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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 \_\_\_\_\_, Individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 PRIMERO MINING CORP., JOSEPH  
16 F. CONWAY, ERNEST MAST , DAVID  
17 BLAIKLOCK, AND WENDY  
18 KAUFMAN,

19 Defendants.  
20

Case No:

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE FEDERAL  
SECURITIES LAWS**

JURY TRIAL DEMANDED

21  
22 Plaintiff \_\_\_\_\_ (“Plaintiff”), by Plaintiff’s undersigned attorneys,  
23 individually and on behalf of all other persons similarly situated, alleges the  
24 following based upon personal knowledge as to Plaintiff’s own acts, and information  
25 and belief as to all other matters, based upon, *inter alia*, the investigation conducted  
26 by and through Plaintiff’s attorneys, which included, among other things, a review of  
27 Defendants’ public documents, conference calls and announcements made by  
28 Defendants, United States Securities and Exchange Commission (“SEC”) filings,

1 wire and press releases published by and regarding Primero Mining Corp. (“Primero”  
2 or the “Company”), and information readily obtainable on the Internet. Plaintiff  
3 believes that substantial evidentiary support will exist for the allegations set forth  
4 herein after a reasonable opportunity for discovery.

### 5 **NATURE OF THE ACTION**

6 1. This is a federal securities class action brought on behalf of a class  
7 consisting of all persons and entities, other than defendants and their affiliates, who  
8 purchased or otherwise acquired the securities of Primero from October 5, 2012 to  
9 February 3, 2016, inclusive (the “Class Period”), seeking to recover compensable  
10 damages caused by Defendants’ violations of federal securities laws (the “Class”).

11 2. Primero is a Canadian-based gold mining company which operates  
12 mines in Canada and Mexico. Primero has a portfolio of development-stage and  
13 exploration projects.

14 3. On August 6, 2010, Primero acquired the San Dimas gold-silver mine,  
15 mill, and related assets. Primero’s Mexican subsidiary, Primero Empresa Minera,  
16 S.A. de C.V. (“PEM”), owns and operations the San Dimas Mine.

17 4. In October 2011, Primero’s Mexican subsidiary, Primero Empresa  
18 Minera, S.A. de C.V. (“PEM”), submitted an Advance Pricing Agreement (“APA”)  
19 to the Mexican tax authorities, Servicio de Administración Tributaria (“SAT”) asking  
20 for a ruling to confirm whether the Company was properly recording revenue and  
21 taxes from sales under Primero’s silver purchase agreement with Silver Wheaton  
22 Corp. (“Silver Wheaton”).

23 5. Throughout the Class Period, Defendants made false and/or misleading  
24 statements, as well as failed to disclose material adverse facts about the Company’s  
25 business, operations, prospects and performance. Specifically, during the Class  
26 Period, Defendants made false and/or misleading statements and/or failed to disclose  
27 that: (1) PEM was inappropriately recording revenues and taxes from sales under its  
28 silver purchase agreement between Primero and Silver Wheaton; and (2) as a result of

1 the foregoing, the Company's public statements were materially false and misleading  
2 and/or lacked a reasonable basis at all relevant times.

3 6. On February 3, 2016, the Company issued a press release, announcing,  
4 among other things, that the SAT served a legal claim on PEM seeking to nullify the  
5 APA filed by Primero in October 2011 and issued by the SAT in 2012.

6 7. On this news, the Company's shares fell \$0.74 per share or over 28% to  
7 close at \$1.89 per share on February 4, 2016.

8 8. As a result of Defendants' wrongful acts and omissions, and the  
9 precipitous decline in the market value of the Company's securities, Plaintiff and  
10 other Class members have suffered significant losses and damages.

### 11 **JURISDICTION AND VENUE**

12 9. The claims asserted herein arise under and pursuant to Sections 10(b)  
13 and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5  
14 promulgated thereunder (17 C.F.R. § 8 240.10b-5).

15 10. This Court has jurisdiction over the subject matter of this action pursuant  
16 to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

17 11. Venue is proper in this District pursuant to §27 of the Exchange Act, 15  
18 U.S.C. §78aa and 28 U.S.C. §1391(b), as the misleading statements entered into this  
19 District.

