

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

_____	X	
Michael Toporek, individually and on behalf of all	:	
others similarly situated,	:	
	:	Case No.
Plaintiff,	:	
v.	:	
	:	
Walgreen Co.,	:	CLASS ACTION
	:	COMPLAINT
Defendant.	:	<u>JURY TRIAL DEMANDED</u>
	:	
	:	
_____	X	

Plaintiff Michael Toporek (hereinafter “Plaintiff”), individually and on behalf of all others similarly situated, by his attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge:

NATURE OF THE ACTION

1. This action seeks to remedy the deceptive and misleading business practices of Walgreen Co., (hereinafter “Defendant”) with respect to the marketing and sale of Defendant’s various pain relief lidocaine patch products throughout the state of New York and throughout the country, including, but not limited to, the following products (hereinafter collectively the “Products”):

- Walgreens Assorted Sizes Pain Relieving Lidocaine Patches, Maximum Strength;
- Walgreens Lidocaine + Menthol Cool n’ Heat Patch;
- Walgreens Pain Relieving Lidocaine Patch; and
- Walgreens Pain Relieving Lidocaine Patch, Maximum Strength.

2. Lidocaine belongs to the family of medicines called local anesthetics. It prevents pain by blocking the signals at the nerve endings in the skin.¹ Lidocaine patches are often prescribed by doctors, but Defendant offers the Products over-the-counter to consumers.

3. Defendant manufactures, sells, and distributes the Products using a marketing and advertising campaign that represents that its lidocaine patches provide “pain relief,” that is “maximum strength,” through a “stay-put flexible patch,” that will work for “up to 12 hours.”

4. As depicted below, Defendant claims that the topical patches provide “pain relief,” that is “maximum strength,” through a “stay-put flexible patch,” that will work for “up to 12 hours.”



¹ <https://www.mayoclinic.org/drugs-supplements/lidocaine-topical-application-route/description/drg-20072776>







The image shows the packaging for Walgreens Pain Relieving Lidocaine Patches. The top of the box features the Walgreens logo in red script. Below the logo, a blue banner contains the text "Compare to Salonpas® Maximum Strength Lidocaine Patch active ingredient!". To the right of this banner, the NDC number "NDC 0363-9110-06" is printed. The main title "Pain Relieving Lidocaine Patch" is displayed in large white font, with "LIDOCAINE 4% / TOPICAL ANESTHETIC" written below it. The lower half of the box is dark grey and features three blue callouts: "MAXIMUM STRENGTH", "ODOR FREE", and "MEDICATED". Below these callouts is a list of three bullet points describing the product's benefits. At the bottom, it states "6 PATCHES" and "3.94 IN x 5.5 IN (10 cm x 14 cm) EACH". On the right side of the box, there is a photograph of a person's back with a white rectangular patch applied to the lower back area.

Walgreens

Compare to Salonpas® Maximum Strength Lidocaine Patch active ingredient!

NDC 0363-9110-06

Pain Relieving Lidocaine Patch

LIDOCAINE 4% / TOPICAL ANESTHETIC

MAXIMUM STRENGTH

ODOR FREE **MEDICATED**

- Temporarily relieves minor pain & desensitizes aggravated nerves
- Stay-put flexible patch is easy to apply & remove
- No-mess, single-use application

6 PATCHES
3.94 IN x 5.5 IN (10 cm x 14 cm) EACH

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