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Dr. Cheryl G. Heaton, P.H.

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**Before the FDA Tobacco Products Scientific Advisory
Committee**

**“The Case for Protecting the Health of the Nation by
Eliminating Menthol from Tobacco Products”**

March 31, 2010

Thank you for the opportunity to testify today. My name is Dr. Cheryl Heaton. I am the President and CEO of Legacy. Legacy is a national, independent public health foundation created in 1998 out of the landmark Master Settlement Agreement (“MSA”) between the tobacco industry, 46 state governments and five U.S. territories. Our mission is to build a world where young people reject tobacco and anyone can quit. Legacy does not lobby, take positions on specific legislation or support any candidates for elective office. Our programs include:

truth® - A decade old national youth smoking prevention media campaign responsible for preventing approximately 450,000 youth from initiating smoking from 2000 through 2004¹ and saving up to 5.4 billion in health care costs.²

EX® - Credited with sharply increasing quit attempts, **EX®** is an innovative national smoking cessation public education



campaign designed to help smokers “re-learn” life without cigarettes found to sharply increase quit attempts.^{3,4}

Research and Policy Initiatives – Examining the various causes and effects of tobacco use in the United States and contributing to policies that work to reduce the burden of tobacco use on individuals and society as a whole.

Outreach to Priority Populations – Priority Populations Initiatives and grants provide critical interventions using methods that are culturally competent and tailored for the specific needs of communities disproportionately affected by the toll of tobacco including low ⁵income persons, racial/ethnic minorities and the LGBT community.

Legacy believes that the FDA should prohibit menthol in cigarettes and other tobacco products. Menthol products account for one-fifth of the U.S. cigarette market, and an astonishing approximately 83% of African American smokers smoke menthol cigarettes.⁶ These numbers are roughly consistent for both youth and adult African American smokers.⁶ Menthol cigarettes dwarf the market share of the flavored cigarettes already prohibited by the Act.⁷ The success of menthol cigarettes is hardly an accident. Literally many hundreds of internal tobacco industry documents conclusively establish that the tobacco industry has for decades systematically developed and marketed menthol products to attract and keep as long-term customers millions of “starter” and youth smokers; racial/ethnic minorities and African-Americans in particular; and smokers seeking health reassurances. One study demonstrated a 17.5 percent increase in youth menthol cigarette use between 2000-2002.⁸ Despite a 22% decline in overall packs of cigarettes sold in the United States between 2000 and 2005, menthol sales remained stable.⁹

Menthol as an additive is not limited to cigarettes. It is found in other tobacco products including cigars and smokeless products. In all of these products, menthol is used to lure youth and younger tobacco users by masking the harsh flavor and feel of non-mentholated products, with the expectation that users may “graduate” to stronger, possibly unflavored products. The detailed findings of fact in the U.S. District Court’s opinion in *United States v. Philip Morris, et al.*, 449 F.

Supp. 2d 1 (D.D.C. 2006) *aff'd*, 566 F.3d 1095 (D.C. Cir. 2009) provide a thorough and highly instructive review of this chilling history. The public record provides more than ample support for the agency to conclude that prohibiting menthol is “appropriate for the protection of the public health.” Sec. 907(a)(3)(A).

There are of course many unanswered questions surrounding the properties and health effects of menthol cigarettes. Among other things, the best minds working in tobacco research are still trying to determine for certain whether menthol cigarettes:

- pose a greater health hazard than unflavored cigarettes;
- are more addictive than regular cigarettes; and
- whether menthol smokers require different cessation interventions.

Today, I would like to focus on what we already know about menthol cigarettes. Much—if not all—of this information may be well known, but, I think it nonetheless bears repeating. While there’s a lot we *don’t* know about menthol cigarettes, what we *do* know provides ample reason for the FDA to eliminate menthol in tobacco products:

- First, menthol cigarettes serve as a starter product for America’s youth, luring them into taking up a deadly and addictive habit which based on current data will cause a third to die prematurely of tobacco-related disease and millions more to become chronically disabled;
- Second, menthols have historically been a key part of the tobacco industry’s fraudulent health reassurance campaign; and
- Third, menthols have been targeted to communities of color, which often bear a disproportionate burden of tobacco-related disease.

