

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
3 9100 Wilshire Blvd., Suite 610E
4 Beverly Hills, CA 90212
Telephone: 310-623-1926
5 Facsimile: 310-623-1930

ORIGINAL FILED

DEC 13 2011

6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

**LOS ANGELES
SUPERIOR COURT**

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
11

12 CONSUMER ADVOCACY GROUP, INC., in
13 the public interest,
14
15 Plaintiff,
16
17 v.
18 PRIMOS, INC., a Mississippi Corporation;
19 and DOES 1-50,
20
21 Defendants.

CASE NO. BC455023

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT AND ~~PROPOSED~~ ORDER

Health & Safety Code § 25249.5 *et seq.*

Dept.: 58
Judge: Honorable Rolf M. Treu

Complaint Filed: February 14, 2011
Trial: February 27, 2012

COPY

21 **1. INTRODUCTION**

22 1.1 On February 14, 2011, Plaintiff, Consumer Advocacy Group, Inc. (“CAG”), filed a
23 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. Primos,*
24 *Inc.*, Case No. BC455023 (the “Action”), for civil penalties and injunctive relief pursuant to the
25 provisions of California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) against
26 Primos, Inc. (“Defendant”). CAG and Defendant are collectively referred to hereinafter as
27 “Parties.”
28

1 1.2 Defendant is a corporation that employs 10 or more persons. In the Action, CAG
2 alleges that Defendant made available for sale and distribution in the State of California the
3 following products: "Guttin' Gloves™ Model No. 6121 Primos Hunting Calls, One Size Fits All"
4 ("Covered Product"). The Covered Product allegedly contains Lead, a chemical known to the
5 State of California to cause cancer and birth defects or other reproductive harm. (Lead is
6 hereinafter referred to as the "Noticed Chemical.")

7 1.3 On or about August 19, 2010, CAG served Defendant and the appropriate public
8 enforcement agencies with a notice claiming that Defendant was in violation of Proposition 65 in
9 regard to the Covered Product. CAG's notice and the Complaint in this Action allege that
10 Defendant exposed people who handle the Covered Product to the Noticed Chemical, without first
11 providing clear and reasonable warnings, in violation of California Health & Safety Code §
12 25249.6.

13 1.4 Defendant denies all of CAG's the material allegations, including allegations
14 averred in the notices and the Complaint, and denies liability for the cause of action alleged in the
15 Complaint and in connection with the Action. By executing this Stipulated Consent Judgment and
16 agreeing to provide the relief and remedies specified herein, Defendant does not admit that it has
17 committed any violations of Proposition 65, or any other law or legal duty and specifically denies
18 that it has committed any such violations and no such admission shall be deemed to have occurred
19 as a result of Defendant's agreement to settle and compromise the Action. Defendant maintains
20 that all Covered Products distributed, marketed and/or sold by Defendant in California have at all
21 times been in compliance with Proposition 65.

22 1.5 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that
23 this Court has jurisdiction over the allegations of violations contained in CAG's Complaint and
24 personal jurisdiction over Defendant with respect to the matters set forth in the Stipulated Consent
25 judgment, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to
26 enter this Stipulated Consent Judgment as a full and final resolution of all claims which were or
27 could have been raised in the Complaint based on the facts alleged therein.

28 1.6 The parties enter into this Stipulated Consent Judgment pursuant to a settlement of

1 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
2 costly litigation.

3 1.7 Neither this Stipulated Consent Judgment nor any of its provisions shall be
4 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
5 law, including without limitation, any admission concerning any violation of Proposition 65 or any
6 other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
7 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and
8 Safety Code section 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with
9 its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of
10 law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its
11 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
12 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
13 agency, or forum.

14 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
15 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
16 except as expressly provided in this Stipulated Consent Judgment. By executing this Consent
17 Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not
18 admit that this Action or any other action that may be filed against it in the future under
19 Proposition 65 or any other cause of action is not preempted by Federal law. Defendant reserves
20 all of their rights and defenses with regard to any claim by any person under Proposition 65 or
21 otherwise, including the defense of federal preemption.

22 1.9 This Stipulated Consent Judgment is the product of negotiations during the
23 litigation and is accepted by the Parties, for purposes of settling, compromising, and resolving
24 issues disputed in this action, including future compliance by Defendant with Section 2 of this
25 Stipulated Consent Judgment, and shall not be used for any other purpose, or in any other matter.

