



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

August 20, 2013

DMS NOTICE
QC - 13 - 10
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **Chattem, Inc. (Allegra-branded and Pamprin-branded Products)**

Enclosed is a copy of the stipulated final judgment against Chattem, Inc. The case was filed by the District Attorney's Office of the County of Fresno in conjunction with the District Attorney of Sacramento County on July 29, 2013 for deceptive packaging/non-functional slack-fill of Allegra-branded and Pamprin-branded products in violation of California Business and Professions Code Section 12606.

The California Department of Food and Agriculture, Division of Measurement Standards worked with the Sacramento County Office of Weights and Measures. The total settlement was for \$438,311.06. Civil penalties amounted to \$416,389.76, agency costs were \$11,921.30, and \$10,000 in cy pres went to the California Agricultural Commissioners and Sealers Association Quantity Control Trust Fund.

Sacramento County should be sure to report these penalties on the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns on the report.

We appreciate the fine work done by the District Attorney's Offices along with the state and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



1 ELIZABETH A. EGAN
District Attorney, County of Fresno
2 MICHAEL C. BRUMMEL, State Bar No. 236116
Deputy District Attorney
3 929 L Street
Fresno, California 93721
4 Telephone: (559) 600-3156

FILED

JUL 29 2013

FRESNO COUNTY SUPERIOR COURT
By _____

5 JAN SCULLY
District Attorney, County of Sacramento
6 RUTH YOUNG, State Bar No. 133606
Deputy District Attorney
7 906 G Street, Suite 700
Sacramento, CA 95814
8 Telephone: (916) 874-6174

9 Attorney's for Plaintiff

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

11 13 CE CG 02355

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

) Civil Case No.: _____
) D.A. Case No.: 2010-B-24220

13 Plaintiff,

) **STIPULATED FINAL JUDGMENT**

14 v.

15 CHATTEM, INC., a Tennessee corporation,

16 Defendant(s).
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19 THE PEOPLE OF THE STATE OF CALIFORNIA (the "People") having filed its complaint
20 and appearing through its attorneys ELIZABETH A. EGAN, District Attorney for the County
21 of Fresno, by Deputy District Attorney Michael C. Brummel, JAN SCULLY, District Attorney
22 for the County of Sacramento, by Deputy District Attorney Ruth Young; and defendant
23 Chattem, Inc., a Tennessee corporation (hereinafter referred to as "Defendant"), appearing
24 through its attorneys DLA Piper LLP by George Gigounas, stipulated to the entry of this Final
25 Judgment without Defendant admitting any wrongdoing, without the court taking evidence, and
26 without this Final Judgment constituting an admission by any Defendant regarding any issue of
27 law or fact. All parties waive their right of appeal and agreed presumption set forth in Civil
28 Code section 1654 is not applicable and there is no presumption that documents should be

1 interpreted against any party. This court having considered the pleadings and the Stipulation for
2 Entry of Final Judgment and good cause appearing therefore:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED, THAT:**

4 **JURISDICTION**

5 1. This Court has jurisdiction of the subject matter hereof and the parties hereto.

6 **APPLICABILITY**

7 2. This Final Judgment is applicable to all of the Defendant's over-the-counter
8 Allegra-branded and Pamprin-branded products offered for sale in the State of California (the
9 "Covered Products"). To the extent permitted by law, this Final Judgment is applicable to
10 Defendant and its officers, representatives, successors, assignees, and all persons, partnerships,
11 corporations, and other entities acting under, by, through, on behalf of, or in concert with
12 Defendant, with actual or constructive knowledge of this Final Judgment. This Final Judgment
13 is also applicable to any and all subsidiaries of the Defendant and its respective officers,
14 representatives, successors, assignees and all persons, partnerships, corporations, and other
15 entities acting under, by, through, on behalf of, or in concert with any such subsidiary with
16 actual or constructive knowledge of this Final Judgment.

17 3. This Final Judgment is a full, final and binding resolution between the People
18 and the Defendant of any past violation of each of the statutes and regulations concerning the
19 Covered Products as alleged in the People's Complaint.

20 4. The District Attorneys for the Counties of Fresno and Sacramento have the
21 authority under the laws of the State of California to maintain this action for the protection of
22 the People concerning the Covered Products and the conduct alleged in the Complaint.

23 5. This Final Judgment has been reviewed by the Court and the Court finds that it
24 has been entered into in good faith and is in all respects just, reasonable, equitable, and
25 adequate.

26 6. Nothing in this Final Judgment shall be deemed to restrict or dictate the
27 information provided on the Defendant's Covered Products that is required pursuant to
28 applicable federal statutes, regulations, rules or guidelines pertaining to packaging labeling,

1 statements, or disclosures. The requirements of this Final Judgment shall be interpreted so that
2 they are consistent with any applicable federal statute, regulation, rule, or guideline.

