

December 14, 2010

**NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND  
TOXIC ENFORCEMENT ACT OF 1986  
(California Health and Safety Code § 25249.5 et seq.)**

TO  
Chattem, Inc.  
1715 West 38th Street  
Chattanooga, TN 37409

First Class Mail-Proof of Service Attached

TO THE PARTIES LISTED ON THE ATTACHED DISTRIBUTION LIST

**Re: Gandara v. Chattem, Inc.**

Dear Sir or Madam:

Mallisa McCumber Gandara (the "Noticing Party") serves this Notice of Violation ("Notice") upon Chattem, Inc. (hereinafter "Noticed Party") pursuant to and in compliance with California Health and Safety Code ("H&S Code") § 25249.7(d) and 27 California Code of Regulations ("CCR") § 25903.

This Notice satisfies a prerequisite for the Noticing Party to commence an action against the Noticed Party to enforce the Safe Drinking Water and Toxic Enforcement Act of 1986. On information and belief, the violations addressed by this Notice occur in every county and city in California. This Notice is being served upon each violator, the California Attorney General, the district attorney of every California County and the city attorney of every California City with a population (according to the most recent decennial census) of over 750,000. If the Noticed Party has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel, this Notice is being addressed to, and served upon, one of those persons.

Attached as Exhibit "A" to this Notice is a copy of the "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." The attached Summary was prepared by the California Environmental Protection Agency and provides general information about the Safe Drinking Water and Toxic Enforcement Act of 1986. Copies of the Summary are not required to be, and are not being provided to the public enforcement agencies.

A description of the Noticing Parties, the Alleged Violator, and the Alleged Violations addressed by this Notice are as follows:

- This Notice is provided by Mallisa McCumber Gandara. Ms. Gandara is acting in the public interest pursuant to H&S Code § 25249.7(d), and is dedicated to protecting the environment; improving human health and supporting environmentally sound practices. The Noticing Party is a person acting on his own behalf, and is a resident of the County of Los Angeles in the State of California.
- The Noticed Party's name and address is:  
 Chattem, Inc.  
 1715 West 38th Street  
 Chattanooga, TN 37409
- The violations addressed by this Notice began on or after January 1, 2002, have occurred on numerous occasions each and every day since January 1, 2002, and are ongoing and continuing.
- This Notice of Violation covers the "warning provision" of Proposition 65, which is found at H&S Code § 25249.6.
- The name of each chemical that is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 involved in the violations addressed by this Notice is hexavalent chromium (the "Listed Chemicals"). The Listed Chemicals have been listed for more than twelve months by the Governor of the State of California as being a chemical known to the State of California to cause cancer or reproductive toxicity, or both cancer and reproductive toxicity.
- The route of exposure for the violations addressed by this Notice is ingestion. There is also a danger of a dermal exposure while preparing the product for consumption.
- The type of consumer products causing the exposures addressed by this Notice are nutritional supplements, including but not limited to, the following illustrative products: Dexatrim brand weight loss supplements sold by the Noticed Party under brand names, including but not limited to, Dexatrim Max Complex 7, Dexatrim Max Daytime Appetite Control, Dexatrim Max Slim Packs, Dexatrim Natural Green Tea, and Dexatrim Natural Extra Energy.
- There are numerous sources of the exposures addressed in this Notice. These exposures occur in homes, the workplace and everywhere else in California where these products are consumed. These exposures occur principally off the property of the Noticed Party.
- In the course of doing business, the Noticed Party has knowingly and intentionally exposed, and continues to expose, individuals to the Listed Chemicals. No clear and reasonable warning is or has been provided by

the Noticed Party to individuals regarding exposure to the Listed Chemicals or regarding the fact that the Listed Chemicals are known to be a carcinogen, reproductive toxicant, or both a carcinogen and reproductive toxicant by the State of California.

