine by the smoker at lower levels of total dose;

- 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;
 - N. 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;
 - O. that use of mild tobaccos, re-constituted tobacco, tobacco casings and flavorants 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;
 - P. that smoke from Defendant's cigarette products caused damage to a smoker's 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 such that their intake of tar, nicotine and other harmful substances would not be reduced;
 - S. 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.
156. The Virginia Slims cigarette manufacturer, including Defendant herein, have concealed vast amounts of knowledge regarding the health hazards of cigarettes and their addictive nature

over the course of the last 65 years. Plaintiff is unable to allege in full all such knowledge that the cigarette manufacturers and their co-conspirators, THE TOBACCO INSTITUTE, INC. ("TI") formed in 1958, TOBACCO INDUSTRY RESEARCH COMMITTEE ("TIRC") formed in 1954, and COUNCIL for TOBACCO RESEARCH ("CTR") formed in 1964 and previously known as the TIRC, as well as attorneys and law firms retained by the Defendant and have withheld and/or failed to release over the last almost 65 years both because he does not have access to this information, and because to allege each and every such concealment of material fact herein would entail hundreds or even thousands of pages of pleadings; indeed, it is the cigarette manufacturers themselves, including Defendant herein, which have this knowledge and information, and are in the best position to know the contents of each and every such concealed fact.

157. The Virginia Slims cigarette manufacturer, including Defendant herein, carried out their campaign of concealment by concealing and suppressing facts, information and knowledge about the health dangers of smoking, including addiction. 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 the 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 and/or the availability of a "safe" or "safer" cigarette and/or the addictive nature of the manufacturers' cigarette would have thwarted the conspiracy.
158. In 1953 Dr. Ernst Wydner had published an article titled Experimental Production of Carcinoma with Cigarette Tar in the journal Cancer Research. In his experiments he painted

cigarette tar on the backs of mice which then developed tumors on their backs. In 1954 LIGGETT & MEYERS, assuming that whatever cigarettes were used in Dr. Wydner's study were not CHESTERFIELD or L & M, decided to repeat Dr. Wydner's experiments with their cigarettes with, hopefully, better results. In a 1954 memo written by F. R. Darkis, an executive for LIGGETT & MEYERS, Mr. Darkis writes:

If Chesterfield turn out to be negative, and X (used by Wydner) as positive, it would then be possible to say, that by using Dr. Wydner's techniques, Chesterfield did not produce cancer in mice.

Of course when the experiments were finished in 1955 the mice had developed tumors and so had rabbits that were similarly tested. The results of these experiments would not become public until many years later.

159. A confidential "limited" LIGGETT & MEYERS document dated March 15, 1961 states, in part: (L&M - A Perspective Review)

- A. There are biologically active materials present in cigarette smoke. These are a) cancer causing b) cancer producing, c) poisonous ...
- B. What the causative precursors in tobacco are is not well known...So there is the suggestion of two mechanisms for causative agent products...but what good is this? We've known this for several years - so what?

This document was written by an industry consultant for LIGGETT & MEYERS. This industry consultant conducted animal research from 1954-1984 for LIGGETT & MEYERS. This memo contained material facts known to and concealed by the Defendant since at least 1961 and unknown to the Decedent.

160. In 1964, the TIRC changed its name to CTR and was joined by Defendant LIGGETT & MYERS. Defendants, R.J. REYNOLDS TOBACCO COMPANY, and PHILIP MORRIS USA, INC. were founding members of the TIRC/CTR. The TIRC had been formed in 1954 with the pledge to provide aid and assistance to the research into all phases of cigarette use

and health, expressly undertaking an interest in health as their basic responsibility paramount to every other consideration thereby affirmatively assuming a duty to disclose any adverse information regarding the health hazards of smoking.

161. Despite their "promise" which purposely created the illusion that scientific research into the dangers of smoking was being conducted, the results of which would be made public, they concealed information regarding the lack of bona fide research being done by the TIRC and CTR into the health hazards of smoking, and the lack of funds being provided for research by the TIRC and CTR into the health hazards of cigarettes, which was the purported purpose for which the TIRC and CTR were established.
162. Joint industry efforts undertaken by the TIRC and the CTR were neither disinterested nor objective. Industry documents, recently revealed, show that CTR functioned not for the promotion of scientific goals, but for the purposes of public relations, politics, and positioning for litigation. The TIRC and CTR were used to support an industry strategy of denying or creating doubt that smoking causes disease. This material information was withheld from the Decedent and the public. For example, in 1967, G.F. Todd of the CTR wrote a letter to Mr. Addison Yeaman. Mr. Yeaman was the vice president and general counsel of BROWN & WILLIAMSON TOBACCO COMPANY. In his letter, Todd observed:

The only real difficulties that we encountered arose out of the unavoidable paradox at the center of our operations - namely that, on the one hand the manufacturers control TIRC's operations and do not accept that smoking has been proved to cause lung cancer while, on the other hand, TIRC's research program is based on the working hypothesis that this has been sufficiently proved for research purposes. In addition, the Council senior scientists accept the causation theory...We have not yet found the best way of handling this paradox.

