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BY:

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1 Howard Rubinstein (Fla. SBN: 104108)
2 *howardr@pdq.net*
3 Attorney at Law
4 914 Waters Avenue, Suite 20
5 Aspen, Colorado 81611
6 (832) 715-2788
7 *(To apply as counsel pro hac vice)*

8 Harold M. Hewell (Cal. SBN: 171210)
9 *hmbewell@hewell-lawfirm.com*
10 HEWELL LAW FIRM
11 105 West F Street, Second Floor
12 San Diego, California 92101
13 (619) 235-6854/(888) 298-0177 (f)

14 *Attorneys for Plaintiff*

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 JASON MELVIN, as an individual,
18 and on behalf of all others similarly
19 situated,

20 *Plaintiff,*

21 *vs.*

22 CHATTEM, INC., a Tennessee
23 corporation,

24 *Defendant.*

Case No.

CV 10-01593-GWC

COMPLAINT FOR
EQUITABLE RELIEF AND
DAMAGES

Class Action
Jury Trial Requested

25
26
27 Plaintiff Jason Melvin, by and through his attorneys, hereby complains
28 and alleges as follows:

*HS
2/1*

I. JURISDICTION AND VENUE

1
2 1. This Court has jurisdiction over the subject matter presented by this
3 Complaint because it is a class action arising under the Class Action Fairness
4 Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which
5 explicitly provides for the original jurisdiction of the Federal Courts of any
6 class action in which any member of the plaintiff class is a citizen of a State
7 different from any Defendant, and in which the matter in controversy
8 exceeds in the aggregate the sum of \$5,000,000, exclusive of interest and
9 costs. Plaintiff alleges that the total claims of individual class members in
10 this action are well in excess of \$5,000,000 in the aggregate, exclusive of
11 interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). The Plaintiff is
12 a citizen of the State of California, whereas, as set forth above, Chattem may
13 be considered to be a citizen of Tennessee. Therefore, diversity of citizenship
14 exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Furthermore,
15 Plaintiff alleges that more than two-thirds of all of the members of the
16 proposed Plaintiff Class in the aggregate are citizens of a State other than
17 California, where this action is originally being filed, and that the total
18 number of members of the proposed Plaintiff Class is greater than 100,
19 pursuant to 28 U.S.C. § 1332(d)(5)(B).

20 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)
21 because Defendant conducts business within, may be found in, and is subject
22 to personal jurisdiction in this district. The original of the “Declaration of
23 Harold M. Hewell Pursuant to Civil Code §1780(c) of the Consumer Legal
24 Remedies Act, Civil Code §§ 1750 et seq.” regarding venue under the
25 California Consumer Legal Remedies Act is submitted with this filing and
26 incorporated herein by reference.

II. PARTIES

27
28 3. Plaintiff Jason Melvin (hereinafter “Plaintiff”), is an individual

1 consumer who at all times material hereto, was and is a resident of the State
2 of California, living within this judicial district. For purposes of diversity
3 jurisdiction, Plaintiff is a "citizen" of the State of California. He respectfully
4 requests a jury trial.

5 4. Defendant Chattem, Inc. ("Chattem") is a corporation organized
6 and existing under the laws of the State of Tennessee with its principal
7 executive offices located at 1715 West 38th Street, Chattanooga, Tennessee
8 37409. It lists with the California Secretary of State a registered agent C T
9 Corporation System, 818 West Seventh Street, Los Angeles, California
10 90017. For diversity purposes, Chattem may be considered to be a citizen of
11 the State of Tennessee. Chattem is a marketer and manufacturer of a
12 portfolio of branded over-the-counter (OTC) health care products, toiletries
13 and dietary supplements. As of November 2006, it had more than 400
14 employees and total annual revenues in excess of \$300 million. At all times
15 relevant hereto, Chattem was and is doing business in the County of San
16 Diego, State of California.

17 III. GENERAL ALLEGATIONS

18 5. All allegations in this Complaint are based on information and
19 belief and/or are likely to have evidentiary support after reasonable
20 opportunity for further investigation or discovery.