- These exposures have gone on from January 1, 2002 and are ongoing and continuing as the Noticing Party believes and so alleges that the Noticed Party has tolled any applicable statute of limitations by failing at any time in the past to disclose the constituents of the ingredients in their products to those persons that required warning in the stores where the Noticed Party's products are sold for consumer consumption in California. The labels on these products are further absent any warning that would meet the requirements of Title 27 §§ 25601 to 25603.3, inclusive.
- The chemical contained in the ingredients of the products, and subject to the warning requirements of H&S Code § 25249.6 and 27 CCR §§ 25601 to 25603.3 are listed below:

1. Hexavalent chromium.

- The aforementioned chemicals are on the Governor's list (Prop 65 List) as expressed at 27 CCR § 27001. These chemicals are known to the State of California to cause harm to humans requiring special warning labels and care in handling and use.
- The principal route of exposure to the Listed Chemical is through a "consumer products exposure" via ingestion. There is a further danger of contacting these Listed Chemical via a dermal exposure while using the food product as intended by the manufacturer. These exposures have gone on since January 1, 2002, and are ongoing and continuing at every place in California that the products set forth above and are offered for sale and consumption. The sale of these products constitutes a transfer of the known dangerous chemicals into the populous and the normal consumption of the product by the purchaser or others will cause the exposure without a clear and reasonable warning.
- The location of these alleged exposures are many and varied while occurring within the 58 counties of the State of California as evidenced by the District Attorneys addressed in the enclosed distribution list. The Noticing Party believes and so alleges that at least one of the jurisdictions identified had the Noticed Party's products sold within that county by the Noticed Party's retail distributors and that sale caused the utilization of the consumer product and subsequent exposure. Further that usage caused exposures in that jurisdiction to the constituents of the consumer product as identified herein, and those exposures by the Noticed Party were allowed to take place without the prerequisite warnings as delineated by the applicable statutes specified in this notice.

- Please direct any inquiries regarding this Notice or any communication for the Noticing Party to:

Daniel L. Warshaw  
Pearson, Simon, Warshaw & Penny, LLP  
15165 Ventura Blvd., Suite 400  
Sherman Oaks, CA 91403.

**Exhibit B – List of Individual Parties Giving Notice**

**Noticed Party:  
Chattem, Inc.  
1715 West 38th Street  
Chattanooga, TN 37409**

- Noticing Party: Mallisa McCumber Gandara

## EXHIBIT C

### **Noticed Party:**

Chatten, Inc.  
1715 West 38th Street  
Chattanooga, TN 37409

List Of Chemicals Contained In The Attached 60-Day Notice of Violation That Are Listed By The Governor Of The State Of California As Being Known To The State Of California To Cause Cancer Or Reproductive Toxicity

#### CARCINOGENS

<u>Chemical</u>	<u>CAS No.</u>	<u>Date Listed</u>
Chromium (hexavalent compounds)	N/A	February 27, 1987

#### REPRODUCTIVE TOXICANTS

<u>Chemical</u>	<u>CAS No.</u>	<u>Date Listed</u>
Chromium (hexavalent compounds)	N/A	December 19, 2008

**Certificate Of Merit**  
**Health and Safety Code Section 25249.7(d)**

**Noticed Party:**  
**Chattem, Inc.**  
**1715 West 38th Street**  
**Chattanooga, TN 37409**

I, Daniel L. Warshaw, on behalf of Mallisa Gandara, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged that the parties identified in the notices have violated California Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that is the subject of this action.

4. Based upon the information obtained through those consultations, and all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all the elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 24249.7(h)(2), *i.e.*, (1) the identity of the person consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: December 14, 2010

Signed by:

  
Daniel L. Warshaw

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 15165 Ventura Boulevard, Suite 400, Sherman Oaks, California 91403.

On December 14, 2010 I served copies of the documents listed immediately hereafter by first class mail by placing same in sealed envelopes, fully preparing postage thereon, and depositing said envelopes in the U.S. Mail at Sherman Oaks, California. Said envelopes were addressed as follows:

**SEE ATTACHED DISTRIBUTION LIST**  
*(sent via certified mail with applicable postage)*

Documents mailed:

1. **NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (California Health and Safety Code § 25249.5 et seq.)**
2. **Exhibit A - THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to those parties listed with an asterisk)**
3. **Exhibit B – List of Individual Parties Giving Notice**
4. **Exhibit C – Noticed Party**
5. **CERTIFICATE OF MERIT - (attachment only sent to California Attorney General's Office)**

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this declaration was executed on December 14, 2010 at Sherman Oaks, California