20 12. In connection with the acts, conduct and other wrongs alleged in this  
21 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of  
22 interstate commerce, including but not limited to, the United States mail, interstate  
23 telephone communications and the facilities of the national securities exchange.

### 24 **PARTIES**

25 13. Plaintiff \_\_\_\_\_, as set forth in the attached Certification, acquired  
26 Primero securities at artificially inflated prices during the Class Period and was  
27 damaged upon the revelation of the alleged corrective disclosures.

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1 14. Defendant Primero is a gold mining company with operating mines in  
2 Canada and Mexico. Primero is headquartered in Toronto, Ontario, Canada and trades  
3 on the NYSE under the ticker symbol “PPP.”

4 15. Defendant Joseph F. Conway (“Conway”) has served as the Company’s  
5 Chief Executive Officer (“CEO”) since June 2010 until January 31, 2016. On January  
6 31, 2016, Conway became Primero’s Executive Vice Chairman.

7 16. Defendant Ernest Mast (“Mast”) became Primero’s CEO on January 31,  
8 2016. Mast is, and has been during the Class Period, Primero’s President and Chief  
9 Operating Officer (“COO”).

10 17. Defendant David Blaiklock (“Blaiklock”) served as the Company’s  
11 Chief Financial Officer (“CFO”) since the beginning of the Class Period until  
12 September 29, 2014.

13 18. Defendant Wendy Kaufman (“Kaufman”) became Primero’s CFO on  
14 September 29, 2014 through the end of the Class Period.

15 19. The defendants referenced above in ¶¶ 14 – 18 are sometimes referred to  
16 herein as the “Individual Defendants.”

17 20. Defendant Primero and the Individual Defendants are referred to herein,  
18 collectively, as the “Defendants.”

19 21. Each of the Individual Defendants:

- 20 a) directly participated in the management of the Company;
- 21 b) was directly involved in the day-to-day operations of the  
22 Company at the highest levels;
- 23 c) was privy to confidential proprietary information concerning the  
24 Company and its business and operations;
- 25 d) was involved in drafting, producing, reviewing and/or  
26 disseminating the false and misleading statements and information  
27 alleged herein;

- 1 e) was aware of or recklessly disregarded the fact that the false and  
2 misleading statements were being issued concerning the  
3 Company; and  
4 f) approved or ratified these statements in violation of the federal  
5 securities laws.

6 22. As officers, directors, and controlling persons of a publicly-held  
7 company whose common stock is and was registered with the SEC pursuant to the  
8 Exchange Act, and was traded on NYSE and governed by the provisions of the  
9 federal securities laws, the Individual Defendants each had a duty to disseminate  
10 accurate and truthful information promptly with respect to the Company's business  
11 prospects and operations, and to correct any previously-issued statements that had  
12 become materially misleading or untrue to allow the market price of the Company's  
13 publicly-traded stock to reflect truthful and accurate information.

14 23. Primero is liable for the acts of the Individual Defendants and its  
15 employees under the doctrine of *respondeat superior* and common law principles of  
16 agency as all of the wrongful acts complained of herein were carried out within the  
17 scope of their employment with authorization.

18 24. The scienter of the Individual Defendants and other employees and  
19 agents of the Company is similarly imputed to Primero under *respondeat superior*  
20 and agency principles.

## 21 **SUBSTANTIVE ALLEGATIONS**

### 22 **Materially False And Misleading Statements Issued During the Class Period**

23 25. The Class Period starts on October 5, 2012, when the Company issued a  
24 press release entitled "Primero Announces Positive Advance Tax Ruling" stating in  
25 relevant part:

26 TORONTO, ONTARIO--(Marketwire - Oct. 5, 2012) - Primero  
27 Mining Corp. ("Primero" or the "Company") (TSX:P)(NYSE:PPP)  
28 announced today that the Company's Mexican subsidiary has received

1 a positive ruling from the Mexican tax authorities (Servicio de  
2 Administración Tributaria) on its Advance Pricing Agreement  
3 (“APA”) filing made in October 2011. The ruling confirms that the  
4 Company’s Mexican subsidiary appropriately records revenue and  
5 taxes from sales under the silver purchase agreement<sup>1</sup> at realized  
6 prices rather than spot prices effective from August 6, 2010.