21 6. Plaintiff is informed and believes, and thereon alleges, that at all
22 times herein mentioned, that the employees of Chattem, its subsidiaries,
23 affiliates and other related entities, were the agents, servants and employees
24 of Chattem, and at all times herein mentioned, each was acting within the
25 purpose and scope of said agency and employment. Whenever reference in
26 this Complaint is made to any act or transaction of Chattem, such allegation
27 shall be deemed to mean that the principals, officers, directors, employees,
28 agents, and/or representatives of said Defendant committed, knew of,

1 performed, authorized, ratified and/or directed such act or transaction on
2 behalf of said Defendant while actively engaged in the scope of their duties.

3 IV. FACTUAL ALLEGATIONS

4 7. Defendant Chattem manufactures, markets, distributes and
5 promotes the product known as GARLIQUE® (also, herein, "Product"), a
6 diet supplement sold as an enteric-coated tablet containing garlic that
7 Chattem contends is "America's #1 selling garlic supplement!" The Product
8 is promoted, marketed, advertised and distributed by Chattem and through
9 distributors.

10 8. The ingredients in the Product, according to Chattem, are as
11 follows: garlic powder (bulb) (not less than 5000 mcg of allicin yield),
12 silicified microcrystalline cellulose, croscarmello methacrylic acid,
13 hydroxypropylmethylcellulose, magnesium stearate magnesium silicate,
14 titanium dioxide, mineral oil, triacetin, polyethyle microcrystalline cellulose,
15 glycerol monostearate, triethyl citrate, and sodium sulfate (245-35).

16 9. Chattem has actively promoted the Product, using celebrities such
17 as television talk show host Larry King.¹

18 10. Chattem has made multiple representations, to the effect that the
19 Product has a beneficial effect on the users' cholesterol levels and
20 cardiovascular health, in print, radio, television and other media, as well as
21 labeling.

22 11. The labeling and packaging of the Product states that it is
23 "Cholesterol's Natural Enemy™" and that it "Supports Cardiovascular
24 Health*" ².

25
26 ¹ The Better Business Bureau requested that the ads be pulled or changed
27 because the research had not been performed specifically on Garlique.

28 ² The asterisks reference a disclaimer, in this case, not remotely as prominent
as the claim.

1 12. In support of its claims for the Product, Chattem has referenced a
2 2001 analysis of data pooled from 37 studies that indicated that garlic
3 slightly lowered high blood cholesterol levels when taken for three months.³

4 13. However, further analysis by those same researchers showed that
5 garlic had no effect on cholesterol levels when taken for six months or
6 more.⁴ Furthermore, when a panel of national experts reviewed the two
7 studies, they determined that the effect of garlic on cholesterol was unclear.⁵

8 14. On February 26, 2007, The Archives of Internal Medicine
9 published the results of a randomized clinical trial.⁶ The report found that:

10 None of the forms of garlic used in this study, including raw
11 garlic, when given at approximate dose of a 4-g clove per day, 6
12 d/wk for 6 months, had statistically or clinically significant
13 effects on LDL-C⁷ or other plasma lipid concentrations in adults
with moderate hypercholesterolemia [high blood cholesterol].⁸

14 A true and correct copy of this report, from the website of the The Archives
15 of Internal Medicine (<http://archinte.ama-assn.org/>) is attached hereto as
16 Exhibit "A" and incorporated by reference.

17 15. Plaintiff has purchased, used and ingested the Product for its
18 intended and foreseeable purpose as marketed, promoted, advertised and
19 labeled by Chattem as set forth in detail above: a dietary supplement that
20 has a beneficial effect on blood cholesterol levels. He last purchased the
21

22 ³ Arch of Intern Med. 2001; 161: 813.

23 ⁴ Evidence Report Technology Assessment (Summ.) 2000; 20: 1.

24 ⁵ Id.

25 ⁶ Arch Intern Med. 2007; 167:346-353.

26 ⁷ Low-density lipoprotein cholesterol. High levels of LDL-C are considered a
27 significant factor in coronary artery disease.

28 ⁸ Id. at 346 (Abstract).