Let me elaborate on each of these.

Reason No. 1: Menthols are a starter product for new and younger smokers.

It doesn't take a rocket scientist to figure out if you want to get young people to smoke, you give them a cigarette that tastes like candy. Like a mint. Which is, after all, what menthol is -- a compound extracted from the peppermint plant. It also helps if you can mask the harsh effects of tobacco smoke with a cooling sensation, the way menthol does. In fact, here's what an internal 1987 Brown & Williamson (now merged with RJR) memo had to say about menthols:

"Menthol brands have been said to be good starter products because new smokers appear to know that menthol covers up some of the tobacco taste, and they already know what the menthol tastes like, vis-a-vis candy."¹⁰

So, we have a cigarette that tastes like candy and is easier on the throat. And guess what? Younger smokers smoke more menthols than adults do. In fact, while less than 1/3 of smokers over the age of 35 smoke menthols, 44 percent of smokers ages 12-17 do.¹¹

Again, this is no surprise to the tobacco industry. After all, the executive who famously wrote "the base of our business is the high school student" was talking about Newports, the #1 selling menthol brand.¹²

Lorillard, which makes Newports, has not been alone in targeting youth with its menthol cigarettes. The authors of a 1983 internal Brown & Williamson document recommended "to increase Kool's share of starters, it will be necessary to increase Kool's share among young smokers."¹³ And, both Kool and Newports have been advertised in publications with substantial youth readership, including *Sports Illustrated*, *Sporting News* and *Spin*.¹⁴

The fact that the tobacco industry has used menthols to lure young people into diving headfirst into a potentially life-long addiction is reason alone to prohibit them. The tobacco industry reaps an estimated \$19.6 *billion* every year in sales revenues from menthol cigarettes.¹⁵ Menthols are

responsible for approximately one fifth of the industry's sales and they are a growing share of a shrinking market.

Congress did ban a wide array of other flavors including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, and coffee, based on the common sense logic that flavored cigarettes make smoking more attractive to youth.¹⁶

A number of public health organizations in addition to Legacy have urged the FDA to expeditiously take up the menthol issue and to consider eliminating its use.

In written comments to the FDA, the American Medical Association urged the Advisory Committee “to quickly examine the impact of menthol additives,” noting that menthol “is the only cigarette additive that is actively marketed to consumers, ... the only aspect of cigarette design that is explicitly marketed based on its physiological effects, as an anti-irritant and a cooling agent, ... [and] the only cigarette additive about which consumers make conscious buying choices.”¹⁷

The American Public Health Association “recommends that FDA make prohibiting menthol in cigarettes and other tobacco products a top priority, after carefully considering the huge volume of evidence available on this subject (approximately 400 published studies). . . . Many hundreds of internal tobacco industry documents demonstrate that the tobacco industry has for decades systematically developed menthol products and utilized heavy marketing to attract and keep millions of ‘starter’ and youth smokers, racial minorities and African Americans in particular.”¹⁸

The American Heart Association “urge(s) the Agency to commence its study on the use of menthol in cigarettes and its impact on public health as soon as possible. Menthol allows smokers to inhale more deeply and speeds the absorption of nicotine, which unfortunately increases health risks, makes the product easier to smoke, and increases the product’s addictive properties. Menthol cigarettes are a critical issue for tobacco control, particularly in the African-American population where their use is significantly higher. Given the known health risks, we urge the FDA to consider banning menthol in tobacco products, or, at a minimum, limiting the amount of menthol a tobacco product can

contain.”¹⁹ Mr. Joseph A. Califano, joined by numerous former CDC Directors, Surgeons General, and HHS Secretaries called on key members of Congress to eliminate menthol before passage of the FDA bill. Mr. Califano and Dr. Loius Sullivan recently renewed their call for the elimination of menthol.²⁰

These minty, less irritating cigarettes that lure our kids into a deadly addiction provide the impetus for the FDA to act now.

