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Los Angeles Superior Court

DEC 24 2008

John A. Clarke, Executive Officer/Clerk  
*M. Garcia*  
BY MARY GARCIA, Deputy

1 REUBEN YEROUSHALMI (SBN 193981)  
2 DANIEL D. CHO (SBN 105409)  
3 BEN YEROUSHALMI (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 3700 WILSHIRE BLVD., SUITE 480  
6 LOS ANGELES, CA 90010  
7 Telephone: 213-382-3183  
8 Facsimile: 213-382-3430

9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

13 BC404608

|    |                                      |   |  |
|----|--------------------------------------|---|--|
| 14 | CONSUMER ADVOCACY GROUP, INC.,       | ) | CASE NO.                               |
| 15 | in the public interest,              | ) |  |
| 16 |                                      | ) | COMPLAINT FOR PENALTY,                 |
| 17 | Plaintiff,                           | ) | INJUNCTION, AND RESTITUTION            |
| 18 |                                      | ) |  |
| 19 | v.                                   | ) | Violation of Proposition 65, the Safe  |
| 20 |                                      | ) | Drinking Water and Toxic Enforcement   |
| 21 | NATIONAL PRONTO ASSOCIATION, an      | ) | Act of 1986 (Health & Safety Code., §§ |
| 22 | Illinois Corporation, and DOES 1-50; | ) | 25249.5, et seq.)                      |
| 23 |                                      | ) |  |
| 24 | Defendants.                          | ) | ACTION IS AN UNLIMITED CIVIL           |
| 25 |                                      | ) | CASE (exceeds \$25,000)                |
| 26 |                                      | ) |  |
| 27 |                                      | ) |  |
| 28 |                                      | ) |  |

29 Plaintiff Consumer Advocacy Group, Inc. alleges, based on information and belief, a  
30 cause of action against defendants as follows:

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**THE PARTIES**

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff") is a non-profit corporation qualified to do business in the State of California. It brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant National Pronto Association is an Illinois corporation qualified to do business in the State of California.
3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. Plaintiff is informed, believes, and thereon alleges that National Pronto Association at all times mentioned herein has conducted business within the State of California.
5. At all times mentioned herein, "Defendants" includes National Pronto Association and Does 1-50.
6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more employees.

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**JURISDICTION**

7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts.

**BACKGROUND AND PRELIMINARY FACTS**

8. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic

1 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.*  
2 (“Proposition 65”), helps to protect California’s drinking water sources from  
3 contamination, to allow consumers to make informed choices about the products they  
4 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

5 9. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
6 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
7 *Code*, § 25249.8. The list, which the Governor updates at least once a year, contains over  
8 550 chemicals. Proposition 65 imposes warning requirements and other controls that  
9 apply to Proposition 65-listed chemicals.

10 10. All businesses with ten (10) or more employees that operate or sell products in California  
11 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
12 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
13 water (*Health & Safety Code*, § 25249.5), and (2) required to provide “clear and  
14 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
15 Proposition 65-listed chemical (*Health & Safety Code*, § 25249.6).

16 11. Plaintiff conducted research, from which it identified a widespread practice of  
17 manufacturers and distributors of lead-bearing automotive battery terminals, cables, and  
18 accessories of exposing, knowingly and intentionally, persons in California to the  
19 Proposition 65-listed chemicals of such products without first providing clear and  
20 reasonable warnings of such to the exposed persons prior to exposure. Plaintiff later  
21 discerned that Defendants engaged in such practice.

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23 **FIRST CAUSE OF ACTION**

24 **(By Consumer Advocacy Group, Inc. and against National Pronto Association and Does 1-**  
25 **50 For Violation Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act**  
26 **Of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

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1 18. The principal routes of exposure are through dermal contact and inhalation when persons  
2 handle Pronto without wearing gloves or by touching bare skin with gloves after handling  
3 Pronto, hand to mouth contact, or breathing in particulate matter emanating from Pronto  
4 as part of the process of installing Pronto on or removing Pronto from an automobile  
5 battery.

6 19. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
7 Proposition 65 as to Pronto have been ongoing and continuous to the date of the signing  
8 of this complaint, so that a separate and distinct violation of Proposition 65 occurred each  
9 and every time a consumer was exposed to Lead or lead compounds by using Pronto as  
10 mentioned herein.

11 20. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing.

13  
14 **SATISFACTION OF PRIOR NOTICE**

15 21. On or about March 24, 2008, Plaintiff gave notice of alleged violations of Health and  
16 Safety Code section 25249.6 subject to a private action to National Pronto Association,  
17 identified in the notice as National Pronto Association, and to the California Attorney  
18 General, County District Attorneys, and City Attorneys for each city containing a  
19 population of at least 750,000 people in whose jurisdictions the violations allegedly  
20 occurred, concerning Pronto.

21 22. On or about June 11, 2008, Plaintiff gave notice of alleged violations of Health and  
22 Safety Code section 25249.6 subject to a private action to National Pronto Association,  
23 identified in the notice as National Pronto Association, and to the California Attorney  
24 General, County District Attorneys, and City Attorneys for each city containing a  
25 population of at least 750,000 people in whose jurisdictions the violations allegedly  
26 occurred, concerning Pronto.

27 23. Before sending the notices of alleged violations referenced above in Paragraphs 21 and  
28 22, Plaintiff investigated the consumer products involved, the likelihood that such

1 products would cause users to suffer significant exposures to Lead, the corporate  
2 structure of each of the Defendants, and other relevant matters.

3 24. Plaintiff's notices of alleged violations each included a certificate of merit executed by  
4 the attorney for the noticing party, Plaintiff. The certificates of merit stated that the  
5 attorney for Plaintiff who executed the certificate had consulted with at least one person  
6 with relevant and appropriate expertise who had reviewed data regarding the exposure to  
7 Lead, respectively, which are the subject Proposition 65-listed chemicals of this action.  
8 Based on that information, the attorney for Plaintiff who executed the certificates  
9 believed there was a reasonable and meritorious case for this private action. The attorney  
10 for Plaintiff attached to the certificates of merit served on the Attorney General  
11 information sufficient to establish the basis of the certificates of merit.

12 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
13 gave notice of the alleged violations to National Pronto Association and to the public  
14 prosecutors referenced in Paragraphs 21 and 22.

15 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
16 any applicable district attorney or city attorney has commenced and is diligently  
17 prosecuting an action against the Defendants.

18 27. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that  
19 results from a person's acquisition, purchase, storage, consumption, or other reasonably  
20 foreseeable use of a consumer good. Pronto is a consumer product, and as mentioned in  
21 paragraphs 12-20, exposure to Lead took place as a result of such consumption and  
22 foreseeable use.

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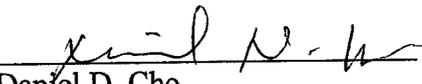
**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65 compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: December 22, 2008

YEROUSHALMI & ASSOCIATES

BY: 

Daniel D. Cho  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.