26 **2. COMPLIANCE – INJUNCTIVE RELIEF**

27 2.1 Within 30 days of approval of this Consent Judgment by the Court, Defendant shall
28 cease sale and distribution of the Covered Product in California, unless the Covered Product is

1 reformulated to a point where there is no lead in the Covered Product, or if there is any lead in the
2 product, the level of lead would be below 50 ppm.

3 **3. SETTLEMENT PAYMENT**

4 3.1 Within ten (10) days of approval of this Consent Judgment by the Court, Defendant
5 shall pay a total of fifty-two thousand dollars (\$52,000.00) by separate checks apportioned as
6 follows:

7 3.1.1 Monetary Payment in Lieu of Civil Penalty: Two thousand dollars (\$2,000)
8 shall be paid to CAG in lieu of any civil penalty pursuant to California Health and Safety
9 Code § 25249.7(b). CAG will use the payment for such projects and purposes related to
10 environmental protection, worker health and safety, or reduction of human exposure to
11 hazardous substances (including administrative and product testing costs arising from such
12 projects), as CAG may choose. The check shall be made payable to Consumer Advocacy
13 Group, Inc. and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
14 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

15 3.1.2 Attorneys' Fees and Costs: Forty-nine thousand dollars (\$49,000) of such
16 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
17 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
18 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
19 settlement in the public interest. The check shall be made payable to Yeroushalmi &
20 Associates and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
21 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

22 3.1.3 Civil Penalty: Defendant shall issue two separate checks for a total amount
23 of one thousand dollars (\$1,000) as penalties pursuant to Health & Safety Code § 25192:
24 (a) one check made payable to the State of California's Office of Environmental Health
25 Hazard Assessment (OEHHA) in the amount of \$750, representing 75% of the total
26 penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$250,
27 representing 25% of the total penalty. Two separate 1099s shall be issued for the above
28 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA

1 95184 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the
2 amount of \$250 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire
3 Boulevard, Suite 610E, Beverly Hills, California 90212.

4 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

5 4.1 This written Stipulated Consent Judgment may only be modified by written
6 agreement of CAG and Defendant upon stipulation and Order of the Court, or after noticed
7 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of
8 CAG or Defendant as provided by law and upon entry of a modified Stipulated Consent Judgment
9 by the Court.

10 4.2 The Attorney General shall be served with notice of any proposed modification to
11 this Consent Judgment at least 15 days in advance of its consideration by the Court.

12 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

13 5.1 Either party may, by motion or application for an order to show cause before the
14 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in
15 paragraphs 8.1 and 8.2 of this Stipulated Consent Judgment, enforce the terms and conditions
16 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its
17 reasonable attorneys' fees and costs associated with such motion or application.

18 5.2 The Parties may enforce the terms and conditions of this Consent Judgment
19 pursuant to paragraph 5.1 only after the party seeking to enforce the Stipulated Consent Judgment
20 has first given 30 days notice to the Party allegedly failing to comply with the terms and
21 conditions of the Stipulated Consent Judgment (the Notice of Non-Compliance) and has
22 attempted, in an open and good faith manner, to resolve such Party's alleged failure to comply.

23 The Notice of Non-Compliance shall identify the specific provision that the party seeking
24 enforcement alleges was violated as well as sufficient information to put the party accused of the
25 violation on notice of the scope, nature, timing and substance of the alleged violation.

26 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

27 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the
28 Parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents

1 and their successors or assigns, and to the extent allowed by law, on the general public.

2 7. **CLAIMS COVERED AND RELEASED**

3 7.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges
4 Defendant, its related subsidiaries, affiliates, predecessors, successors, assigns, distributors,
5 vendors, and manufacturers, and all officers, directors, employees, and shareholders of them
6 (collectively, "Released Parties") from any and all claims asserted, or that could have been
7 asserted, in this litigation arising from the alleged failure to provide Proposition 65 warnings only
8 for the Covered Product regarding the exposure of individuals to the Noticed Chemical in the
9 Covered Product. CAG, on behalf of itself only, hereby releases and discharges the Released
10 Parties from any and all known and unknown past, present, and future rights, claims, causes of
11 action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees,
12 costs, and expenses only related to or arising out of the facts and claims asserted, or that could
13 have been asserted, under state or federal law or the facts alleged in Plaintiff's Proposition 65
14 Notices or the Complaint relating only to any and all claims concerning exposure of any person to
15 the Noticed Chemical in the Covered Product. Compliance with the terms of this Stipulated
16 Consent Judgment shall constitute compliance by the Released Parties with Proposition 65 with
17 respect to exposures to the Noticed Chemical contained in the Covered Product. This release does
18 not limit or affect the obligations of any party created under this Stipulated Consent Judgment.