The latest numbers from SAMHSA confirm that more smokers are using menthols. The increases were most pronounced among adolescents ages 12-17.²¹ This data also reveals that the vast majority of African American smokers of all ages smoke menthols, with the highest menthol rate among black smokers ages 26-34, ninety percent of whom smoke menthols.²² Smokers of other racial and ethnic groups also disproportionately smoke menthols, including Native Hawaiian and other Pacific Islanders (53.2%), Hispanic/Latinos (32.3%), and Asian Americans (31.2%), compared with White smokers (23.8%).²³

Menthols are demonstrably appealing to newer smokers; menthol use is 40 percent higher among those who started smoking in the past year than among longer-term smokers (44.6 versus 31.8 percent, respectively).²⁴

If we can prevent our young people from being recruited as “replacement smokers” for those who quit smoking or die from tobacco-related disease, we stand a real chance of eradicating the tobacco epidemic. There is simply no question that a deadly product that has been designed to and does appeal to our youth should be eliminated from tobacco products, just as Congress already banned all other cigarette flavorings.

Reason No. 2:

Menthols have been part of a decades-long, deliberate, and fraudulent attempt by the tobacco industry to reassure smokers about the health effects of its products. Just as it has done with light cigarettes, the industry has tried to fool smokers into believing that menthols are a healthier



alternative to regular cigarettes. But as the old saying goes, “Fool me once, shame on you. Fool me twice, shame on me.” It is up to us in public health and tobacco control to educate the public about the fact that the tobacco industry has long manipulated consumers and to put an end to it.

As we all know, menthol is not only an ingredient in cigarettes, it’s an ingredient in all kinds of cold medicine—from cough drops to throat spray. And the message that smoking menthol cigarettes has some medicinal benefits has been a recurrent theme in tobacco industry advertising. Here is a representative ad from the 1930s:



LEGACYSM

FOR LONGER HEALTHIER LIVES

"GOT A COLD?"

THEN IT'S TIME TO

CHANGE TO SPUDS

WHENEVER-



THEN-

ENJOY THEIR COOLING SMOOTHNESS AND GIVE YOUR THROAT A REST!

New, improved Spud Imperials are made for a purpose—designed to safeguard your throat from irritation caused by ordinary cigarettes.

SPUDS ARE SUPERIOR IN 3 WAYS:

GREATER SAFETY—The special moisture-retaining agent used in Spud Imperials does not produce acrolein—a throat irritant found in the smoke of nearly all cigarettes. In addition, Spuds are made 20% longer to give you a cooler, better filtered smoke.

MILDER MENTHOL—An exclusive, patented process distributes menthol more mildly and evenly throughout Spuds. *No menthol overloading!*

BETTER QUALITY—Spud Imperials are made of an extremely mild blend of the finest vintage tobaccos—aged to perfect mellowness. *No coupons—just high quality tobaccos!*

Try the new, improved Spud Imperials. Smoke them as long as you like—and by all means change to Spuds when your throat is irritated. It's safer—and you'll get real smoking pleasure. The Axton-Fisher Tobacco Co., Inc. "House of Tradition."



More for your money—
20% longer—equal to 4
other cigarettes per pack!

THE ORIGINAL

MENTHOLATED CIGARETTE

This ad suggests you should switch to this menthol brand to combat a cold or sore throat, a hoarse voice, or smoker’s cough. It also explicitly states that these menthols offer “Greater Safety.”

As time went on, the messages from the industry became more subtle. But, just as with light cigarette ads, the tobacco companies continued to send the message that menthols were less harmful than other cigarettes—and maybe even beneficial—using code words like:

- smooth
- natural
- refreshes; and
- cool.

It’s no surprise that one of the top-selling menthol brands is actually called Kool -a brand which used a playful penguin as its mascot.