6 Under Mexican tax law, an APA ruling is generally applicable for up  
7 to a five year period. For Primero this applies to the fiscal years 2010  
8 to 2014. Assuming the Company continues to sell its silver from  
9 its San Dimas mine on the same terms and there are no changes in the  
10 application of Mexican tax laws relative to the APA ruling, the  
11 Company expects to pay taxes on realized prices for the life of the San  
12 Dimas mine.

12 <sup>1</sup> According to the silver purchase agreement between the Company  
13 and Silver Wheaton Corp. (“Silver Wheaton”), until August 6, 2014  
14 Primero will deliver to Silver Wheaton a per annum amount equal to  
15 the first 3.5 million ounces of silver produced at San Dimas and 50%  
16 of any excess at US\$4.08 per ounce (increasing by 1% per  
17 year). Thereafter Primero will deliver to Silver Wheaton a per annum  
18 amount equal to the first 6.0 million ounces of silver produced at San  
19 Dimas and 50% of any excess at US\$4.20 per ounce (increasing by  
20 1% per year). The Company will receive silver spot prices only after  
21 the annual threshold amount has been delivered.

20 26. On November 8, 2012, the Company filed a Form 40-F/A for the fiscal  
21 year ended December 31, 2011 (the “2011 40-F/A”) with the SEC, which provided  
22 the Company’s year-end financial results. The 2011 40-F/A was signed by Defendant  
23 Conway. The 2011 40-F/A contained signed certifications pursuant to the Sarbanes-  
24 Oxley Act of 2002 (“SOX”) by Defendants Conway and Blaiklock, which stated that  
25 the financial information and operations of Primero contained in the 2011 40-F/A was  
26 accurate.

27 27. The 2011 40-F/A discussed the APA, stating in relevant part:  
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As described in Note 8, on October 17, 2011 the Company’s Mexican subsidiary filed a formal application to the Mexican tax authorities for an advance ruling on the Company’s restructuring plan that, if successful, would result in paying income taxes in Mexico based on realized rather than spot revenue.

The Company’s restructuring plan relies on a detailed transfer pricing analysis in order to support the ongoing sale of silver from Mexico to a related party at the fixed price. Given the intensified scrutiny of transfer pricing in recent years and the significant adjustments and penalties assessed by tax authorities, many jurisdictions (including Mexico) allow companies to mitigate this risk by entering into an advance pricing agreement (“APA”).

The APA review is an interactive process between the taxpayer and the tax authority. At the end of the APA process, the tax authority will issue a tax resolution letter specifying the pricing method that they consider appropriate for the Company to apply to intercompany sales under the silver purchase agreement.

For the duration of the APA process, the taxpayer can record its revenues and intercompany pricing under the terms that the taxpayer considers reasonable (given that they are compliant with applicable transfer pricing requirements). As such, the Company’s Mexican subsidiary has recorded revenues from sales of silver under the silver purchase agreement (and taxes thereon) at the contracted price of approximately \$4 since the date of acquisition of the San Dimas Mine (August 6, 2010), and in addition to this has claimed a refund for the “overpayment” of taxes between the date of purchase of the San Dimas Mine (August 6, 2010) and the date of the filing.

Should the Company be unsuccessful in its APA application , then it will need to pay to the Mexican government the amount of tax which the government deems to be owing in respect of taxation on silver sales under the silver purchase agreement. The Company considers this to be a contingent liability, the outcome of which will not be known until the tax authority issue its final opinion. The maximum contingent liability in respect of such an adverse ruling as at December 31, 2011 is \$28.6 million; however at December 31, 2011,

1 the Company's Mexican subsidiary had a taxes receivable balance of  
2 \$19.6 million and as such the cash that would have to be paid to  
3 satisfy the contingent liability at December 31, 2011 is \$9.0 million.  
4 Since the Company intends to continue to record taxes in Mexico  
5 based on realized prices, the contingent liability will grow during the  
6 APA process.