163. In a July 17, 1963 memo Addison Yeaman, vice president and general counsel of BROWN & WILLIAMSON TOBACCO COMPANY and later president and CEO of the CTR writes:

The TIRC cannot, in my opinion, provide the vehicle for such research (discover the carcinogens in cigarette smoke). It was conceived as a public relations gesture and ... it has functioned as a public "relations operation".

Clearly, despite what the industry had publicly represented as being the purpose for which the TIRC and later CTR were formed industry insiders knew it was nothing more than a "public relations" sham.

164. In that same July 17, 1963 memo Addison Yeaman, vice president and general counsel of BROWN & WILLIAMSON TOBACCO COMPANY and later president and CEO of the CTR writes:

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

- 1) They cause, or predispose to, lung cancer.
- 2) They contribute to certain cardiovascular disorders.
- 3) They may well be truly causative in emphysema, etc, etc.

The 1964 Surgeon's General Report was not issued for another 6 months. The 1964 Report did not have sufficient evidence to conclude that nicotine was addictive but the cigarette industry certainly did. The industry also understood what the findings of the Surgeon General would be regarding causation and disease even before those findings were made public. Despite what the industry told the public the industry clearly understood that nicotine was addictive and cigarettes were a cause of COPD, heart disease, various forms of cancer and other diseases.

165. The aforementioned information and/or knowledge concealed and/or suppressed by the cigarette manufacturers, including Defendant herein, and its co-conspirators was material

information which the Defendant was under a duty to disclose and/or which it had assumed the duty of disclosing.

166. The aforementioned information and/or knowledge concealed and/or suppressed by the cigarette manufacturers, including Defendant herein, and its co-conspirators was concealed for the purposes of inducing the Decedent to smoke, fail to quit or reduce consumption for the Defendant's own pecuniary gain.
167. The Decedent, and others similarly situated, justifiably relied upon the cigarette manufacturers, including the Defendant herein, the TI, TIRC and the CTR to disseminate knowledge and information and misinformation which they possessed regarding the health hazards of cigarettes. The aforementioned information and/or knowledge concealed and/or suppressed by the cigarette manufacturer, including Defendant herein, and their co-conspirators was concealed for the purposes of inducing the Decedent to smoke, what the Decedent believed to be a safe, safer or less hazardous cigarette, fail to quit or reduce consumption. The Decedent was unaware of the extent of the danger of the Defendant's cigarette products, the addictive nature of Defendant's cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as hazardous or dangerous as unfiltered cigarettes. The knowledge and information concealed by the cigarette manufacturer, including the Defendant herein, was concealed by entities which had superior knowledge regarding the health aspects of cigarettes than the Decedent.
168. The Decedent reasonably relied to her detriment on the Defendant's concealment or omission of material information as described herein, and specifically that smoking was not injurious to health and to the extent it was, he choose filtered cigarettes because she believed the filtered cigarettes were safe, safer or less hazardous. That was not otherwise known or

available to the Decedent, concerning the efficacy of filters and the health effects or addictive nature of smoking. But for the concealment or omission of a material fact not otherwise known or available, to the Decedent, she would have acted differently and avoided contracting her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer which subsequently resulted in her death.

169. As a direct and proximate result of the aforementioned concealment and/or suppression of material information by the cigarette manufacturers, including Defendants herein, and its co-conspirators, Decedent, TOMASA SANTANA, smoked and/or continued to smoke Defendants' cigarette products which caused her to develop injuries, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and her death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-listed count, should the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's Personal Representatives demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life,

mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representatives may be legally or equitable entitled.

COUNT V: CONSPIRACY TO COMMIT FRAUDULENT CONCEALMENT

170. This count applies to the following Defendants ONLY to: PHILIP MORRIS USA, INC., R.J. REYNOLDS TOBACCO COMPANY, and LIGGETT GROUP, LLC.
171. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1-93 and 144-169.
172. Each of the Defendants conspired to deprive the public of medical and scientific data reflecting the dangers associated with smoking cigarettes, including the addictive nature of nicotine.
173. The Defendants have worked in collusion to utilize misleading words, half truths and visual imagery in a hugely successful advertising campaign to confuse children and teenagers who are contemplating smoking, about the the reality, nature and extent of the dangers of cigarette smoking, filters marketed as safe or safer, and the addictive nature of nicotine.
174. These Defendants and their co-conspirators have conspired to develop a public relations strategy aimed at combatting the mounting adverse scientific reports regarding the dangers of smoking. There has ben a conspiracy to refute, undermine and neutralize information coming from the scientific and medical community and to confuse and mislead the consuming public in an effort to encourage new persons to commence smoking and to encourage existing smokers to believe that they have made an “adult choice” to continue smoking.