And we all know that Newports, the top-selling menthol brand, for years had a slogan with the ultimate fraudulent health message: Alive!

These messages were reinforced with images that have a clean, healthy connotation—blue and green coloring and ice, snow, and water. Models and actors typically engaged in healthy athletic activities. Internal tobacco industry documents reflect that tobacco companies knew exactly what they were doing in sending these messages.

A 1983 internal Brown & Williamson document discussed how Kool had maintained its market share for 30 years by “positioning itself as a specialty cigarette to be smoked ONLY for remedial or medicinal purposes.”²⁵ (emphasis added)

Internal tobacco company documents also reflect that the industry’s health reassurance message worked. A 1963 Lorillard document reached the following conclusion based on Gallup polling:

“Filter and mentholated cigarettes are considered most favorably, with most people voting them ‘very safe’ or ‘moderately safe. . . .’”²⁶ The industry explicitly tried to profit from this association between menthol and health. For example, a 1976 document discussing a possible new Reynolds menthol brand explains it would “offer the smoker greater appeal” by “capitaliz[ing] on the ‘healthier’ feeling of a menthol smoke.”²⁷ Similarly, a 1993 Philip Morris product development document analyzes a new menthol’s “product potential” by citing menthol as one of the “cigarette attributes associated with ‘healthier’.”²⁸

Not surprisingly, menthol smokers appear to have been deterred from quitting, just as the tobacco companies recognized they would be. As a 1986 Brown & Williamson document explained, “Quitters may be discouraged from quitting, or at least kept in the market longer. . . . A less irritating cigarette is one route. . . . (Indeed, the practice of switching to lower tar cigarettes and sometimes menthol in the quitting process tacitly recognizes this).”²⁹

Today the industry has learned to send the same health reassurance messages in a less overt way. The “Alive with Pleasure” slogan has morphed into simply “Pleasure!” But Big Tobacco continues to use water imagery and mint green coloring to send the same subtle message that menthols are somehow akin to medicine and thus healthier than regular cigarettes.

According to research released in July of 2008 by the Harvard School of Public Health, depending on who they are marketing to, tobacco companies have tinkered with the menthol levels in cigarettes.³⁰ Findings indicated that young smokers who prefer milder cigarettes get lower levels of menthol while long-term, adult smokers get higher levels to deter them from quitting. Dr. Greg Connolly, a member of this esteemed body and Dr. Howard Koh, now the Assistant Secretary for Health at the US Department of Health and Human Services, are among the authors of this paper and said:

“For decades, the tobacco industry has carefully manipulated menthol content not only to lure youth but also to lock in lifelong adult customers.”³¹



So, not only do these products lure our kids into smoking with their minty taste and cooling sensation, but they trick smokers of all ages into believing they are smoking a healthier or medicinal type of cigarette.

Most recently, RJR rolled-out a new brand of cigarettes, Camel No. 9, which it marketed in five of the top ten magazines read by teen girls. After this short-lived but chillingly effective campaign more female teens in a national study named Camel as their favorite brand, by 10 percentage points, while no similar increase occurred among teen males.³² No wonder, look at the ads offering menthol in teal and regulars in shocking pink with the tag line "light and luscious".³²



LEGACYSM

FOR LONGER HEALTHIER LIVES

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new

CAMEL

No. 9

light & luscious

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

9 mg. "tar", 0.9 mg. nicotine av. per cigarette by FTC method. Actual amount may vary depending on how you smoke. For T&N info, visit www.rjrt.com

Research has demonstrated that youth who identify a favorite brand are 50 percent more likely to initiate smoking in the next three years.³² Thankfully through the concerted efforts of Members of Congress, leading national organizations and the Attorneys General, this ad campaign ended- sadly the brand is still for sale waiting to capture its market share of purchase ready girls.

Reason No. 3:

In addition to the other compelling reasons to ban menthols, it is also a simple matter of social justice.