7 28. On April 2, 2013, the Company filed a Form 40-F for the fiscal year  
8 ended December 31, 2012 (the "2012 40-F") with the SEC, which provided the  
9 Company's year-end financial results and position. The 2012 40-F was signed by  
10 Defendant Conway. The 2012 40-F contained signed SOX certifications by  
11 Defendants Conway and Blaiklock, which stated that the financial information and  
12 operations of Primero contained in the 2012 40-F was accurate.

13 29. The 2012 40-F discussed the APA stating in relevant part:

14 On October 17, 2011, Primero Empresa filed a formal application to  
15 the Mexican tax authorities for an advance pricing agreement  
16 ("APA") on the appropriate price for sales of silver under the  
17 Amended and Restated Silver Purchase Agreement. In its 2010 and  
18 2011 financial statements and income tax returns, Primero Empresa  
19 had recorded revenue at the fixed price realized from Silver Wheaton  
20 Caymans ("SW Caymans") and computed income taxes on the same  
21 basis. On October 4, 2012, the Company received a ruling from the  
22 Mexican tax authorities that confirmed the silver pricing in Primero  
23 Empresa's 2010 and 2011 income tax returns. Under Mexican tax law,  
24 an APA ruling is generally applicable for up to a five year period. For  
25 Primero this applies to the fiscal years 2010 to 2014. Assuming  
26 Primero Empresa continues to sell silver under the silver purchase  
27 agreement on the same terms and there are no changes in the  
28 application of Mexican tax laws relative to the APA ruling, Primero  
29 Empresa expects to record revenues and pay taxes on realized prices  
30 for the life of the San Dimas Mine. See "Risk Factors –APA Ruling".

\* \* \*

*APA Ruling*

1 Under Mexican tax law, an APA ruling is generally applicable for up  
2 to a five year period. For Primero this applies to the fiscal years 2010  
3 to 2014. Assuming Primero continues to sell silver under the  
4 Amended and Restated Silver Purchase Agreement on the same terms  
5 and there are no changes in the application of Mexican tax laws  
6 relative to the APA ruling, the Company expects to record revenues  
7 and pay taxes based on realized prices for the life of the San Dimas  
8 mine. There can be no assurance that Mexican tax laws applicable to  
9 the APA ruling will not change. If the Mexican tax authorities  
determine that the appropriate price of silver sales under the silver  
purchase agreement is different than the realized price, Primero's cash  
flows and earnings could be significantly adversely impacted.

10 30. On April 12, 2014, the Company filed a Form 40-F for the fiscal year  
11 ended December 31, 2013 (the "2013 40-F") with the SEC, which provided the  
12 Company's year-end financial results and position. The 2013 40-F was signed by  
13 Defendant Conway. The 2013 40-F contained signed SOX certifications by  
14 Defendants Conway and Blaiklock, which stated that the financial information and  
15 operations of Primero contained in the 2013 40-F was accurate.

16 31. The 2013 40-F discussed the APA stating in relevant part:

17 *Advance Pricing Agreement Ruling*

18  
19 On October 17, 2011, Primero Empresa filed a formal application to  
20 the Mexican tax authorities for an advance pricing agreement ("APA")  
21 on the appropriate price for sales of silver under the Amended and  
22 Restated Silver Purchase Agreement. In its 2010 and 2011 financial  
23 statements and income tax returns, Primero Empresa had recorded  
24 revenue at the fixed price realized from Silver Wheaton Caymans  
25 ("SW Caymans") and computed income taxes on the same basis. On  
26 October 4, 2012, the Company received a ruling from the Mexican tax  
27 authorities that confirmed the silver pricing in Primero Empresa's  
28 2010 and 2011 income tax returns. Under Mexican tax law, an APA  
ruling is generally applicable for up to a five year period. For Primero  
this applies to the fiscal years 2010 to 2014. Assuming Primero  
Empresa continues to sell silver under the silver purchase agreement  
on the same terms and there are no changes in the application of

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Mexican tax laws relative to the APA ruling, Primero Empresa expects to record revenues and pay taxes based on realized prices for the life of the San Dimas Mine. See “Risk Factors – APA Ruling”.

