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April 21, 2023

The Honorable Rob Bonta  
Attorney General, State of California  
1300 I Street  
Sacramento, California 95814-2919

Re: Introduction of “non-menthol” cooling agent cigarette products

Dear: Attorney General Bonta,

On behalf of the California Thoracic Society and its parent organization, the American Thoracic Society, we are contacting you to express our serious concerns about the introduction of “non-menthol” cooling agent cigarettes in the state of California. We believe these novel tobacco products are a threat to public health, violate California law (SB 793) and are yet another example of Big Tobacco’s attempts to circumvent tobacco control laws to addict a new generation of tobacco users. As physicians who treat patients with pulmonary diseases like COPD and lung cancer, we are all too familiar with the illness, death and emotional devastation caused by tobacco addiction. We strongly urge you to take swift action under the authority granted by SB793 to remove these supposedly “non-menthol” cooling agent cigarettes from California stores.

### **Cooling Agent WS-3 is a Menthol Flavor Additive**

R.J. Reynolds is using a new flavoring agent for its next generation of cooling tobacco products (i.e., Newport Non-Menthol Green and Camel Crisp Non-Menthol Green cigarettes). The new flavoring agent is WS-3, a synthetic cooling agent that – like menthol – elicits cooling sensations by activating the TRPM8 cold/menthol receptor on sensory nerve endings in the throat and airways. A few important points to consider: WS-3 works on the exact same nerve receptor as do menthol flavoring additives, WS-3 elicits the same “cooling” sensation that menthol flavoring additives do, and R.J. Reynolds is intentionally adding WS-3 to these tobacco products to create the same experience that tobacco users expect from a menthol flavored cigarette.

### **The Tobacco Industry is Marketing These New Products as Menthol Equivalents**

As noted in the extensive comments submitted by the Campaign for Tobacco-Free Kids, the tobacco industry is intentionally and explicitly marketing these new tobacco products as equivalents to menthol

tobacco products. The new products are using the same color scheme used to identify menthol tobacco products. They are using the same terms traditionally used to describe menthol products – terms like “cool,” “crisp,” and “fresh”.

Equally compelling is the direct comparison the tobacco industry is making between menthol tobacco products and the new products in advertisements and mailers. Statements like, “The menthol ban is here but we’ve got you covered, California,” “Introducing what’s next in fresh,” “Fresh intensity made just for you,” “Immerse yourself in a fresh intensity that is designed to satisfy the senses,” and “New fresh taste, same satisfaction” clearly convey to the consumer that these new tobacco products provide the same flavoring experience that smokers expect from a menthol tobacco product.

### **R. J. Reynolds Explicitly Claimed and FDA Agreed that WS-3 is “Substantially Equivalent” to Menthol Cigarettes**

Most compelling is the tobacco industry’s own regulatory position on these new tobacco products. R.J. Reynolds petitioned the FDA Center for Tobacco Products for market approval for new tobacco products that used the WS-3 flavoring agent. What is relevant for policy purposes is that R.J. Reynolds sought approval for this new product under the substantial equivalence pathway. Substantial equivalence refers to comparisons between a new tobacco product and a predicate product that is already on the U.S. market (i.e., a single tobacco product that the manufacturer will compare to its new tobacco product) such that the new product is so similar to a product already on the market that it does not raise new issues of public health. In this case, R.J. Reynold explicitly claimed that the new product that uses the WS-3 flavoring agent is substantially equivalent to a product already on the market – menthol flavored cigarettes. The FDA Center for Tobacco Products agreed and accepted R.J. Reynold’s petition under the substantial equivalence pathway. For R.J. Reynolds and other tobacco companies to now claim these products are “non-menthol” is undermined by their own statements before the FDA.

In summary, these new “non-menthol” cigarette products work on the same neurological pathway to create the same cooling sensation as menthol cigarettes, have been directly advertised to menthol smokers as being equivalent to menthol cigarettes, and the industry itself has presented WS-3 products to a federal regulatory agency (the FDA) as “substantially equivalent” to menthol cigarettes. Any claim these products are “non-menthol” is both disingenuous and not supported by the facts. The state of California should treat these new tobacco products as menthol tobacco products – which they are – and order their immediate removal from the market.

On behalf of the members of the American Thoracic Society, the California Thoracic Society, and the patients we serve, we urge you to act swiftly to remove these products from the California market.

Sincerely,

George Su, MD  
President  
California Thoracic Society

Greg Downey, MD ATSF  
President  
American Thoracic Society

Hasmeena Kathuria MD  
Chair  
ATS Tobacco Action Committee



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