175. The Defendants and through their co-conspirators made numerous public statements and advertisements, including but not limited to, that smoking had not been proven to be injurious to health, that filtered cigarettes were safe, safer or less hazardous than non-filtered cigarettes and other similar statements and or advertisements. At all times the Decedent saw, heard and believed numerous public statements and advertisements made by the Defendants and or their co-conspirators from the 1950s through at least 2009. The public statements and advertisements, covered several decades from the 1950s through at least 2009. The dissemination of these public statements and advertisements, were conveyed to the Decedent through different communication and media forms included but were not limited to, newspapers, magazines, billboards, sporting events, movies, concerts, radio, and television.
176. The Defendants and their predecessors carried out their campaign of concealment and never affirmatively retracted the many false statements and statements containing concealment and half-truth's about cigarettes in a manner that would retract the false statements and concealment and half truth's that these Defendants made over the decades during which the Decedent smoked and thereafter. The Defendants' fraudulent concealment can be said to have *started* is on January 4, 1954 with the publication of the "Frank Statement" in all of the major newspapers in the United States.
177. As of the year 2009, the Defendants, individually and/or collectively continued their fraud and/or conspiratorial acts related to the concealment of the harms of smoking cigarettes and its addictive nature, including but not limited to the following acts:
- A. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
 - B. Marketing and/or advertising low tar cigarettes and/or low nicotine as safer or less hazardous to health;
 - C. Marketing and/or advertising lights and/or ultra-lights cigarettes as safer or less hazardous to health;

D. Knowingly concealing from the public that filtered, low tar, lights and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes.

178. As for an end date of that fraudulent concealment the very earliest time, the Defendants' fraudulent concealment can be said to have *ended* is on November 26, 2017 when each of the defendants published the "Corrective Statements" in most of the major newspapers in the United States. Any statements or half-truths about the dangers of cigarettes that might have been made by the Defendants before November 26, 2017 never adequately retracted the breadth and scope of concealment that had occurred before that date. Thus, the concealment by each defendant and the industry as a whole, continued—at the very minimum—for 63 years.
179. Defendants and their co-conspirators, as mentioned herein, sustained a broad-based public campaign for many years disseminating misleading information and creating controversy over the adverse health effects of smoking cigarettes, and the addictive nature of smoking cigarettes, intending that current and potential smokers would rely on the misinformation.
180. At all times material to this action, including pre and post 1969, and through the time the Decedent quit smoking in 2015, the Decedent, TOMASA SANTANA, heard, saw, believed and relied to her detriment on many public statements, and/or advertising made by the Defendants and/or their co-conspirators, that smoking cigarettes had not been proven to be harmful or injurious to health, that lights, ultra-lights, low tar and nicotine, and filtered cigarettes were less harmful, less hazardous, and/or safe, and that cigarettes were not addictive. Defendants advertised filtered cigarettes as safer including, pre and post 1969, and continue through today to take a public position that filtered cigarettes are safer than convention non-filtered cigarettes.
181. Defendants advertised low tar and nicotine cigarettes as safer including, pre and post 1969, and continue through today, to take a public position that low tar and nicotine cigarettes are safer than convention non-filtered cigarettes.
182. At all times material to this action, including, pre and post 1969, the Decedent, TOMASA

SANTANA, believed that low tar and nicotine cigarettes were safe, safer, and/or less harmful and hazardous than non-filtered cigarettes. The Decedent based her beliefs on pervasive misleading advertising campaigns by all the Defendants and co-conspirators mentioned herein and their public statements.

183. The Defendants, along with other tobacco manufacturers, and the Council for Tobacco Research (CTR), The Tobacco Industry Research Committee (TIRC) and Tobacco Institute (TI), along with attorneys and law firms retained by the Defendants unlawfully agreed to conceal or omit, and did in fact conceal or omit, information regarding the health effects of cigarettes and or their addictive nature with the intention that smokers and the public would rely on this information to their detriment. The Defendants agreed to execute their scheme by performing the above mentioned unlawful acts and/or by doing lawful acts by unlawful means.
184. The Defendants PHILLIP MORRIS USA, R.J. REYNOLDS, and later LIGGETT, 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.
185. The Defendants through their employees, agents and representative made numerous public statements from 1953 through 2000 directly denying the actual health harms and addictive nature of smoking cigarettes.
186. The concealed and omitted information described in the aforementioned and preceding paragraphs was material information.
187. The Decedent reasonably relied to her detriment on the Defendants' concealment or omission of material information as described herein and specifically that smoking was not injurious to health and to the extent it was, she choose filtered cigarettes because she believed the filtered cigarettes were safe, safer or less hazardous. That was not otherwise known or available to the Decedent, concerning the efficacy of filters and the health effects or addictive nature of smoking. But for the concealment or omission of a material fact not otherwise

known or available, to the Decedent, she would have acted differently and avoided her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer which resulted in her death.

