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ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

FEB 14 2011

John A. Starks, Executive Officer/Clerk  
BY M. Florio Deputy  
Mary Florio

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

14 CONSUMER ADVOCACY GROUP, INC.,  
15 in the public interest,

16 Plaintiff,

17 v.

18 PRIMOS, INC. a Mississippi Corporation,  
19 and DOES 1-50;

20 Defendants.

CASE NO. **BC 455023**

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as  
22 follows:

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**THE PARTIES**

- 1  
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a corporation  
3 qualified to do business in the State of California. CAG is a person within the meaning  
4 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
5 attorney general, brings this action in the public interest as defined under Health and  
6 Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant Primos, Inc. ("Primos") is a company incorporated in the State of Mississippi.
- 8 3. Plaintiff is presently unaware of the true names and capacities of defendants Docs 1-50,  
9 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
10 complaint to allege their true names and capacities when ascertained. Plaintiff is  
11 informed, believes, and thereon alleges that each fictitiously named defendant is  
12 responsible in some manner for the occurrences herein alleged and the damages caused  
13 thereby.
- 14 4. At all times mentioned herein, the term "Defendants" includes Primos, Inc. and Docs 1-  
15 20.
- 16 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
17 times mentioned herein have conducted business within the State of California.
- 18 6. At all times relevant to this action, each of the Defendants, including Docs 1-50, was an  
19 agent, servant, or employee of each of the other Defendants. In conducting the activities  
20 alleged in this Complaint, each of the Defendants was acting within the course and scope  
21 of this agency, service, or employment, and was acting with the consent, permission, and  
22 authorization of each of the other Defendants. All actions of each of the Defendants  
23 alleged in this Complaint were ratified and approved by every other Defendant or their  
24 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
25 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 26 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
27 Defendants was a person doing business within the meaning of Health and Safety Code  
28

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
2 employees at all relevant times.

### 3 JURISDICTION

- 4 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
5 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
6 those given by statute to other trial courts. This Court has jurisdiction over this action  
7 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
8 violations of Proposition 65 in any Court of competent jurisdiction.
- 9 9. This Court has jurisdiction over Defendants named herein because Defendants either  
10 reside or are located in this State or are foreign corporations authorized to do business in  
11 California, are registered with the California Secretary of State, or who do sufficient  
12 business in California, have sufficient minimum contacts with California, or otherwise  
13 intentionally avail themselves of the markets within California through their manufacture,  
14 distribution, promotion, marketing, or sale of their products within California to render  
15 the exercise of jurisdiction by the California courts permissible under traditional notions  
16 of fair play and substantial justice.
- 17 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
18 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
19 because Defendants conducted, and continue to conduct, business in the County of Los  
20 Angeles with respect to the consumer product that is the subject of this action.

### 21 BACKGROUND AND PRELIMINARY FACTS

- 22 11. In 1986, California voters approved an initiative to address growing concerns about  
23 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
24 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Prop.,  
25 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
26 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
27 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
28 from contamination, to allow consumers to make informed choices about the products

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
2 fit.

3 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
4 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
5 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
6 chemicals and chemical families. Proposition 65 imposes warning requirements and  
7 other controls that apply to Proposition 65-listed chemicals.

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

14 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
15 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
16 "Threaten to violate" means "to create a condition in which there is a substantial  
17 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
18 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
19 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

20 15. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
21 products of exposing, knowingly and intentionally, persons in California to the  
22 Proposition 65-listed chemicals of such products without first providing clear and  
23 reasonable warnings of such to the exposed persons prior to the time of exposure.  
24 Plaintiff later discerned that Defendants engaged in such practice.

25 16. On October 1, 1992, the Governor of California added Lead and Lead Compounds to the  
26 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).  
27 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
28 after addition of Lead and lead compounds to the list of chemicals known to the State to

1 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
2 requirements and discharge prohibitions.

3 17. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
4 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).  
5 Lead is known to the State to cause developmental, female, and male reproductive  
6 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
7 months after addition of Lead to the list of chemicals known to the State to cause  
8 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements  
9 and discharge prohibitions.

#### 10 SATISFACTION OF PRIOR NOTICE

11 18. On or about August 16, 2010 Plaintiff gave notice of alleged violations of Health and  
12 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
13 private action to Primos, identified in the notice as "Primos, Inc.," and to the California  
14 Attorney General, County District Attorneys, and City Attorneys for each city containing  
15 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
16 occurred, concerning "Guttin' Gloves™ Model No. 6121 Primos Hunting Calls, One Size  
17 Fits All"

18 19. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
19 products involved, the likelihood that such products would cause users to suffer  
20 significant exposures to lead, and the corporate structure of each of the Defendants.