1 Product in or around February 2009 at the Albertsons store located at 2627
2 Lincoln Boulevard, Santa Monica, California 90405. He was exposed to
3 Chattem's marketing campaign for the Product, including the
4 representations made on the Product labeling. He relied on the message
5 conveyed by Chattem in that marketing campaign, that taking the Product
6 as recommended would have a beneficial effect on his cholesterol level, and
7 purchased and used the Product based on that reliance. However, as he has
8 learned, the Product does not provide measurable beneficial effects on
9 cholesterol levels as claimed by Chattem. As a result, he contends that he has
10 been misled by Chattem's false claims into purchasing and paying for a
11 product that did not perform as promised when he used it for its intended
12 and foreseeable purpose as marketed, promoted, advertised and labeled by
13 Chattem, and that he has as a direct result been deprived of the benefit of his
14 bargain and has spent money on a product that did not have any value, a
15 product he would not have purchased and used had he known the true facts
16 about it. As a direct result of the foregoing, he has suffered actual damages
17 in the amount of the difference between the purchase price he paid for the
18 Product and its actual value.

19 V. CLASS ALLEGATIONS

20 16. Plaintiff realleges and incorporates by reference the allegations set
21 forth in each of the preceding paragraphs of this Complaint.

22 17. Pursuant to California Code of Civil Procedure §382 and Federal
23 Rule of Civil Procedure ("FRCP") 23, Plaintiff brings this action on behalf
24 of himself and all other consumers who purchased, used and ingested the
25 Product during the Class Period. Defendant's practices and omissions were
26 applied uniformly to all members of the Class, so that the questions of law
27 and fact are common to all members of the Class. All putative Class
28 members were and are similarly affected by having purchased, used and

1 ingested the Product for its intended and foreseeable purpose as marketed,
2 promoted, advertised and labeled by Chattem as set forth in detail above,
3 and the relief sought herein is for the benefit of Plaintiff and members of the
4 putative Class. Plaintiff is informed and believes, and based on said
5 information and belief, alleges that the Plaintiff Class is so numerous that
6 joinder of all members would be impractical.

7 18. Based on the annual sales of the Product and the popularity of the
8 Product, it is apparent that the number of consumers of the Product would
9 at least be in the many thousands, thereby making joinder impossible

10 19. Questions of law and fact common to the Plaintiff Class and the
11 subclasses exist that predominate over questions affecting only individual
12 members, including, inter alia:

- 13 (a) Whether Defendant's practices in connection with the
14 marketing, promotion, advertising, labeling and sale of
15 the Product were deceptive or unfair in any respect,
16 thereby violating California's Unfair Competition Law
17 ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq.;
- 18 (b) Whether Defendant's practices in connection with the
19 marketing, promotion, advertising, labeling and sale of
20 the Product were deceptive or false in any respect,
21 thereby violating California's False Advertising Law
22 ("FAL"), Cal. Bus. & Prof. Code § 17500 et seq.;
- 23 (c) Whether Defendant breached implied warranties in its
24 sale of the Product, thereby causing harm to Plaintiff and
25 class members;
- 26 (d) Whether Defendant breached express warranties in its
27 sale of the Product, thereby causing harm to Plaintiff and
28 Class members;

- 1 (e) Whether Defendant fraudulently marketed, promoted,
2 advertised, labeled and sold the Product;
- 3 (f) Whether Defendant breached California's Consumer
4 Legal Remedies Act ("CLRA"), Civil Code §1750 et seq.,
5 in its sale of the Product, thereby causing harm to
6 Plaintiff and Class members;
- 7 (g) Whether Defendant's conduct as set forth above injured
8 consumers and if so, the extent of the injury.

9 20. The claims asserted by Plaintiff in this action are typical of the
10 claims of the members of the Plaintiff Class as the claims arise from the
11 same course of conduct by Defendant, and the relief sought is common.

12 21. Plaintiff will fairly and adequately represent and protect the
13 interests of the members of the Plaintiff Class and all subclasses. Plaintiff has
14 retained counsel competent and experienced in both consumer protection
15 and class action litigation.

