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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARK DUFFER, on behalf of himself  
and all others similarly situated and the  
general public,

Plaintiff,

v.

CHATTEM, INC.,

Defendant.

CASE NO. 11-CV-2735 W (WVG)

**FINAL JUDGMENT AND ORDER  
APPROVING CLASS-ACTION  
SETTLEMENT**

This matter came on for a fairness hearing on May 7, 2013 in Courtroom 3C regarding the parties' proposed settlement ("Fairness Hearing"). The Court has considered the Stipulation of Settlement filed on November 1, 2012 ("Stipulation"), oral and/or written objections and comments received regarding the proposed settlement, if any, the record in the action, and the arguments and authorities of counsel. Good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

A. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation unless set forth differently herein. The terms of the Stipulation are fully incorporated in this judgment as if set forth fully here.

1 B. For the reasons set forth on the record during the Fairness Hearing, the  
2 Court finds:

3 (1) The Court has jurisdiction over the subject matter of this Action and all  
4 Parties to the Action, including all Class Members.

5 (2) The Court approves the settlement as set forth in the Stipulation and finds  
6 that the settlement is in all respects fair, reasonable, adequate and just to  
7 the Settlement Class Members.

8 (3) Pursuant to Federal Rules of Civil Procedure, Rule 23(c), the Court  
9 certifies the following Class for settlement purposes:

10 All persons who purchased ACT Total Care branded products in  
11 the United States from January 1, 2009, to June 30, 2010. Excluded  
12 from the Class are: (i) those who purchased ACT® Total Care  
13 branded products for purposes of resale; (ii) those with claims for  
14 personal injuries arising from the ingestion of one or more ACT®  
15 Total Care branded products; (iii) Defendant and its officers,  
16 directors and employees; (iv) any person who files a valid and  
17 timely Request for Exclusion; and (v) the Judge(s) to whom this  
18 Action is assigned and any members of their immediate families.

19 (4) The ACT Total Care products covered by this judgment are ACT® Total  
20 Care Anticavity Fluoride Mouthwash branded mouthwash products,  
21 including all size variations.

22 (5) Pursuant to Federal Rules of Civil Procedure, Rule 23(c)(3), all such  
23 Persons who satisfy the Class definition above, except those Persons who  
24 timely and validly excluded themselves from the Class, are Class Members  
25 bound by this Order.

26 (6) Pursuant to Federal Rules of Civil Procedure, Rule 23(a), the Court finds  
27 that Plaintiff Mark Duffer is a member of the Class, his claims are typical  
28 of the Class claims, and he fairly and adequately protected the interests of  
the Class throughout the proceedings in the Action. Accordingly, the  
Court hereby appoints Mark Duffer as the Class Representative.

- 1 (7) The Court finds that the Class meets all requirements of Federal Rules of  
2 Civil Procedure, Rule 23(a) and (b)(3) for certification, for settlement  
3 purposes, of the class claims alleged in the operative complaint, including:  
4 (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class  
5 representative and Class Counsel; (e) predominance of common questions  
6 of fact and law Class; and (f) superiority. Because the class is being  
7 certified for settlement and not for litigation, the Court need not  
8 determine whether the case would be unmanageable as a class action if the  
9 litigation continued.
- 10 (8) Having considered the factors set forth in Federal Rules of Civil  
11 Procedure, Rule 23(g)(1), the Court finds that Class Counsel have fairly  
12 and adequately represented the Class for purposes of entering into and  
13 implementing the settlement, and thus, hereby appoints Class Counsel as  
14 counsel to represent the Class Members.
- 15 (9) The distribution of the Class Notice, as directed by the Court's  
16 Preliminary Approval Order and the Court-approved notice program,  
17 constituted the best notice practicable under the circumstances, and fully  
18 satisfied the requirements of Federal Rules of Civil Procedure, Rule 23, the  
19 requirements of due process, 28 U.S.C. §1715, and any other applicable  
20 law.
- 21 (10) Pursuant to Federal Rules of Civil Procedure, Rule 23(e)(2), the Court  
22 finds that the settlement proposed by the Parties is fair, reasonable, and  
23 adequate. The terms and provisions of the Stipulation are the product of  
24 lengthy, arms-length negotiations conducted in good faith and with the  
25 assistance of the Honorable William V. Gallo. Approval of the  
26 Stipulation will result in substantial savings of time, money and effort to  
27 the Court and the Parties, and will further the interests of justice.  
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1 (11) All Class Members who have not timely and validly filed opt-outs are thus  
2 Class Members who are bound by this Judgment and by the terms of the  
3 Stipulation.