21 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
22 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
23 Plaintiff who executed the certificate had consulted with at least one person with relevant  
24 and appropriate expertise who reviewed data regarding the exposures to lead,  
25 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
26 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
27 believed there was a reasonable and meritorious case for this private action. The attorney  
28 for Plaintiff attached to the Certificate of Merit served on the Attorney General the

1 confidential factual information sufficient to establish the basis of the Certificate of  
2 Merit.

3 21. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
4 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
5 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.

6 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
7 gave notice of the alleged violations to Primos and the public prosecutors referenced in  
8 Paragraph 18.

9 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
10 any applicable district attorney or city attorney has commenced and is diligently  
11 prosecuting an action against the Defendants.

### 12 FIRST CAUSE OF ACTION

13 **(By Consumer Advocacy Group, Inc. and against Primos for Violations of Proposition 65,  
14 The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§  
15 25249.5, et seq.*))**

16 **"Guttin' Gloves™ Model No. 6121 Primos Hunting Calls, One Size Fits All"**

17 24. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
18 paragraphs 1 through 24 of this complaint as though fully set forth herein.

19 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
20 distributor, promoter, or retailer of "Guttin' Gloves™" Model No. 6121 Primos Hunting  
21 Calls, One Size Fits All" ("Gloves"), a consumer product designed for use within the  
22 home environment as well as the outdoor environment.

23 26. Plaintiff is informed, believes, and thereon alleges that Gloves contains Lead.

24 27. Defendants knew or should have known that Lead has been identified by the State of  
25 California as a chemical known to cause cancer and reproductive toxicity and therefore  
26 was subject to Proposition 65 warning requirements. Defendants were also informed of  
27 the presence of Lead in the Gloves within Plaintiff's notice of alleged violations further  
28 discussed above at Paragraph 18.

1 28. Plaintiff's allegations regarding Gloves concern "[c]onsumer products exposure[s],"  
2 which "is an exposure that results from a person's acquisition, purchase, storage,  
3 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
4 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).  
5 Gloves is a consumer product, and, as mentioned in herein, exposures to Lead took place  
6 as a result of such normal and foreseeable consumption and use.

7 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
8 Persons sustain exposures by handling Gloves or by touching bare skin or mucous  
9 membranes after handling Gloves as well as hand to mouth contact (*e.g.*, by inserting  
10 surfaces, such as hands, that have contacted Gloves into their mouths), hand to mucous  
11 membrane, or breathing in particulate matter released or emanating from Gloves during  
12 use and wear, as well as through environmental mediums that carry the Lead and Lead  
13 Compounds once contained within the Gloves.

14 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
15 Proposition 65 as to Gloves have been ongoing and continuous to the date of the signing  
16 of this complaint, as Defendants engaged and continue to engage in conduct which  
17 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
18 promotion, and sale of Gloves, so that a separate and distinct violation of Proposition 65  
19 occurred each and every time a person was exposed to Lead by Gloves as mentioned  
20 herein.

21 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
22 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
23 violations alleged herein will continue to occur into the future.

24 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
25 \$2,500.00 per day per individual exposure to Lead from Gloves, pursuant to Health and  
26 Safety Code section 25249.7(b).

27 33. In the absence of equitable relief, the general public and Defendants' employees will  
28 continue to be involuntarily exposed to Lead that is contained in Gloves, creating a

1 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
2 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
3 remedy at law.

4 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

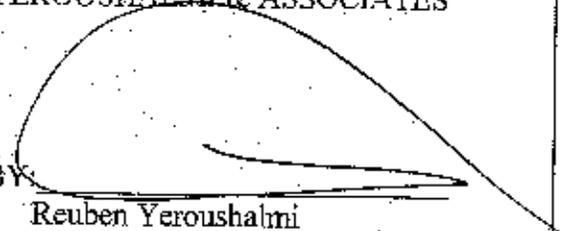
6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13  
14 Dated: 2/9, 2011

YEROUSHALMI & ASSOCIATES

15  
16  
17 BY 

18 Reuben Yeroushalmi  
19 Attorneys for Plaintiff,  
20 Consumer Advocacy Group, Inc.