\* \* \*

*APA Ruling*

Under Mexican tax law, an APA ruling is generally applicable for up to a five year period. For Primero this applies to the fiscal years 2010 to 2014. Assuming Primero continues to sell silver under the Amended and Restated Silver Purchase Agreement on the same terms and there are no changes in the application of Mexican tax laws relative to the APA ruling, the Company expects to record revenues and pay taxes based on realized prices for the life of the San Dimas mine. There can be no assurance that Mexican tax laws applicable to the APA ruling will not change. If the Mexican tax authorities determine that the appropriate price of silver sales under the silver purchase agreement is different than the realized price, Primero’s cash flows and earnings could be significantly adversely impacted.

32. On March 31, 2015, the Company filed a Form 40-F for the fiscal year ended December 31, 2014 (the “2014 40-F”) with the SEC, which provided the Company’s year-end financial results and position. The 2014 40-F was signed by Defendant Conway. The 2014 40-F contained signed SOX certifications by Defendants Conway and Kaufman, which stated that the financial information contained in the 2014 40-F was accurate.

33. The 2014 40-F discussed the APA stating in relevant part:

*Advance Pricing Agreement Ruling*

For purposes of its financial statements and tax returns for the last five taxation years, the Company has recorded revenues received from sales of silver at the contracted price paid to the Company pursuant to the Amended and Restated Silver Purchase Agreement (See - Mining Activities – San Dimas Mine – Amended and Restated Silver Purchase Agreement). On October 4, 2012, the Company received an

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advance pricing ruling (the “APA Ruling”) from the Mexican tax authorities which confirmed the basis on which the Company records revenues it receives from sales of silver under the Amended and Restated Silver Purchase Agreement. This APA Ruling was applicable until December 31, 2014. In 2015, the Company intends to continue to record its revenue from sales of silver under the Amended and Restated Silver Purchase Agreement in a manner consistent with prior years, the APA Ruling and applicable Mexican laws. The Company is entitled to file an application for a new advance pricing ruling in respect of 2015 and the subsequent four taxation years at any time prior to December 31, 2016. There can be no assurance that Mexican tax laws applicable to the APA Ruling will not change, or that the applicable authorities will issue a renewal of the APA Ruling or a similar advance pricing ruling or that the authorities will continue to assess the Company’s taxes on the basis of its realized prices for silver. To the extent the Mexican tax authorities determine that the appropriate price of silver sales under the Amended and Restated Silver Purchase Agreement is different than the realized price, it could have a material adverse effect on the results of the Company’s operations, financial condition and cash flows. See “Risk Factors – Financial Risks - APA Ruling”.

\* \* \*

*APA Ruling*

Under Mexican tax law, an APA ruling is generally applicable for up to a five year period. Primero’s APA applies to its fiscal years 2010 to 2014. Assuming Primero continues to sell silver under the Amended and Restated Silver Purchase Agreement on the same terms and there are no changes in the application of Mexican tax laws relative to the APA Ruling, the Company expects to record revenues and pay taxes based on realized prices for the life of the San Dimas Mine. There can be no assurance that Mexican tax laws applicable to the APA Ruling will not change or that the applicable authorities will issue a renewal of the APA Ruling or a similar advance pricing Ruling or that the Mexican tax authorities will not change their views on the appropriate price for the sale of silver under the Amended and Restated Silver Purchase Agreement. If the Mexican tax authorities determine that the appropriate price of silver sales under the silver purchase agreement is

1 different than the realized price, Primero's cash flows and earnings  
2 could be significantly adversely impacted.

3 34. The statements referenced in ¶¶ 25 – 33 above were materially false  
4 and/or misleading because they misrepresented and failed to disclose the following  
5 adverse facts pertaining to the Company's business, operations, and prospects, which  
6 were known to Defendants or recklessly disregarded by them. Specifically,  
7 Defendants made false and/or misleading statements and/or failed to disclose that: (1)  
8 PEM was inappropriately recording revenues and taxes from sales under its silver  
9 purchase agreement between Primero and Silver Wheaton; and (2) as a result of the  
10 foregoing, the Company's public statements were materially false and misleading  
11 and/or lacked a reasonable basis at all relevant times.