3 **INJUNCTION**

4 7. Pursuant to Business and Professions Code section 17203 and 17535,
5 Defendant is permanently enjoined and restrained from directly or indirectly, in or from
6 California, failing to abide by each and every provision of Business and Professions Code
7 sections 12606(a), 12606(b), 17500 and Health and Safety Code sections 110385, 110375(a)
8 and 110375(b) as pertaining to the Covered Products.

9 8. The injunctive provisions of this Final Judgment shall not apply to any
10 Covered Products manufactured and distributed by Defendant that have been manufactured
11 and/or shipped to retailers for sale to the public in California prior to the date of this Final
12 Judgment. In order to afford Defendant sufficient time to bring Covered Products packaging
13 into compliance with the terms of this Final Judgment, Defendant will be permitted twenty
14 (20) months from the date of entry of the Final Judgment to implement changes to the
15 Covered Products manufacturing process and packaging, as long as the Defendant's efforts
16 are in good faith. By the expiration of the twenty (20) month period Defendant will
17 exclusively manufacture packaging for Covered Products to comply with the terms of the
18 Final Judgment; however, neither Defendant nor its customers or vendors shall be required to
19 cease shipments, distribution, or sales of Covered Products packaged prior to the expiration
20 of the twenty (20) month period with existing packaging. Defendant shall introduce no new
21 Covered Products which are in violation of the injunctive provisions of the Final Judgment
22 during this twenty (20) month time period. As used in this Final Judgment, "new Covered
23 Products" excludes Covered Products modified only to include free, bonus or giveaway
24 product in the same packaging during the twenty (20) months following the date of entry of
25 the Final Judgment.

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COMPLIANCE

9. Defendant shall specifically advise the following persons of the injunctive provisions of this Final Judgment: (a) its current officers; (b) any officers who are appointed or elected within one year of the date of entry of this Final Judgment, and (c) any and all persons responsible for package engineering, design or marketing of Covered Products for Defendant at any time during the three years following the date of entry of this Final Judgment.

10. Defendant shall use good faith efforts to make available and fully and clearly explain the injunctive language of this Final Judgment, including the terms and conditions thereof, to each person or entity responsible for the packaging of Defendant's Covered Products offered to California consumers, including its officers, employees, contractors, and/or designers of packaging.

MONETARY PROVISIONS

11. **Filing Fees.** Defendant shall pay to Plaintiff, upon signing of the Stipulation for Entry of Final Judgment, the sum of four hundred and thirty-five dollars (\$435.00) by check made payable to the "Fresno Superior Court" as filing fees in this case, pursuant to government Code section 6103.5.

12. **Costs.** Defendant shall pay the People as and for investigative and prosecution costs the sum of eleven thousand four hundred eighty six dollars and thirty cents (\$11,486.30) by separate checks made payable to each agency in the corresponding amounts listed below:

Agency	Amount
California Department of Food and Agriculture Division of Measurement Standards	\$ 1,184.80
Sacramento County Weights and Measures	\$ 1,000.00
Fresno County District Attorney	\$ 4,650.75
Sacramento County District Attorney	\$ 4,650.75
TOTAL COSTS	\$ 11,486.30

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13. **Cy Pres Restitution.** Pursuant to Business and Professions Code sections 17203 and 17535, recognizing the infeasibility of identifying consumers, if any, who suffered actual loss, the impracticality of providing direct restitution to said consumers, and the disproportionate cost of making restitution to individual consumers, which would far exceed the benefit consumers would gain, the parties agree that Defendant shall pay cy pres restitution in the sum of ten thousand dollars (\$10,000.00) by way of a separate check made payable to the California Agriculture Commissioner and Sealer’s Association Quality Control Trust Fund (established pursuant to the Judgment in the case of *People of the State of California v. Safeway, Inc., et al*, Sonoma County Superior Court case number 233008, filed July 7, 2003).

14. **Civil Penalties.** Defendant is hereby ordered, pursuant to Business and Professions Code sections 17207, 17536, 17503 and 17535, to pay at the time of the filing of this Final Judgment, a civil penalty of four hundred sixteen thousand three hundred eighty-nine dollars and seventy six cents (\$416,389.76) which shall be distributed equally to the prosecuting agencies bringing this action pursuant to Government Code section 26506. Said penalty shall be paid by two separate checks each in the amount of two hundred eight thousand one hundred ninety-four dollars and eighty eight cents (\$208,194.88) made payable respectively to the “Fresno County District Attorney” and the “Sacramento County District Attorney.”

15. **Delivery of Settlement Funds.** All settlement funds shall be due at the time of the filing of this Final Judgment and shall be delivered to Michael Brummel, Fresno County District Attorney’s Office, Consumer & Environmental Protection Unit, 929 L Street, Fresno, CA 93721.

NO PRESUMPTIONS AGAINST DRAFTOR

16. If an ambiguity arises regarding any provision of this Final Judgment that requires interpretation, there is no presumption that documents should be interpreted against any party. The presumption set forth in Civil Code section 1654 is not applicable.

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of California law.

23. This Judgment shall take effect immediately upon entry thereof.

Dated: 7/29/13

By KRISTI CULVER KAPETAN 
JUDGE OF THE SUPERIOR COURT