

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

Fernanda Price, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

Walgreen Co.,

Defendant

1:22-cv-21405

Class Action Complaint

Jury Trial Demanded

Plaintiff Fernanda Price (“Plaintiff”), by and through her undersigned counsel, pursuant to all applicable *Federal Rules of Civil Procedure*, hereby files this class action complaint on behalf of herself and all others similarly situated throughout the United States, and alleges upon information and belief, except for allegations pertaining to Plaintiff, which are based on personal knowledge against Defendant Walgreen Co. (“Defendant” or “Walgreens”) as follows:

1. Founded in 1901, Walgreens is an American company that operates as the second-largest drug-store chain in the United States with over 9,000 retail locations nationwide and a presence in all 50 states, as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands.

2. In addition to retail and wholesale pharmacy Defendant markets, advertises, distributes and sells various types of tobacco products including but not limited to menthol cigarettes.

3. At issue here are Defendant’s Marlboro Menthol Cigarettes (the “Products”). *See Exhibit 1*, attached hereto and incorporated herein, a true and correct representation of the Products’ label and online advertisement.

4. Defendant represents the Products as mere ordinary cigarettes, when in fact, they are

not because menthol cigarettes are far more dangerous and addictive than any other type of cigarette available to consumers. Defendant provides NO WARNING that the Products pose additional health risks far beyond those seen with nonmenthol cigarettes.

5. For example, numerous studies have shown that menthol increases the appeal of tobacco and facilitates addiction, particularly among youth and young adults because menthol masks the unpleasant flavors and harshness of tobacco products, making them easier to start using.

6. Tobacco products with menthol can also be more addictive and harder to quit because they can enhance the effects of nicotine. One study suggests that banning menthol cigarettes in the U.S. would lead an additional 923,000 smokers to quit, while an earlier study projected that about 633,000 deaths would be averted if not for the marketing of menthol cigarettes.<sup>1</sup>

7. Despite the wealth of scientific research elucidating the inordinate hazards of menthol cigarettes, Defendant provides no warning or disclaimer of the Products' disproportionately toxic effects. As a result, Plaintiff has purchased Products that are unreasonably harmful and addictive and not as warranted and represented by Defendant.

8. Defendant's marketing and advertising of the Products is false and deceptive. Through a variety of advertising methods, including but not limited to the packaging and labeling and online advertising of the Products, Defendant has made false representations regarding the true nature of the Products.

9. Plaintiff and consumers expected to purchase conventional cigarettes only to learn that they were in fact purchasing a product far more addictive and harmful than any of the other

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<sup>1</sup> "FDA Commits to Evidence Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers." (April 29, 2021). Available at <https://www.fda.gov/news-events/press-announcements/fda-commits-evidence-based-actions-aimed-saving-lives-and-preventing-future-generations-smokers>.

cigarettes available on the market; as a result, plaintiff and consumers were denied the benefit of their bargain.

10. Defendant’s false and misleading representations and omissions violate state and federal law, including Florida’s Deceptive and Unfair Trade Practices Act, as detailed more fully below.

### I. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

11. In 2009, Congress passed—and President Obama signed into law—the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (codified, in relevant part, at 15 U.S.C. §§ 1333–34 and 21 U.S.C. § 301 *et seq.*) (2009) (“Tobacco Control Act”).

12. This Act authorized the U.S. Food & Drug Administration (“FDA”) to regulate tobacco products, 21 U.S.C. § 387a, and prohibited all flavors in cigarettes, except for tobacco and menthol (i.e., the “flavor ban”), *id.* § 387g(a)(1). Although it did not ban menthol at that time, Congress recognized that menthol cigarettes “may pose unique health risks to those who smoke them.”<sup>2</sup>

13. Thereafter Congress repeatedly highlighted the urgent nature of the menthol inquiry, “urg[ing] the Secretary [of the U.S. Department of Health and Human Services (“HHS”)] to address these issues *as quickly as practicable.*” H. Rept., Part 1 at 38 (emphasis added). Indeed, Congress believed that it would be “*critical* for the Secretary *to move quickly* to address the unique public health issues posed by menthol cigarettes.” *Id.* at 38–39 (emphasis added).