### 12 The Truth Emerges

13 35. On February 3 2016, the Company issued a press release announcing  
14 that the SAT filed a legal claim seeking to nullify PEM's APA issued in 2012. The  
15 press release states in relevant part:

16  
17 TORONTO, ON -- (Marketwired) -- 02/04/16 -- Primero Mining  
18 Corp. ("Primero" or the "Company") (TSX: P) (NYSE:  
19 PPP) announced today that its Mexican subsidiary, *Primero Empresa*  
20 *Minera, S.A. de C.V. ("PEM")*, *has received a legal claim from the*  
21 *Mexican tax authorities, Servicio de Administración Tributaria*  
22 *("SAT"), seeking to nullify the Advance Pricing Agreement ("APA")*  
23 *issued by SAT in 2012.* The APA confirmed the Company's basis for  
24 paying taxes on realized silver prices for the years 2010 to 2014 and  
25 represented SAT's agreement to accept that basis for those years. The  
26 legal claim initiated does not identify any different basis for paying  
27 taxes. The Company believes this legal claim is without merit and it  
28 intends to vigorously defend the validity of its APA. The Company's  
operations continue as usual.

PEM and its legal counsel are in the process of completing a detailed  
review of the legal claim, which is in excess of 200 pages. The

1 Company's Mexican legal and financial advisors have informed the  
2 Company that SAT's judicial challenge to the validity of an APA is  
3 without precedent. The Company's advisors maintain that seeking to  
4 nullify an APA undermines the function of an APA, which is to assure  
5 a taxpayer of certainty. The Mexican Supreme Court of Justice  
6 recently concluded that where a tax ruling is challenged by the tax  
7 authorities through a legal claim, there can be no retroactive  
8 consequences or payments levied against a taxpayer that obtained the  
9 ruling in good faith within applicable legal principles. The Company,  
10 and its Mexican legal and financial advisors, continue to believe that  
11 the Company has filed its tax returns, and paid all applicable taxes, in  
12 compliance with Mexican tax laws.

(Emphasis added).

12 36. On this news, the Company's shares fell \$0.74 per share or over 28% to  
13 close at \$1.89 per share on February 4, 2016.

14 37. As a result of Defendants' wrongful acts and omissions, and the  
15 precipitous decline in the market value of the Company's securities Plaintiff and  
16 other Class members have suffered significant losses and damages.

#### 17 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

18 38. Plaintiff brings this action as a class action pursuant to Federal Rule of  
19 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
20 purchased or otherwise acquired Primero securities during the Class Period (the  
21 "Class"); and were damaged upon the revelation of the alleged corrective disclosure.  
22 Excluded from the Class are Defendants herein, the officers and directors of the  
23 Company, at all relevant times, members of their immediate families and their legal  
24 representatives, heirs, successors or assigns and any entity in which Defendants have  
25 or had a controlling interest.

26 39. The members of the Class are so numerous that joinder of all members is  
27 impracticable. Throughout the Class Period, Primero securities were actively traded  
28 on the NYSE. While the exact number of Class members is unknown to Plaintiff at

1 this time and can be ascertained only through appropriate discovery, Plaintiff believes  
2 that there are hundreds or thousands of members in the proposed Class. Record  
3 owners and other members of the Class may be identified from records maintained by  
4 Primero or its transfer agent and may be notified of the pendency of this action by  
5 mail, using the form of notice similar to that customarily used in securities class  
6 actions.

7 40. Plaintiff's claims are typical of the claims of the members of the Class as  
8 all members of the Class are similarly affected by Defendants' wrongful conduct in  
9 violation of federal law that is complained of herein.

10 41. Plaintiff will fairly and adequately protect the interests of the members  
11 of the Class and has retained counsel competent and experienced in class and  
12 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those  
13 of the Class.

14 42. Common questions of law and fact exist as to all members of the Class  
15 and predominate over any questions solely affecting individual members of the Class.  
16 Among the questions of law and fact common to the Class are:

- 17 • whether the federal securities laws were violated by Defendants' acts as  
18 alleged herein;
- 19 • whether statements made by Defendants to the investing public during  
20 the Class Period misrepresented material facts about the business,  
21 operations and management of Primero;
- 22 • whether the Individual Defendants caused Primero to issue false and  
23 misleading financial statements during the Class Period;
- 24 • whether Defendants acted knowingly or recklessly in issuing false and  
25 misleading financial statements;
- 26 • whether the prices of Primero securities during the Class Period were  
27 artificially inflated because of the Defendants' conduct complained of  
28 herein; and

- 1           •       whether the members of the Class have sustained damages and, if so,  
2                    what is the proper measure of damages.