16 22. Certification of this class action is appropriate under FRCP 23(b)
17 and California Code of Civil Procedure §382 because the questions of law
18 or fact common to the respective Class members predominate over questions
19 of law or fact affecting only individual members. This predominance makes
20 class litigation superior to any other method available for the fair and
21 efficient adjudication of these claims. Absent a class action, it would be
22 highly unlikely that the representative Plaintiff or any other Class member
23 would be able to protect their own interests because the cost of litigation
24 through individual lawsuits might exceed expected recovery. Certification is
25 also appropriate because Defendant acted or refused to act on grounds
26 generally applicable to the Class, thereby making appropriate final
27 injunctive relief with respect to the Class as a whole. Further, given the large
28 number of consumers of the Product, allowing individual actions to proceed

1 in lieu of a class action would run the risk of yielding inconsistent and
2 conflicting adjudications.

3 23. A class action is a fair and appropriate method for the
4 adjudication of the controversy, in that it will permit a large number of
5 claims to be resolved in a single forum simultaneously, efficiently, and
6 without the unnecessary hardship that would result from the prosecution of
7 numerous individual actions and the duplication of discovery, effort,
8 expense and burden on the courts that such individual actions would
9 engender. The benefits of proceeding as a class action, including providing a
10 method for obtaining redress for claims that would not be practical to
11 pursue individually, outweigh any difficulties that might be argued with
12 regard to the management of this class action.

13 24. In the aggregate, the claims of the individual Class members
14 exceed the sum of \$5,000,000.00, exclusive of interest and costs.

15 **VI. FIRST CAUSE OF ACTION:**

16 **FOR VIOLATIONS OF BUS & PROF. CODE §17200 ET SEQ.**

17 25. Plaintiff realleges and incorporates by reference the allegations set
18 forth in each of the preceding paragraphs of this Complaint.

19 26. This cause of action is brought on behalf of Plaintiff and members
20 of the general public pursuant to the UCL, which provides that “unfair
21 competition shall mean and include any unlawful, unfair or deceptive
22 business act or practice and unfair, deceptive, untrue or misleading
23 advertising and any act prohibited by Chapter I (commencing with Section
24 17500) as Part 3 of Division 7 of the Business and Professions Code.”

25 27. Plaintiff is informed and believes, and based on such information
26 and belief, alleges that Defendant committed unfair business acts and/or
27 practices. Defendant and its related entities represent themselves as being
28 reputable and reliable manufacturers. The utility of Defendant’s practices

1 related to its marketing, promotion, advertising, labeling and sale of the
2 Product is negligible when weighed against the harm to the general public,
3 Plaintiff and Class members. The harmful impact upon members of the
4 general public and the Class who purchased, used and ingested the Product
5 for its intended and foreseeable purpose as marketed, promoted, advertised
6 and labeled by Chattem as set forth in detail above, far outweighs any
7 reasons or justifications by Defendant for its practices related to its
8 marketing, promotion, advertising, labeling and sale of the Product in such
9 manner as set forth in detail above. Defendant had an improper motive
10 (profit before truthful representations regarding the Product) in its practices
11 related to its marketing, promotion, advertising, labeling and sale of the
12 Product as set forth in detail above. The use of unlawful, unfair and/or
13 deceptive practices was and is under the sole control of Defendant, and was
14 fraudulently and deceptively hidden from members of the general public in
15 its marketing, promotion, advertising, labeling and sale of the Product. As a
16 purchaser and consumer of Defendant's Product, and as a member of the
17 general public in California who purchased, used and ingested the Product
18 for its intended and foreseeable purpose as marketed, promoted, advertised
19 and labeled by Chattem as set forth in detail above, Plaintiff is entitled to
20 and does bring this class action seeking all available remedies under the
21 UCL, including declaratory, injunctive and other equitable relief, as well as
22 attorneys' fees and costs.

23 28. Defendant committed a deceptive act or practice by failing to
24 make known the truth in its marketing, promotion, advertising, labeling and
25 sale of the Product as set forth in detail above. These deceptive acts and
26 practices have a capacity, tendency, and/or likelihood to deceive or confuse
27 reasonable consumers in that such consumers had a good faith basis for
28 believing the Product has a beneficial effect upon blood cholesterol levels as

1 marketed, promoted, advertised, labeled and sold by Defendant.

2 29. Defendant's practices related to its marketing, promotion,
3 advertising, labeling and sale of the Product in such manner as set forth in
4 detail above constitute unfair and/or deceptive business practices within the
5 meaning of the UCL.