19 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
20 now known to the Parties arising out of the facts alleged in the Complaint and relating to the
21 exposure of individuals to the Noticed Chemical in the Covered Product will develop or be
22 discovered, and this Stipulated Consent Judgment is expressly intended to cover and include all
23 such injuries, damages, liability, and claims, including all rights of action therefor. CAG has full
24 knowledge of the contents of Section 1542 of the Civil Code. CAG, on behalf of itself only,
25 acknowledges that the claims released in paragraph 7.1 above may include unknown claims and
26 waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

27 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
28 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

1 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
2 **OR HER SETTLEMENT WITH THE DEBTOR"**

3 CAG acknowledges and understands the significance and consequences of this specific waiver of
4 Civil Code Section 1542.

5 **8. NOTICE AND CURE**

6 8.1 No action to enforce this Stipulated Consent Judgment may be commenced, and no
7 notice of violation related to the Covered Product may be served or filed against Defendant by
8 CAG, unless the party seeking enforcement or alleging violation notifies the other party of the
9 specific acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving or
10 filing any motion, action, or Notice of Violation. Any notice to Defendant must contain (a) the
11 name of the product, (b) specific dates when the product was sold in California, (c) the store or
12 other place at which the product was available for sale to consumers, and (d) any other evidence or
13 other support for the allegations in the notice.

14 8.2 Within 30 days of receiving the notice described in paragraph 8.1, Defendant shall
15 either (1) take all steps necessary to bring the sale of the product into compliance under the terms
16 of this Stipulate Consent Judgment, (2) withdraw the product, or (3) refute the information
17 provided under paragraph 8.1. Should the parties be unable to resolve the dispute, either party may
18 seek relief under Section 5.

19 **9. GOVERNING LAW**

20 9.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of the
21 State of California.

22 **10. PROVISION OF NOTICE**

23 10.1 All notices required pursuant to this Stipulated Consent Judgment and
24 correspondence shall be sent to the following:

25 For Consumer Advocacy Group, Inc.

For Primos, Inc.

26 Reuben Yeroushalmi
27 YEROUSHALMI & ASSOCIATES
28 9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
T: 310-623-1926

John R. Epperson
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94104
T 415.954.4400

2 The contacts and/or addresses above may be amended by giving notice to all Parties to this
3 Consent Judgment.

4 **11. ENTIRE AGREEMENT**

5 11.1 This Stipulated Consent Judgment constitutes the sole and entire agreement and
6 understanding between the Parties with respect to the subject matter hereof, and any prior
7 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
8 merged herein and therein. There are no warranties, representations or other agreements between
9 the Parties, except as expressly set forth herein. No representations, oral or otherwise, express or
10 implied, other than those specifically referred to herein, shall be deemed to exist or bind any of the
11 Parties hereto. No supplementation, modification, waiver, or termination of this Stipulated
12 Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

13 **12. ATTORNEY GENERAL REVIEW AND COURT APPROVAL**

14 12.1 The Court shall either approve or disapprove of this Stipulated Consent Judgment
15 in its entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the
16 Parties and their counsel. If this Stipulated Consent Judgment is not approved by the Court, it
17 shall be of no further force or effect.

18 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
19 11 California Code of Regulations section 3003.

20 **13. EXECUTION AND COUNTERPARTS**

21 13.1 This Stipulated Consent Judgment may be executed in counterparts and by means
22 of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf
23 signatures shall be construed as valid as the original.

24 **14. AUTHORIZATION**

25 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully
26 authorized by the party he or she represents to stipulate to the terms and conditions of this
27 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
28 behalf of the party represented and legally bind that party. The undersigned have read, understand

1 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
2 explicitly provided herein, each party is to bear its own fees and costs.

3
4 Dated: 10/19/11

CONSUMER ADVOCACY GROUP, INC.

5
6 

7
8 Name and Title: MICHAEL SASSOON - EXECUTIVE
DIRECTOR

9 Dated: 10/19/11

PRIMOS, INC.

10
11 

12
13 Name and Title: Wilbur R. Primos
Director

14
15
16
17 **ORDER AND JUDGMENT**

18 Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and
19 Primos, Inc., the Consent Judgment is approved and judgment is hereby entered according to the
20 terms herein.

21 Dated: 12/30/11

ROLF M. TREU

22
23 Judge, Superior Court of the State of California