We all know that tobacco is not an equal opportunity killer. As a woman who was convinced to start smoking by the allure of Virginia Slim advertisements, I have strongly-held views about the way the tobacco industry targets certain populations. Smoking is not—as Hollywood would like us to believe—a lifestyle choice of the rich and famous. Those communities heavily targeted by the industry are often the same ones that have been traditionally disadvantaged in other ways. Menthols have been targeted not only at young people generally, but at African American youth specifically and well as at the broader African-American community and other minority communities as well.

Some of the internal tobacco company discussions about targeting minority communities, and minority youth in particular, are really highly disturbing. At one Lorillard sales seminar in 1978, one suggestion was “Tie-in with any company who help blacks [sic] – ‘we help them, they help us.’ Target group age 16+.”³⁴

The same document reveals Lorillard’s plan to promote Newport in “inner city areas,” recommending “a specially designed Black newspaper campaign for NEWPORT on an on-going basis” that “outside consultants specializing in Black promotion . . . be brought in” and suggests sponsoring the “Miss Black Teenager” contest.³⁵ Meanwhile, Kool, Reynolds’ menthol brand, is described as the “dominant entry brand in the inner city.”³⁶

So, it's no surprise that one study found that, between 1998 and 2002, *Ebony* was 10 times more likely than *People* to contain ads for menthols, while the Spanish version of *People* was more than twice as likely to contain ads for menthol cigarettes than the English language *People*.³⁷

In a controversial campaign in 2004, Brown & Williamson sponsored Kool Mixx, which focused on hip-hop artists and was clearly designed to target this menthol brand to African-American youth. The Attorneys General of three states filed suit alleging that the campaign violated the MSA's youth targeting provisions, resulting in an out-of-court settlement.³⁸

Other advertisements target other populations, including the LGBT community. In some ads appearing in OUT Magazine and for GLAAD events, the photos were tailored to appeal to LGBT audiences. Instead of a man, a woman and a dog in the photo, in these targeted ads, the man and dog remain, but the woman has been replaced by another man. An RJR campaign, known as Project SCUM sought to increase market share in San Francisco among gays and homeless people.^{39,40,41}

This targeting works: of blacks who are current smokers, approximately 83% smoke menthols. Also, while researchers are still exploring the reasons why, we know that:

- Blacks have lower cessation rates than other smokers, and research suggests that menthols could be harder to quit than regular cigarettes.⁴² One study found that high school menthol smokers were more likely to report symptoms of dependence compared to non-menthol cigarette smokers, while other studies found that found adult menthol smokers were more likely to have their first cigarette within a shorter time period after waking than non-menthol smokers.⁴³
- Compared to whites, African Americans are at increased risk for lung cancer even though they smoke about the same amount, with African American men experiencing lung cancer at a rate 34% higher than white men,⁴⁴ and
- African American smokers are more likely to die from lung cancer or other smoking-related diseases than white smokers.⁴⁵ Between 2002 and 2006, the lung cancer mortality rate among African American men was 29 percent higher than among white



men, although African American women experienced slightly lower rates of lung cancer and lung cancer mortality than white women,⁴⁶ probably due to lower smoking rates in the past.

It is worth noting that the black and Hispanic communities may be particularly vulnerable right now. All Americans are experiencing stress in these unprecedented economic times, and we know that when people are stressed, they smoke more, delay quitting, and are more likely to relapse. A recent study from the Center for American Progress found that the current recession, African Americans and Hispanics have been disproportionately impacted by high unemployment and job losses.⁴⁷ So, the very communities that are experiencing disproportionate economic stress right now are the same communities being targeted by the tobacco industry with menthols.

Legacy has a long-standing and ongoing commitment to addressing tobacco-related disparities among priority populations.

But interventions can only get us so far. Our government needs to take dramatic action to stem the epidemic of tobacco-related disease and death, which has been disproportionately borne by communities of color, and prohibiting menthols will help us get there. In closing I would like to thank the Committee for allowing me to speak on this urgent health matter. I wish you all the best of success in the complex challenges before you.

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