  
\_\_\_\_\_  
Natalie M. Halpern

## Distribution List

**By Certified Mail-Return Receipt Requested**

<p><b>Certified Mail No. 7009 2820 0002 3227 7317</b></p> <p>Current President or CEO*          Chattem, Inc.          1715 West 38th Street          Chattanooga, TN 37409</p>	
<p><b>Certified Mail No. 7009 2820 0002 3227 7324</b></p> <p>CALIFORNIA ATTORNEY GENERAL          CA Department of Justice  <b>PROP. 65 ENFORCEMENT REPORTING</b>          Attn: Prop 65 Coordinator          1515 Clay Street, Suite 2000          Post Office Box 70550          Oakland, CA 94612-0550</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7331</b></p> <p>San Francisco City Attorney's Office          City Hall, Room 234          San Francisco, CA 94102</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 7348</b></p> <p>Office of the District Attorney of Alameda County          1225 Fallon Street, Room 900          Oakland, CA 94612</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7355</b></p> <p>Los Angeles City Attorney's Office          1800 City Hall East          200 North Main Street          Los Angeles, CA 90012</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 7362</b></p> <p>Office of the District Attorney of Amador County          708 Court Street, Room 202          Jackson, CA 95642</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7379</b></p> <p>San Diego City Attorney's Office          Civic Center Plaza          1200 3rd Avenue, Suite 1200          San Diego, CA 92101</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 7386</b></p> <p>Office of the District Attorney of Butte County          Administration Building 25          County Center Drive          Oroville, CA 95965</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7393</b></p> <p>San Jose City Attorney's Office          200 East Santa Clara Street          San Jose, CA 95113</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 7409</b></p> <p>Office of the District Attorney of Alpine County          P.O. Box 248          Markleeville, CA 96120</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5719</b></p> <p>Office of the District Attorney of Colusa County          547 Market Street          Colusa, CA 95932</p>

<p><b>Certified Mail No. 7009 2820 0002 3227 5726</b></p> <p>Office of the District Attorney of Calaveras County Government Center 891 Mountain Ranch Road San Andreas, CA 95249</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5733</b></p> <p>Office of the District Attorney of Contra Costa County P.O. Box 670 Martinez, CA 94553</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5740</b></p> <p>Office of the District Attorney of El Dorado County 515 Main Street Placerville, CA 95667</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5757</b></p> <p>Office of the District Attorney of Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5764</b></p> <p>Office of the District Attorney of Del Norte County Courthouse 450 H Street, Suite 171 Crescent City, CA 95531</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5771</b></p> <p>Office of the District Attorney of Humboldt County 825 Fifth Street Eureka, CA 95501</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5788</b></p> <p>Office of the District Attorney of Imperial County County Courthouse, Rm. 202 939 West Main Street El Centro, CA 92243</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5795</b></p> <p>Office of the District Attorney of Glenn County 540 West Sycamore Street P.O. Box 430 Willows, CA 95988</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5801</b></p> <p>Office of the District Attorney of Kern County 1215 Truxtun Avenue, 4th Floor Bakersfield, CA 93301</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5818</b></p> <p>Office of the District Attorney of Kings County Government Center 1400 West Lacey Boulevard Hanford, CA 93230</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5825</b></p> <p>Office of the District Attorney of Inyo County 168 North Edwards Street P.O. Drawer D Independence, CA 93526</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7430</b></p> <p>Office of the District Attorney of Lassen County County Courthouse 220 South Lassen Street, Suite 8 Susanville, CA 96130</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 7454</b></p> <p>Office of the District Attorney of Los Angeles County 18000 Criminal Courts Building 210 West Temple Street Los Angeles, CA 90012</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7461</b></p> <p>Office of the District Attorney of Lake County 255 North Forbes Street, Suite 424 Lakeport, CA 95453</p>

<p><b>Certified Mail No. 7009 2820 0002 3227 7478</b></p> <p>Office of the District Attorney of Marin County Hall of Justice, Room 183 3501 Civic Center Drive San Rafael, CA 94903</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7485</b></p> <p>Office of the District Attorney of Mariposa County P.O. Box 748 Mariposa, CA 95338</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 7492</b></p> <p>Office of the District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 7508</b></p> <p>Office of the District Attorney of Merced County 2222 "M" Street Merced, CA 95340</p>
<p><b>Certified Mail No. 7009 2820 0002 3228 0010</b></p> <p>Office of the District Attorney of Modoc County County Courthouse P.O. Box 1171 Alturas, CA 96101</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5511</b></p> <p>Office of the District Attorney of Mendocino County County Courthouse P.O. Box 1000 Ukiah, CA 95482</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5528</b></p> <p>Office of the District Attorney of Monterey County 240 Church Street Salinas, CA 93901</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5535</b></p> <p>Office of the District Attorney of Napa County 931 Parkway Mall Napa, CA 94559</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5542</b></p> <p>Office of the District Attorney of Mono County County Courthouse P.O. Box 617 Bridgeport, CA 93517</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5559</b></p> <p>Office of the District Attorney of Orange County 700 Civic Center Drive West, 2nd Floor P.O. Box 808 Santa Ana, CA 92702</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5566</b></p> <p>Office of the District Attorney of Placer County 10810 Justice Center Drive, Suite 240 Roseville, CA 95678</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5573</b></p> <p>Office of the District Attorney of Nevada County Courthouse Annex 201 Church Street, Suite 8 Nevada City, CA 95959-2504</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5580</b></p> <p>Office of the District Attorney of Riverside County 4075 Main Street, 1st Floor Riverside, CA 92501</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5597</b></p> <p>Office of the District Attorney of Sacramento County 901 "G" Street P.O. Box 749 Sacramento, CA 95814</p>