188. Each Defendants' acts and omissions, and those of the CTR, TIRC, TI and other tobacco manufacturers, as well as their in-house and retained counsel, and all of them, constitute a successful conspiracy to commit fraud.
189. Conspiracy is but a vehicle for imputing the tortious acts of one co-conspirator to another. Each act done in pursuance of a conspiracy by one of several conspirators is an act for which each is jointly and severally liable. Once the existence of a conspiracy is established, and a party's membership in the conspiracy is established, that party will be liable for the acts of all members of the conspiracy in furtherance of the conspiracy regardless of the nature of his own actions. One who knowingly joins a conspiracy, even at a later date, takes the conspiracy as he/she/it finds it and is liable for all acts previously or subsequently done in pursuance of the conspiracy. Accordingly, Defendants as members of a civil conspiracy are liable for all acts and/or omissions of any co-conspirator done in pursuance of the conspiracy.
190. As a direct and proximate result of the aforementioned conspiracy to conceal and/or suppress material information by the cigarette manufacturers, including Defendants herein, and their co-conspirators, Decedent, TOMASA SANTANA, smoked and/or continued to smoke Defendants' cigarette products which caused her to develop injuries, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and her death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-

listed count, should the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's Personal Representatives demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representatives may be legally or equitable entitled.

COUNT VI: FRAUDULENT MISREPRESENTATION (Manufacturer)

191. This count applies to the following Defendant ONLY: PHILIP MORRIS USA.
192. All of the allegations contained in paragraphs 1 through 93 are realleged herein.
193. The Defendant by operation of law assumed the duty to disclose adverse information regarding smoking and health when they affirmatively told the American public as early as 1954, and on numerous occasions thereafter, that they would disclose adverse information regarding smoking and health.
194. The Defendant and through their co-conspirators made numerous public statements and advertisements, including but not limited to, that smoking had not been proven to be injurious to health, that filtered cigarettes were safe, safer or less hazardous than non-filtered cigarettes and other similar statements and or advertisements. At all times the Decedent saw, heard and believed numerous public statements and advertisements made by the Defendant and or their co-conspirators from the 1950s through at least 2009. The public statements and advertisements, covered several decades from the 1950s through at least 2009. The

dissemination of these public statements and advertisements, were conveyed to the Decedent through different communications and media forms included but were not limited to, newspapers, magazines, billboards, sporting events, movies, concerts, radio, and television.

195. The Defendants and their predecessors carried out their campaign of concealment and never affirmatively retracted the many false statements and statements containing concealment and half-truth's about cigarettes in a manner that would retract the false statements and concealment and half truth's that these Defendants made over the decades during which the Decedent smoked and thereafter. The Defendants' fraudulent concealment can be said to have *started* is on January 4, 1954 with the publication of the "Frank Statement" in all of the major newspapers in the United States.
196. As of the year 2009, the Defendant, individually and/or collectively continued their fraud and/or conspiratorial acts related to the concealment of the harms of smoking cigarettes and its addictive nature, including but not limited to the following acts:
 - A. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
 - B. Marketing and/or advertising low tar cigarettes and/or low nicotine as safer or less hazardous to health;
 - C. Marketing and/or advertising lights and/or ultra-lights cigarettes as safer or less hazardous to health;
 - D. Knowingly concealing from the public that filtered, low tar, lights and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes.
197. As for an end date of that fraudulent concealment the very earliest time, the Defendants fraudulent concealment can be said to have *ended* is on November 26, 2017 when each of the defendants published the "Corrective Statements" in most of the major newspapers in the United States. Any statements or half-truth's about the dangers of cigarettes that might have been made by the Defendants before November 26, 2017 never adequately retracted the breadth and scope of concealment that had occurred before that date. Thus, the concealment by each defendant and the industry as a whole, continued—at the very

minimum—for 63 years.

198. Defendant and their co-conspirators, as mentioned herein, sustained a broad-based public campaign for many years disseminating misleading information and creating controversy over the adverse health effects of smoking cigarettes, and the addictive nature of smoking cigarettes, intending that current and potential smoker would rely on the misinformation.
199. At all times material to this action, including pre and post 1969, and through the time the Decedent quit smoking in 2015, the Decedent, TOMASA SANTANA, heard, saw, believed and relied to her detriment on many public statements, and/or advertising made by the Defendant and/or their co-conspirators, that smoking cigarettes had not been proving to be harmful or injurious to health, that lights, ultra-lights, low tar and nicotine, and filtered cigarettes were less harmful, less hazardous, and/or safe, and that cigarettes were not addictive. Defendant advertised filtered cigarettes as safer including, pre and post 1969, and continue through today to take a public a position that filtered cigarettes are safer than convention non-filtered cigarettes.
200. Defendant advertised low tar and nicotine cigarettes as safer including, pre and post 1969, and continue through today, to take a public a position that low tar and nicotine cigarettes are safer than convention non-filtered cigarettes.
201. At all times material to this action, including, pre and post 1969, the Decedent, TOMASA SANTANA, believed that low tar and nicotine cigarettes were safe, safer, and/or less harmful and hazardous than non-filtered cigarettes. The Decedent based her beliefs on pervasive misleading advertising campaigns by all the Defendant and co-conspirators mentioned herein and their public statements.
202. Beginning in the 1950s and at least through 2009, and continuing even today, the Defendant herein, have carried out, and continue to carry out a campaign designed to deceive the public, the Decedent, the government and others as to the health hazards of smoking and the addictive nature of smoking, through fraudulent statements, false statements and/or misrepresentations of material facts.