14. In 2010, FDA organized a Tobacco Product Scientific Advisory Committee

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<sup>2</sup> H. Rept. 111-58, Part 1, Tobacco Control Act, 111th Congress (2009–10), 38 (Energy and Commerce Comm.) (“H. Rept., Part 1”). Available at <https://www.congress.gov/111/crpt/hrpt58/CRPT-111hrpt58-pt1.pdf>.

(“TPSAC”) in accordance with the Act’s directive. That Committee was comprised of “a panel of leading public health, scientific experts and representatives of various parts of the tobacco industry.” *See* FDA, Dr. Lawrence R. Deyton, Dir. Center for Tobacco Products, *FDA Remarks on the Report and Recommendation on the Public Health Impact of Menthol Cigarettes* (Mar. 18, 2011) (“2011 FDA Remarks on Menthol Cigarettes Rept.”).<sup>3</sup>

15. This Committee was charged with “providing advice, information, and recommendations to FDA on health issues related to tobacco products and other issues relating to the regulation of tobacco products.” *Id.*

16. The full Scientific Advisory Committee first met in March 2010, and 11 more times thereafter. *See* FDA Rept. to Congress, *Progress and Effectiveness of the Implementation of the Family Smoking Prevention and Tobacco Control Act*, at 15 (2013). There were also two meetings of the Tobacco Products Constituents Subcommittee of the TPSAC and two meetings of the Menthol Report Subcommittee. *See id.*

17. On March 23, 2011, the TPSAC submitted its report, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations* (2011) (“2011 TPSAC Menthol Rept.”). This Report—also known as the TPSAC Report—contained a number of findings and conclusions, based on the best available scientific evidence.

18. Among other things, the Report found that menthol is a flavor additive that possesses a minty taste and aroma. *See* 2011 TPSAC Menthol Rept. at 16. In certain medicinal products such as cough drops, menthol is actually regulated as a drug. *See id.* The use of menthol in tobacco products, however, was not. *See id.*

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<sup>3</sup> Available at <https://wayback.archiveit.org/7993/20170112125250/http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm247617.htm>.

19. The Report also found that menthol produces a variety of sensory effects, including cooling and soothing effects, as well as anesthetic effects. *See id.* at 23. For example, “[i]n cigarettes with low levels of tar and nicotine, the addition of menthol can enhance the ‘bite’ or ‘throat grab’ of the smoke, making such cigarettes more acceptable to consumers. Conversely, the addition of menthol to cigarettes high in tar and nicotine can reduce the irritating effect of nicotine ... making these cigarettes more palatable.” *Id.* at 24.

20. Additionally, the Report found that the tobacco companies “manipulated the concentration of menthol to achieve a desired taste, aroma, and cooling sensation based on anticipated consumer preference and demand.” *See id.* at 55.

21. The Report also concluded that menthol cigarettes were associated with “increased transition to greater or established smoking and dependence.” *Id.* at 149.

22. In sum, the Report noted that sufficient evidence existed to conclude that the availability of menthol cigarettes— increases experimentation and regular smoking, *id.* at 216; increases the likelihood of addiction and the degree of addiction in youth smokers, *id.* at 216; and results in lower likelihood of smoking cessation success in African-Americans, compared to smoking non-menthol cigarettes, *id.* at 217.

23. The availability of menthol cigarettes was also found to “increase the likelihood of experimentation and regular smoking beyond the anticipated prevalence if such cigarettes were not available, in the general population and particularly in African Americans.” *id.* at 219. In addition, the Committee found a “causal relationship between the availability of menthol cigarettes and regular smoking among youth.” *Id.* It also found that menthol cigarette marketing increased the prevalence of smoking “beyond anticipated prevalence if such cigarettes were not available for the whole population, and for youth and African Americans.” *Id.* at 220.

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