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

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MICHAEL C. BRUMMEL, State Bar No. 236116
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Fresno, California 93721
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Attorney's for Plaintiff

FILED
JUL 29 2013
FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. CHATTEM, INC., a Tennessee corporation, Defendant(s).	Civil Case No.: 13 CE CG 02355 D.A. Case No.: 2010-B-24220 **STIPULATED FINAL JUDGMENT**

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, THAT:

JURISDICTION

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

APPLICABILITY

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

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

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

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

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

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

INJUNCTION

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

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

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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17. The failure of the People to enforce any provision of this Final Judgment shall neither be deemed a waiver of such provision nor shall it in any way affect the validity of this Final Judgment. The failure of the People to enforce any provision shall not preclude it from later enforcing the same or other provisions of this Final Judgment.

RES JUDICATA EFFECT

18. This Final Judgment is a full, final, and binding resolution between the prosecutors representing the People in this action and Defendant regarding any acts of unfair competition, as defined in Business and Professions Code §17200, based upon violations of Business and Professions Code §§12606(a), 12606(b), 17500 and Health and Safety Code sections 110375(a), 110375(b), and 110385 as pertaining to the Covered Products as more fully alleged in the Complaint on file in this action.

RETENTION OF JURISDICTION

19. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply to the court at any time for such orders and directions as may be necessary and appropriate for the construction of or the carrying out of this Final Judgment, for the modification or termination of any of the injunctive provisions, and for the enforcement of compliance herewith and for punishment of violations hereof.

20. All forms of notice of service required to be made upon any Defendant for the purpose of enforcement of the terms of this Judgment shall be deemed to have been made when such service has been made by United States mail as follows:

Crews Townsend Miller & Martin PLLC Suite 1000 Volunteer Bldg. 832 Georgia Avenue Chattanooga, TN 37402	George Gigounas DLA Piper LLP (US) 555 Mission Street Suite 2400 San Francisco, CA 94105-2933

21. Except as otherwise expressly provided herein, each party shall bear its own attorney's fees and costs.

22. The language used for the obligations set forth in the Final Judgment are solely for the purposes of settlement and compromise and are in no way intended to be an alteration

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