203. The Defendant herein, made literally hundreds of misrepresentations to the Decedent and others similarly situated over the course of the last 50 years. The Defendant issued press releases, testimony by its officers and employees before Congress and other governmental entities, etc., that the cigarette manufacturers and their co-conspirators, THE TOBACCO INSTITUTE, INC. ("TI") formed in 1958, TOBACCO INDUSTRY RESEARCH COMMITTEE ("TIRC") formed in 1954, and COUNCIL for TOBACCO RESEARCH ("CTR") formed in 1964 and previously known as the TIRC, have prepared, participated in, given, and released over the last almost 50 years both because the Decedent does not have access to this information, and because to allege each and every such misrepresentation and/or false statement here would entail hundreds or even thousands of pages of pleadings; indeed, it is the Defendant herein, which have this knowledge and information, and are in the best position to know the contents of each and every such misrepresentation and/or false statement.

204. The Defendant and their co-conspirators herein, carried out their campaign of fraud, false statements and/or misrepresentations in at least five ways:

- A. they agreed falsely to represent to the Decedent and others similarly situated that questions about smoking and health would be answered by an unbiased, and trustworthy source;
- B. they misrepresented and confused the facts about the health dangers of smoking, including addiction. The cigarette manufacturers claimed, falsely, that there is insufficient "objective" research to determine if cigarette smoking causes disease and that cigarettes are not addictive;
- C. the Defendant and their co-conspirators herein, used lawyers to misdirect what purported to be objective scientific research, yet maintained to the Decedent and others similarly situated that such objective scientific research was being conducted and that the results of such research would be made public;
- D. to discourage meritorious litigation by the Decedent injured due to cigarettes, they engaged in "scorched earth" litigation tactics in combination with suppressing and distorting evidence in order to protect the cigarette manufacturers, including Defendant herein, existence and profits.
- E. by designing, selling and marketing so called "Light" cigarettes as being substantially lower in tar and nicotine than regular, or non-light cigarettes and therefore healthier or safer for consumers. The Defendant 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 Defendant marketed their “Light” cigarettes to consumers as a safer alternative. The Defendant manipulated the design of cigarettes to produce test results that were artificially low. Furthermore, Defendant knew that “Light” cigarette smokers may compensate to obtain the same level of tar or nicotine as non-light cigarettes either by taking more puffs on each cigarette, by taking larger, longer or deeper puffs, or by smoking more cigarettes.

205. The Defendant and their co-conspirators, knew that cigarettes were dangerous and addictive. It became the practice, purpose and goal of the cigarette manufacturers to question any scientific research which concluded that cigarettes were a health hazard. They did this through media campaigns, mailings to doctors and other scientific professionals and through testimony before governmental bodies.

206. Joint industry efforts undertaken by the TIRC and the CTR were neither disinterested nor objective. Industry documents, recently revealed, show that CTR functioned not for the promotion of scientific goals, but for the purposes of public relations, politics, and positioning for litigation. The TIRC and CTR were used to support an industry strategy of denying or creating doubt that smoking causes disease. For example, in 1967, G.F. Todd of the CTR wrote a letter to Mr. Addison Yeaman. Mr. Yeaman was the vice president and general counsel of BROWN & WILLIAMSON TOBACCO COMPANY. In his letter, Todd observed:

“The only real difficulties that we encountered arose out of the unavoidable paradox at the center of our operations - namely that, on the one hand the manufacturers control TRC's operations and do not accept that smoking has been proved to cause lung cancer while, on the other hand, TRC's research program is based on the working hypothesis that this has been sufficiently proved for research purposes. In addition, the Council senior scientists accept the causation theory...We have not yet found the best way of handling this paradox.”

207. The Defendant and their co-conspirators, when sued denied that cigarettes were addictive and claimed that smoking was a matter of free choice and that smokers could quit smoking if they so wanted.

208. The Defendant and their co-conspirators, claimed attorney-client privilege to shield as many

documents as possible from disclosure and destroyed and/or refused to produce documents related to health issues and the Plaintiff's claims.

209. The Defendant and their co-conspirators, when sued for smoking-related injuries, conducted the litigation in such a way as to cause the maximum expenditure of time and resources by the claimant for the purposes of exhausting their adversaries' resources and to discourage other meritorious litigation.