<p><b>Certified Mail No. 7009 2820 0002 3227 5603</b></p> <p>Office of the District Attorney of Plumas County 520 Main Street, Room 404 P.O. Box 10716 Quincy, CA 95971</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5610</b></p> <p>Office of the District Attorney of San Bernardino County 316 North Mountain View Avenue San Bernardino, CA 92415</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5627</b></p> <p>Office of the District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92112</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5634</b></p> <p>Office of the District Attorney of San Benito County 419 4th Street Hollister, CA 95023</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5641</b></p> <p>Office of the District Attorney of San Joaquin County 222 East Weber, Room 202 P.O. Box 990 Stockton, CA 95201</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5658</b></p> <p>Office of the District Attorney of San Francisco County Hall of Justice 880 Bryant Street San Francisco, CA 94103</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5665</b></p> <p>Office of the District Attorney of San Luis Obispo County 1050 Monterey Street, Room 450 San Luis Obispo, CA 93408</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5672</b></p> <p>Office of the District Attorney of Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5832</b></p> <p>Office of the District Attorney of San Mateo County 400 County Center, 3rd Floor Redwood City, CA 94063</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5849</b></p> <p>Office of the District Attorney of Santa Clara County 70 West Hedding Street, West Wing San Jose, CA 95110</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5856</b></p> <p>Office of the District Attorney of Sierra County County Courthouse P.O. Box 457 Downieville, CA 95936</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5863</b></p> <p>Office of the District Attorney of Shasta County 1525 Court Street, Third Floor P.O. Box 1320 Redding, CA 96001</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5870</b></p> <p>Office of the District Attorney of Solano County 600 Union Avenue Fairfield, CA 94533</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5887</b></p> <p>Office of the District Attorney of Santa Cruz County 701 Ocean Street, Suite 200 Santa Cruz, CA 95061</p>

<p><b>Certified Mail No. 7009 2820 0002 3227 5894</b></p> <p>Office of the District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5900</b></p> <p>Office of the District Attorney of Sonoma County Hall of Justice 600 Administration Drive, Room 212-J Santa Rosa, CA 95403</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5917</b></p> <p>Office of the District Attorney of Tehama County County Courthouse P.O. Box 519 Red Bluff, CA 96080</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5924</b></p> <p>Office of the District Attorney of Sutler County Courthouse Annex Box 1555 446 Second Street Yuba City, CA 95991</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5931</b></p> <p>Office of the District Attorney of Tulare County County Civic Center 2350 Burrel Avenue, Room 224 Visalia, CA 93291</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5948</b></p> <p>Office of the District Attorney of Stanislaus County 11001 Street, Room 200 P.O. Box 442 Modesto, CA 95353</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5955</b></p> <p>Office of the District Attorney of Yolo County 204 4th Street Woodland, CA 95695</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5962</b></p> <p>Office of the District Attorney of Tuolumne County 2 South Green Street Sonora, CA 95370</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5979</b></p> <p>Office of the District Attorney of Yuba County County Courthouse 215 5th Street Marysville, CA 95901</p>	<p><b>Certified Mail No. 7009 2820 0002 3227 5986</b></p> <p>Office of the District Attorney of Trinity County P.O. Box 310 Weaverville, CA 96093</p>
<p><b>Certified Mail No. 7009 2820 0002 3227 5993</b></p> <p>Office of the District Attorney of Ventura County 800 South Victoria Avenue, Room 314 Ventura, CA 93009</p>	