6 30. Plaintiff and members of the general public were and are likely to
7 be deceived by Defendant as set forth herein.

8 31. Pursuant to California Bus. & Prof. Code §17203, Plaintiff, on
9 behalf of himself and members of the general public, seeks an Order:

10 (a) Enjoining Defendant from continuing to engage, use, or
11 employ any unfair and/or deceptive business acts or
12 practices related to its marketing, promotion, advertising,
13 labeling and sale of the Product in such manner as set
14 forth in detail above; and

15 (b) Restoring all monies that may have been acquired by
16 Defendant as a result of such unfair and/or deceptive act
17 or practices.

18 32. Plaintiff and members of the general public may be irreparably
19 harmed and/or denied an effective and complete remedy if such an order is
20 not granted.

21 33. The unlawful, unfair and/or deceptive acts and practices of
22 Defendant, as described above, present a serious threat to Plaintiff and
23 members of the general public.

24 34. As a result of Defendant's violation of the UCL, Plaintiff and the
25 Class are entitled to restitution for out-of-pocket expenses and economic
26 harm.

27 35. Pursuant to Civil Code § 3287(a), Plaintiff and Class Members are
28 further entitled to pre-judgment interest as a direct and proximate result of

1 Defendant's wrongful conduct. The amount of damages suffered as a result
2 is a sum certain and capable of calculation and Plaintiff and Class members
3 are entitled to interest in an amount according to proof.

4 **VII. SECOND CAUSE OF ACTION:**

5 **FOR VIOLATIONS OF BUS. & PROF. CODE §17500 ET SEQ.**

6 36. Plaintiff realleges and incorporates by reference the allegations set
7 forth in each of the preceding paragraphs of this Complaint.

8 37. In violation of California Bus. & Prof. Code §17500, Defendant
9 has disseminated, or caused to be disseminated, false and misleading
10 statements and representations in advertisements, labeling promotion and/or
11 marketing of the Product as set forth in detail above and incorporated
12 herein.

13 38. Defendant's representations in the advertisements, promotions
14 and/or marketing of the Product are untrue and/or misleading as set forth
15 above.

16 39. Plaintiff is informed and believes and based thereon alleges, that
17 Defendant continues to disseminate, or causes to be disseminated, such false
18 and misleading statements alleged herein.

19 40. Defendant is disseminating marketing, promoting, labeling and
20 advertising the Product, which by its very nature is unfair, deceptive, untrue
21 or misleading within the meaning of California Bus. & Prof. Code §17500
22 et seq. Such advertisements are likely to deceive, and continue to deceive, the
23 consuming public.

24 41. In making and disseminating the statements alleged herein,
25 Defendant knew or should have known that the statements were untrue or
26 misleading, and acted in violation of California Bus. & Prof. Code §17500
27 et seq.

28 42. As a direct and proximate result of Defendant's wrongful conduct,

1 Plaintiff and the Class Members have suffered substantial monetary and
2 non-monetary damage. Pursuant to California Business and Professions
3 Code §17535, Plaintiff, on behalf of himself and members of the general
4 public, seeks an Order:

5 (a) Enjoining Defendant from continuing to engage, use, or
6 employ any act prohibited by Chapter I (commencing with
7 Section 17500) of part 3 of Division 7 of the Business and
8 Professions Code; and

9 (b) Restoring all monies that may have been acquired by
10 means of Defendant's false and misleading statements in
11 advertisements, promotions, labeling and/or marketing
12 described herein.

13 43. As such, Plaintiff and the members of the Class request that this
14 Court cause the Defendant to restore this money to them, and to enjoin the
15 Defendant from continuing to violate California Bus. & Prof. Code §17500
16 et seq., as alleged above. If Defendant's conduct is not enjoined, Plaintiff
17 and the members of the Class will continue to be damaged by Defendant's
18 false marketing, promotion, labeling and advertising of the Product.

19 44. Pursuant to Civil Code section 3287(a), Plaintiff and Class
20 members are further entitled to pre-judgment interest as a direct and
21 proximate result of Defendant's wrongful conduct. The amount of funds
22 paid by Plaintiff and Class members as a result of said acts is a sum certain
23 and capable of calculation, and Plaintiff and Class members are entitled to
24 interest in an amount to be set forth according to proof.