4 (12) The Stipulation and this Order are not admissions of liability or fault by  
5 Defendant or the Released Party, or a finding of the validity of any claims  
6 in the Action or of any wrongdoing or violation of law by Defendant or  
7 the Released Party. Neither this Judgment, nor any of its terms or  
8 provisions, nor any of the negotiations or proceedings connected with it,  
9 shall be offered as evidence or received in evidence in any pending or  
10 future civil, criminal, or administrative action or proceeding to establish  
11 any liability of, or admission by Defendant, the Released Parties, or any of  
12 them. Notwithstanding the foregoing, nothing in this Final Judgment  
13 shall be interpreted to prohibit the use of this Judgment in a proceeding  
14 to consummate or enforce the Stipulation or Judgment, or to defend  
15 against the assertion of Released Claims in any other proceeding, or as  
16 otherwise required by law.

17 (13) The Court has considered the submissions by the Parties and all other  
18 relevant factors, including the result achieved and the efforts of Class  
19 Counsel in prosecuting the claims on behalf of the Class. Plaintiff initiated  
20 the Action, acted to protect the Class, and assisted his counsel. The  
21 efforts of Class Counsel have produced the Stipulation entered into in  
22 good faith, and which provides a fair, reasonable, adequate and certain  
23 result for the Class. Class Counsel have made application for an award of  
24 attorneys' fees and expenses in connection with the prosecution of the  
25 Action. The fee and expense award requested is approximately 20% of  
26 the value of the constructive common fund which the Court finds to be  
27 a fair, reasonable and justified attorneys' fee and expense award under the  
28 circumstances. The Court hereby awards \$300,000 as attorneys' fees and

1 expenses. Class Counsel shall be responsible for distributing and allocating  
2 the attorneys' fees and expense award to Plaintiff's Counsel in their sole  
3 discretion.

4 (14) Plaintiff Duffer, who has agreed to the terms of the Stipulation, and whose  
5 claims will be finally and fully resolved by this Judgment, is entitled to a  
6 service award in the amount of \$3,000.

7 C. Based on the foregoing and the findings of this Court, as of the Effective  
8 Date, the Class Representative and all Settlement Class Members shall be forever  
9 barred from bringing or prosecuting, in any capacity, any of the Released Claims against  
10 any Released Party and shall conclusively be deemed to have released and forever  
11 discharged the Released Party from all Released Claims.

12 D. The Class Representative and all Settlement Class Members shall, as of the  
13 Effective Date, conclusively be deemed to have acknowledged that the Released Claims  
14 include claims, rights, demands, causes of action, liabilities, or suits that are not known  
15 or suspected to exist as of the Effective Date. The Class Representatives and all  
16 Settlement Class Members nonetheless release all such Released Claims against the  
17 Released Party. Further, as of the Effective Date, the Class Representatives and all  
18 Settlement Class Members shall be deemed to have waived any and all protections,  
19 rights and benefits of California Civil Code section 1542 and any comparable statutory  
20 or common law provision of any other jurisdiction.

21 E. The Court hereby **DISMISSES THIS ACTION WITH PREJUDICE**,  
22 and all Released Claims against the Released Party and without costs to any of the  
23 Parties as against the others. Notwithstanding the foregoing, this Order does not  
24 dismiss any claims that have been or may be asserted in the future by any persons or  
25 entities who have validly and timely requested exclusion from the Settlement Class.

26 F. Without affecting the finality of the Judgment, the Court reserves  
27 jurisdiction over the implementation, administration and enforcement of this Order,  
28 the Judgment and the Stipulation, and all matters ancillary thereto.

1 G. The Court finding that no reason exists for delay in ordering final  
2 judgment pursuant to Federal Rules of Civil Procedure, Rule 54(b), the clerk is hereby  
3 directed to enter the Judgment forthwith.

4 H. The Parties are hereby authorized without needing further approval from  
5 the Court, to agree to and adopt such modifications and expansions of the Stipulation,  
6 including without limitation, the forms to be used in the claims process, which are  
7 consistent with this Judgment and do not limit the rights of Class Members under the  
8 Stipulation.

9 All other relief not expressly granted to the Settlement Class Members is  
10 **DENIED.**

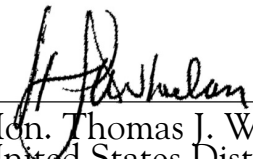
11 **IT IS SO ORDERED.**

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13 DATED: July 10, 2013

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Hon. Thomas J. Whelan  
United States District Judge

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