210. The Defendant as it relates to their acts in furtherance of their conspiracy, and their individual fraudulent acts of concealment and misrepresentation as alleged in this complaint continues through the present. Including but not limited to the following:

- A. The Defendant has never admitted that a single U.S. Smoker has died of a smoking related disease;
- B. The Defendant continues to publicly state that lights and low tar cigarettes are less hazardous than other full flavored and conventional cigarettes.
- C. The Defendant continues to publicly state that filtered cigarettes are less hazardous than non-filtered cigarettes.
- D. The Defendant continues to publicly state that addiction to nicotine contained in their cigarettes does not cause disease and illnesses;
- E. The Defendant continues to publicly state that none of their public statements made prior to 2000 were false misleading or misrepresented the harms of smoking cigarettes or its addictive nature;
- F. The Defendant continues to publicly state that they have never mislead public health authorities about the harms of smoking or their addictive nature;
- G. The Defendant continues to market their cigarettes to children under the age of eighteen (18) knowing that the vast majority of their customers start smoking as teenagers;
- H. The Defendant continues to hire and retain scientific and medical expert and fact witnesses to testify in individual tobacco litigation cases to create doubt and controversy with regards to the overall harms of smoking and its addictive nature.

211. The aforementioned acts, false statements and/or misrepresentations which were made and/or caused to be made by the cigarette manufacturer, including Defendant herein, and their co-conspirators were made and/or caused to be made with knowledge of their falsity and/or in reckless disregard of the truth.

212. The Decedent relied to her detriment upon the acts, false statements and/or fraudulent

misrepresentations of such information and specifically that smoking was not injurious to health and to the extent it was, she choose filtered cigarettes because she believed the filtered cigarettes were safe, safer or less hazardous. That was not otherwise known or available to the Decedent, concerning the efficacy of filters and the health effects or addictive nature of smoking. But for the false statements and /or fraudulent misrepresentations of a material fact not otherwise known or available, to the Decedent, she would have acted differently and avoided her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer which resulted in her death.

213. The aforementioned acts, false statements and/or misrepresentations which were made and/or caused to be made by the cigarette manufacturers, including Defendant herein, and their co-conspirators were justifiably relied upon by the Decedent, resulted in the Decedent being unaware of the extent of the danger of the Defendant's Virginia Slims cigarette products, the addictive nature of Defendant's cigarette products, and that low tar, low nicotine and/or filtered cigarettes were just as dangerous as regular and/or unfiltered cigarettes. Such acts, false statements and/or misrepresentations were made by the Defendant who had knowledge superior to the Decedent regarding the health aspects of cigarettes including their addictive nature. But for the false statements and/or misrepresentations of a material fact not otherwise known or available to the Decedent, she would have acted differently and avoided contracting her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer which resulted in her death.

214. As a direct and proximate result of the aforementioned acts, false statements and/or fraudulent misrepresentations which were made and/or caused to be made or concealed by the cigarette manufacturers, including Defendants herein, and its co-conspirators, Decedent,

TOMASA SANTANA, smoked and/or continued to smoke Defendants' cigarette products which caused her to develop injuries, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and her death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-listed count, should the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's Personal Representatives demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representatives may be legally or equitable entitled.

**COUNT VII: CONSPIRACY TO COMMIT FRAUDULENT
MISREPRESENTATION**

215. This count applies to the following Defendants ONLY: PHILIP MORRIS USA, INC., R.J. REYNOLDS TOBACCO COMPANY, and LIGGETT GROUP, LLC.
216. Plaintiff hereby realleges and incorporates the allegations contained in paragraphs 1- 93

and 191-214.

217. The Defendants by operation of law assumed the duty to disclose adverse information regarding smoking and health when they affirmatively told the American public as early as 1954, and on several occasions thereafter, that they would disclose adverse information regarding smoking and health.
218. The Defendants and through their co-conspirators made numerous public statements and advertisements, including but not limited to, that smoking had not been proven to be injurious to health, that filtered cigarettes were safe, safer or less hazardous than non-filtered cigarettes and other similar statements and or advertisements. At all times the Decedent saw, heard and believed numerous public statements and advertisements made by the Defendants and or their co-conspirators from the 1950s through at least 2009. The public statements and advertisements, covered several decades from the 1950s through at least 2009. The dissemination of these public statements and advertisements, were conveyed to the Decedent through different communication and media forms included but were not limited to, newspapers, magazines, billboards, sporting events, movies, concerts, radio, and television.
219. The Defendants and their predecessors carried out their campaign of concealment and never affirmatively retracted the many false statements and statements containing concealment and half-truth's about cigarettes in a manner that would retract the false statements and concealment and half truth's that these Defendants made over the decades during which the Decedent smoked and thereafter. The Defendants' fraudulent concealment can be said to have *started* is on January 4, 1954 with the publication of the "Frank Statement" in all of the major newspapers in the United States.
220. As of the year 2009, the Defendants, individually and/or collectively continued their fraud

and/or conspiratorial acts related to the concealment of the harms of smoking cigarettes and their addiction nature, including but not limited to the following acts:

- A. Marketing and/or advertising filters as safer or less hazardous to health than non-filtered cigarettes;
 - B. Marketing and/or advertising low tar cigarettes and/or low nicotine as safer or less hazardous to health;
 - C. Marketing and/or advertising lights and/or ultra-lights cigarettes as safer or less hazardous to health;
 - D. Knowingly concealing from the public that filtered, low tar, lights and ultra-lights cigarettes were no safer or even less hazardous than other cigarettes.
221. As for an end date of that fraudulent concealment the very earliest time, the Defendants fraudulent concealment can be said to have *ended* is on November 26, 2017 when each of the defendants published the “Corrective Statements” in most of the major newspapers in the United States. Any statements or half-truth’s about the dangers of cigarettes that might have been made by the Defendants before November 26, 2017 never adequately retracted the breadth and scope of concealment that had occurred before that date. Thus, the concealment by each defendant and the industry as a whole, continued—at the very minimum—for 63 years.
222. The Defendants as it relates to their acts in furtherance of their conspiracy, and their individual fraudulent acts of concealment and misrepresentation as alleged in this complaint continues through the present. Including but not limited to the following:
- A. Defendants have never admitted that a single U.S. Smoker has died of a smoking related disease;
 - B. Defendants continue to publicly state that lights and low tar cigarettes are less hazardous than other full flavored and conventional cigarettes.
 - C. Defendants continue to publicly state that filtered cigarettes are less hazardous than non-filtered cigarettes.
 - D. Defendants continue to publicly state that addiction to nicotine contained in their cigarettes does not cause disease and illnesses;
 - E. Defendants continue to publicly state that none of their public statements made prior to 2000 were false misleading or misrepresented the harms of smoking cigarettes or its addictive nature;
 - F. Defendants continue to publicly state that they have never mislead public health authorities about the harms of smoking or their addictive nature;
 - G. Defendants continue to market their cigarettes to children under the age of eighteen

- (18) knowing that the vast majority of their customers start smoking as teenagers;
- H. Defendants continue to hire and retain scientific and medical expert and fact witnesses to testify in individual tobacco litigation cases to create doubt and controversy with regards to the overall harms of smoking and its addictive nature.
223. Defendants and their co-conspirators, as mentioned herein, sustained a broad-based public campaign for many years disseminating misleading information and creating controversy over the adverse health effects of smoking cigarettes, and the addictive nature of smoking cigarettes, intending that current and potential smoker would rely on the misinformation.
224. At all times material to this action, including pre and post 1969, and through the time the Decedent quit smoking in 2015, the Decedent, TOMASA SANTANA, heard, saw, believed and relied to her detriment on many public statements, and/or advertising made by the Defendants and/or their co-conspirators, that smoking cigarettes had not been proving to be harmful or injurious to health, that lights, ultra-lights, low tar and nicotine, and filtered cigarettes were less harmful, less hazardous, and/or safe, and that cigarettes were not addictive. Defendants advertised filtered cigarettes as safer including, pre and post 1969, and continue through today to take a public a position that filtered cigarettes are safer than convention non-filtered cigarettes.
225. Defendants advertised low tar and nicotine cigarettes as safer including, pre and post 1969, and continue through today, to take a public a position that low tar and nicotine cigarettes are safer than convention non-filtered cigarettes.
226. At all times material to this action, including, pre and post 1969, the Decedent, TOMASA SANTANA, believed that low tar and nicotine cigarettes were safe, safer, and/or less harmful and hazardous than non-filtered cigarettes. The Decedent based her beliefs on pervasive misleading advertising campaigns by all the Defendants and co-conspirators mentioned herein and their public statements.
227. The Defendants, along with other cigarette manufacturers, and the Council for Tobacco Research (CTR), The Tobacco Industry Research Committee (TIRC) and Tobacco Institute (TI), unlawfully agreed to commit, and did commit, overt acts, false statements

and/or fraudulent misrepresentations concerning information regarding the health effects of cigarettes or their addictive nature with the intention that smokers and the public would rely on this information to their detriment. The Defendants agreed to execute their scheme by performing the above mentioned unlawful acts and/or by doing lawful acts by unlawful means.

228. The acts, false statements and/or fraudulent misrepresentations described in the preceding paragraph was material information.

229. The Decedent relied to her detriment upon the acts, false statements and/or fraudulent misrepresentations of such information and specifically that smoking was not injurious to health and to the extent it was, he choose filtered cigarettes because he believed the filtered cigarettes were safe, safer or less hazardous. That was not otherwise known or available to the Decedent, concerning the efficacy of filters and the health effects or addictive nature of smoking. But for the false statements and /or fraudulent misrepresentations of a material fact not otherwise known or available, to the Decedent, she would have acted differently and avoided her COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer which resulted in her death.

230. Each Defendants' acts and omissions, and those of the CTR, TIRC and TI, and other cigarette manufacturers, and all of them, constitute a successful conspiracy to commit fraudulent misrepresentation.