25 **VIII. THIRD CAUSE OF ACTION:**

26 **FOR BREACH OF IMPLIED WARRANTY OF FITNESS FOR PURPOSE**

27 45. Plaintiff realleges and incorporates by reference the allegations set
28 forth in each of the preceding paragraphs of this Complaint.

1 46. Plaintiff and other Class members sought a dietary supplement
2 that had a beneficial effect on blood cholesterol levels. In doing so, Plaintiff
3 and other Class Members relied on Defendant's skill and judgment to select
4 and furnish suitable goods for that purpose, and on or about that time,
5 Defendant sold to Plaintiff and other Class Members the Product. By its
6 representations regarding the reputable nature of its company and related
7 entities, and by its promotion, marketing, advertising and labeling of the
8 Product, Defendant warranted that the Product was a dietary supplement
9 that had a beneficial effect on blood cholesterol levels. Plaintiff and Class
10 members bought the Product from Defendant, relying on Defendant's skill
11 and judgment. However, Defendant's Product does not have a beneficial
12 effect on blood cholesterol levels as set forth in detail above.

13 47. At the time of sale, Defendant had reason to know the particular
14 purpose for which the goods were required, and that Plaintiff and Class
15 members were relying on Defendant's skill and judgment to select and
16 furnish suitable and effective goods, so that there was an implied warranty
17 that the goods were fit for this purpose.

18 48. However, Defendant breached the warranty implied at the time of
19 sale in that Plaintiff and Class members did not receive suitable goods, and
20 the goods were not fit for the particular purpose for which they were made,
21 marketed, promoted, advertised, labeled or sold in that the Product does not
22 have a beneficial effect on blood cholesterol levels as set forth above.

23 49. As a proximate result of this breach of warranty by Defendant,
24 Plaintiff and Class members have suffered damages in an amount to be
25 determined at trial in that, among other things, they purchased and paid for
26 a product that did not perform as promised when used for its intended and
27 foreseeable purpose as marketed, promoted, advertised and labeled by
28 Chattem, and they were deprived of the benefit of their bargain and spent

1 money on a product that did not have any value, a product they would not
2 have purchased and used had they known the true facts about it.

3 **IX. FOURTH CAUSE OF ACTION:**
4 **BREACH OF EXPRESS WARRANTY**

5 50. Plaintiff realleges and incorporates by reference the allegations set
6 forth in each of the preceding paragraphs of this Complaint.

7 51. Plaintiff is informed and believes and thereon alleges that
8 Defendant made different express warranties, including, but not limited to,
9 the express warranty that the Product was a dietary supplement that had a
10 beneficial effect on blood cholesterol levels.

11 52. As stated hereinabove, the Product does not have a beneficial
12 effect on blood cholesterol levels. The lack of any beneficial effect upon
13 blood cholesterol levels constitutes breaches of all applicable express and
14 implied warranties as alleged in this Complaint, based on all laws that
15 support the Plaintiffs and other class members' breach of implied and
16 express warranty claims regarding the ineffectiveness of the Product. These
17 laws include, but are not limited to, California Common Law, the California
18 Uniform Commercial Code and California Civil Code section 1790, et seq.
19 (California Song-Beverly Act). The failure of the Products to perform as
20 expressly warranted by Defendant has caused Plaintiff and members of the
21 Class damages as herein described.

22 53. Plaintiff gave timely notice to Defendant of this breach on behalf
23 of himself and all members of Plaintiff classes either directly, or indirectly,
24 including upon the filing of the original Complaint. Plaintiff could not
25 return the Product to Defendant as the defect is irreparable.

26 **X. FIFTH CAUSE OF ACTION:**
27 **NEGLIGENT MISREPRESENTATION**

28 54. Plaintiff realleges and incorporates by reference the allegations set

1 forth in each of the preceding paragraphs of this Complaint.

2 55. Defendant has represented to the public, including Plaintiff, by
3 packaging, labeling, advertising, and other means, that the Product has
4 characteristics, ingredients, and qualities that it does not have, that the
5 Product is a dietary supplement that has a beneficial effect on blood
6 cholesterol levels.

7 56. Defendant's representations were untrue in that the Product does
8 not have a beneficial effect on blood cholesterol levels.

9 57. Defendant made the representations herein alleged with the
10 intention of inducing the consuming public to purchase Defendant's
11 Product.

12 58. Plaintiff and others believed and relied on Defendant's packaging,
13 promotion, marketing, labeling and advertising, and, in reliance thereon,
14 purchased the Product.

15 59. At the time Defendant made the misrepresentations herein alleged,
16 Defendant had no reasonable grounds for believing the representations to be
17 true.

18 60. As a proximate result of Defendant's negligent misrepresentations,
19 Plaintiff and other consumers were induced to spend an amount to be
20 determined at trial on the Product manufactured, distributed, and sold by
21 Defendant, and thereby lost money by purchasing a product that was not
22 what it was represented to be, and which they would not had purchased but
23 for the misrepresentations.

24 **XI. SIXTH CAUSE OF ACTION:**

25 **INTENTIONAL MISREPRESENTATION**

26 61. Plaintiff realleges and incorporates by reference the allegations set
27 forth in each of the preceding paragraphs of this Complaint.

28 62. Defendant has represented to the public, including Plaintiff, by

1 packaging, labeling, advertising, and other means, that the Product has
2 characteristics, ingredients, and qualities that it does not have, that the
3 Product is a dietary supplement that has a beneficial effect on blood
4 cholesterol levels.

5 63. Defendant's representations were untrue in that the Product does
6 not have a beneficial effect on blood cholesterol levels.

7 64. At the time Defendant made the representations herein alleged,
8 Defendant knew the representations were false.

9 65. Defendant made the misrepresentations herein alleged with the
10 intention of depriving Plaintiff and Class members of property or otherwise
11 causing injury, and is guilty of fraud.

12 66. As a proximate result of these acts, Plaintiff and other consumers
13 were induced to spend an amount to be determined at trial on the Product
14 manufactured, distributed, and sold by Defendant, and thereby lost money
15 by purchasing a product that was not what it was represented to be, and
16 which they would not have purchased but for the misrepresentations.

17 67. Plaintiff and other consumers in purchasing, using, and consuming
18 the Product as herein alleged, did rely on Defendant's above representations,
19 all to their damage as hereinabove alleged. In doing the things
20 aforementioned, Defendant was guilty of malice, oppression, and fraud, and
21 Plaintiff and Class members are, therefore, entitled to recover exemplary or
22 punitive damages.

23 **XII. SEVENTH CAUSE OF ACTION:**
24 **CONSUMERS LEGAL REMEDIES ACT**

25 68. Plaintiff realleges and incorporates by reference the allegations set
26 forth in each of the preceding paragraphs of this Complaint.

27 69. This cause of action is brought pursuant to the CLRA. 77. Plaintiff
28 and each member of the Class are "consumers" within the meaning of Civil

1 Code §1761(d).

2 70. The transaction that Plaintiff and each member of the Class
3 entered into is a “transaction within the meaning of Civil Code §1761(e)
4 and a “service” within the meaning of Civil Code §1761(b).

5 71. Defendant’s marketing, promotion, labeling, advertising and sales
6 of the Product within California, as alleged herein, amount to a violation of
7 the CLRA.

8 72. Defendant violated, and continues to violate, the CLRA in at least
9 the following respects as set forth in detail above:

10 (a) In violation of Civil Code §1770(a)(5), Defendant
11 represented that the Product has characteristics,
12 ingredients, uses, and benefits that it does not have;

13 (b) In violation of Civil Code §1770(a)(7), Defendant
14 represented that the Product is of a particular standard,
15 quality, or grade, which it is not;

16 (c) In violation of Civil Code §1770(a)(9), Defendant
17 advertised the subject Product with an intent not to sell
18 that Product as advertised.