231. Conspiracy is but a vehicle for imputing the tortious acts of one co-conspirator to another. Each act done in pursuance of a conspiracy by one of several conspirators is an act for which each is jointly and severally liable. Once the existence of a conspiracy is established, and a party's membership in the conspiracy is established, that party will be liable for the acts of all members of the conspiracy in furtherance of the conspiracy regardless of the nature of his own actions. One who knowingly joins a conspiracy, even at a later date, takes the conspiracy as he/she/it finds it and is liable for all acts previously or subsequently done in pursuance of the conspiracy. Accordingly, Defendants as a member of a civil conspiracy is

liable for all acts and/or omissions of any co-conspirator done in pursuance of the conspiracy.

232. As a direct and proximate result of the aforementioned conspiracy to commit acts and make false statements and/or fraudulent misrepresentations by the cigarette manufacturers, including Defendants herein, and their co-conspirators, Decedent, TOMASA SANTANA, smoked and/or continued to smoke Defendants' cigarette products which caused her to develop injuries, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and her death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-listed count, should the Defendants contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's Personal Representative demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representative may be legally or equitable entitled.

COUNT VIII: STRICT LIABILITY (Distributor/Retailer)

233. This count applies to the following Defendant ONLY: PUBLIX SUPER MARKETS, INC.
234. All of the allegations contained in paragraphs 1 through 93 are realleged herein.
235. The Defendant, PUBLIX SUPER MARKETS, INC. owed a duty to the Decedent and the general public to sell only products which were reasonably safe for their intended use, and to refrain from selling any product which was unreasonably dangerous and which posed an unreasonable threat of bodily harm to consumers, users, bystanders and/or others.
236. The Defendant breached said duty by placing cigarette products into the stream of commerce which were unreasonably dangerous and hazardous to the public, including the Decedent, for the following reasons:
- A. The products were in an unreasonably dangerous condition and not suitable for the uses intended and were defective;
 - B. The products failed to perform as safely as an ordinary consumer would expect when used in the manner reasonably foreseeable by the Defendant;
 - C. The risk of danger of the product outweighed the benefits.
237. As a direct and proximate result of the of the product defects described herein, Decedent, TOMASA SANTANA, develop injuries, including but not limited to COPD, laryngeal cancer, nasopharyngeal cancer, brain cancer, and oral cavity cancer, in addition to other related physical conditions which resulted in and directly caused her to suffer severe bodily injuries and her death. The Estate and all the statutory survivors are entitled to recover all damages as enumerated in Florida Statute §768.16, et., seq., including, but not limited, to mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance, loss of net accumulations, medical expenses and funeral and burial expenses and all legally recoverable interest; and any other relief to which Plaintiff may be legally or equitable entitled. Alternatively for the above-listed count, should the Defendants

contend that the Decedent died of some cause unrelated to smoking cigarettes, said Decedent's Personal Representatives demands (i) a jury trial on all issues so triable and (ii) judgment against the Defendant for all survival damages pursuant to Section 46.021, Florida Statutes, which damages include all that Decedent could have recovered prior to her death, specifically including, but not limited to: (a) lost wages and earnings capacity; (b) all medical and funeral expenses incurred; (c) loss of enjoyment of life, mental anguish, and pain and suffering; (d) damages for the aggravation of any previously existing condition; (e) all recoverable costs of this action; (f) all legally recoverable interest; and (g) any other relief to which the Personal Representatives may be legally or equitable entitled.

WHEREFORE, Plaintiff prays for judgment against the Defendants and each of them jointly, individually and severally, on all of the aforementioned counts for compensatory damages against all Defendants herein, for their costs expended herein, for interest and for such other and further relief both at law and in equity to which Plaintiff may be entitled.

REQUEST FOR JURY TRIAL

Plaintiff respectfully request the Court for a trial by jury in the above referenced matter.

Respectfully submitted this 20th day of May 2022.

/s/ Richard J. Diaz

RICHARD J. DIAZ, ESQ.

Florida Bar No.: 0767697

Email: rick@rjdpa.com

/s/ Carlos R. Salazar, Jr.

CARLOS R. SALAZAR, JR., ESQ.

Florida Bar No.: 1027807

Email: carloss@rjdpa.com

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this **20th** day of May, 2022, a true and correct copy of the foregoing was filed electronically through the Florida Court's E-filing Portal, which will, in turn, send a notice of electronic filing to all parties of record.

RICHARD J. DIAZ, P.A.

/s/ Richard J. Diaz

RICHARD J. DIAZ, ESQ.

Florida Bar No.: 0767697

Email: rick@rjdpa.com

Secondary email: service@rjdpa.com

/s/ Carlos R. Salazar, Jr.

CARLOS R. SALAZAR, JR., ESQ.

Florida Bar No.: 1027807

Email: carloss@rjdpa.com

Secondary email: eservicelist@gmail.com

3127 Ponce de Leon Blvd.

Coral Gables, FL 33134

Tel.: 305-444-7181

Fax: 305-402-7879

Attorneys for Plaintiff