19 73. Plaintiff seeks and is entitled to equitable relief in the form of an
20 order:

21 (a) Enjoining Defendant from continuing to engage in the
22 deceptive business practices described above;

23 (b) Requiring Defendant to make full restitution of all monies
24 wrongfully obtained as a result of the conduct described
25 above;

26 (c) Requiring Defendant to disgorge all ill-gotten gains
27 flowing from the conduct described above;

28 (d) Requiring Defendant to provide public notice of the true

1 nature of the Product; and

2 (e) Enjoining Defendant from such deceptive business
3 practices in the future.

4 74. Pursuant to Section 1782 of the CLRA, Plaintiff is notifying
5 Defendant in writing of the particular violations of Section 1770 of the
6 CLRA (the Notice) and is demanding, among other things, that Defendant
7 cease marketing the Product as set forth in detail above. Plaintiff is sending
8 Notice by means of by certified mail, return-receipt requested to Defendant
9 concurrent with the service of this Complaint. If Defendant fails to respond
10 to Plaintiff's demand within thirty days of this letter, pursuant to section
11 1782 of the CLRA, Plaintiff will amend this Complaint to request statutory
12 damages, actual damages, plus punitive damages, interest and attorneys'
13 fees. Regardless of such an amendment to seek damages, however, Plaintiff
14 seeks and is entitled to, pursuant to Section 1780(a)(2) of the CLRA, an
15 order as set forth herein enjoining the above-described wrongful acts and
16 practices of Defendant, plus costs and attorneys' fees and any other relief
17 that the Court deems proper.

18 **XIII. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
20 situated, prays for relief, jointly and severally, pursuant to each cause of
21 action set forth in this Complaint as follows:

22 1. For an order certifying that the action may be maintained as a class
23 action.

24 2. For an award of equitable relief as follows:

25 (a) Enjoining Defendant from continuing to engage in
26 practices found to violate the UCL, FAL and CLRA as
27 alleged herein;

28 (b) Requiring Defendant to make full restitution of all monies

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wrongfully obtained as a result of practices found to violate the UCL, FAL and CLRA as alleged herein; and

(c) Requiring Defendant to provide public notice of the true nature of the Product.

3. For actual and punitive damages under the CLRA in an amount to be proven at trial, including any damages as may be provided for by statute upon the filing of a First Amended Complaint should the demanded corrections not take place within the thirty-day notice period.

4. For an award of attorneys' fees pursuant to, inter alia, Section 1780(d) of the CLRA and Code of Civil Procedure § 1021.5.

5. For actual damages in an amount to be determined at trial for the Third, Fourth, Sixth and Seventh Causes of Action.

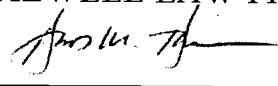
6. For punitive damages in an amount to be determined at trial for the Seventh Cause of Action.

7. For an award of costs and any other relief the Court might deem appropriate.

8. For pre- and post-judgment interest on any amounts awarded.

Dated: March 2, 2010.

HEWELL LAW FIRM



Harold M. Hewell

Howard Rubinstein
Attorney at Law
914 Waters Avenue, Suite 20
Aspen, Colorado 81611
(Seeking Pro Hac Vice Admission)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself)
JASON MELVIN, as an individual, and on behalf of all others similarly situated.
DEFENDANTS
CHATTEM, INC., a Tennessee corporation.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Harold M. Hewell (Cal. SBN: 171210), Email: hmhewell@hewell-lawfirm.com.
HEWELL LAW FIRM, 105 West F Street, Second Floor, San Diego, California 92101
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)
III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. ORIGIN (Place an X in one box only.)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify):
6 Multi-District Litigation
7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND:
CLASS ACTION under F.R.C.P. 23:
MONEY DEMANDED IN COMPLAINT: \$ To be determined.

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005); Violations of California fair business statutes and common law causes of action.

VII. NATURE OF SUIT (Place an X in one box only.)
OTHER STATUTES
CONTRACT
REAL PROPERTY
TORTS
PERSONAL INJURY
IMMIGRATION
TORTS
PERSONAL PROPERTY
BANKRUPTCY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE / PENALTY
LABOR
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS

FOR OFFICE USE ONLY: Case Number: CV10-01593
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): Not to my knowledge.

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County (Santa Monica).	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

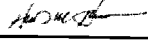
County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Tennessee

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County (Santa Monica).	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date March 2, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))