3           43.     A class action is superior to all other available methods for the fair and  
4 efficient adjudication of this controversy since joinder of all members is  
5 impracticable. Furthermore, as the damages suffered by individual Class members  
6 may be relatively small, the expense and burden of individual litigation make it  
7 impossible for members of the Class to redress individually the wrongs done to them.  
8 There will be no difficulty in the management of this action as a class action.

9           44.     Plaintiff will rely, in part, upon the presumption of reliance established  
10 by the fraud-on-the-market doctrine in that:

- 11           •       Defendants made public misrepresentations or failed to disclose material  
12 facts during the Class Period;  
13           •       the omissions and misrepresentations were material;  
14           •       Primero securities are traded in an efficient market;  
15           •       the Company's shares were liquid and traded with moderate to heavy  
16 volume during the Class Period;  
17           •       the Company traded on the NYSE and was covered by multiple analysts;  
18           •       the misrepresentations and omissions alleged would tend to induce a  
19 reasonable investor to misjudge the value of the Company's securities;  
20           and  
21           •       Plaintiff and members of the Class purchased, acquired and/or sold  
22 Primero securities between the time the Defendants failed to disclose or  
23 misrepresented material facts and the time the true facts were disclosed,  
24 without knowledge of the omitted or misrepresented facts.

25           45.     Based upon the foregoing, Plaintiff and the members of the Class are  
26 entitled to a presumption of reliance upon the integrity of the market.

27           46.     Alternatively, Plaintiff and the members of the Class are entitled to the  
28 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*

1 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants  
2 omitted material information in their Class Period statements in violation of a duty to  
3 disclose such information, as detailed above.

4  
5 **COUNT I**

6 **Violations of Section 10(b) of The Exchange Act and Rule 10b-5**  
7 **Against All Defendants**

8 47. Plaintiff repeats and realleges each and every allegation contained above  
9 as if fully set forth herein.

10 48. This Count is asserted against Defendants and is based upon Section  
11 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
12 thereunder by the SEC.

13 49. During the Class Period, Defendants engaged in a plan, scheme,  
14 conspiracy and course of conduct, pursuant to which they knowingly or recklessly  
15 engaged in acts, transactions, practices and courses of business which operated as a  
16 fraud and deceit upon Plaintiff and the other members of the Class; made various  
17 untrue statements of material facts and omitted to state material facts necessary in  
18 order to make the statements made, in light of the circumstances under which they  
19 were made, not misleading; and employed devices, schemes and artifices to defraud  
20 in connection with the purchase and sale of securities. Such scheme was intended to,  
21 and, throughout the Class Period, did: (i) deceive the investing public, including  
22 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and  
23 maintain the market price of Primero securities; and (iii) cause Plaintiff and other  
24 members of the Class to purchase or otherwise acquire Primero securities at  
25 artificially inflated prices. In furtherance of this unlawful scheme, plan and course of  
26 conduct, Defendants, and each of them, took the actions set forth herein.

27 50. Pursuant to the above plan, scheme, conspiracy and course of conduct,  
28 each of the Defendants participated directly or indirectly in the preparation and/or

1 issuance of the annual reports, SEC filings, press releases and other statements and  
2 documents described above, including statements made to securities analysts and the  
3 media that were designed to influence the market for Primero securities. Such reports,  
4 filings, releases and statements were materially false and misleading in that they  
5 failed to disclose material adverse information and misrepresented the truth about  
6 Primero's finances.

7         51. By virtue of their positions at Primero, Defendants had actual knowledge  
8 of the materially false and misleading statements and material omissions alleged  
9 herein and intended thereby to deceive Plaintiff and the other members of the Class,  
10 or, in the alternative, Defendants acted with reckless disregard for the truth in that  
11 they failed or refused to ascertain and disclose such facts as would reveal the  
12 materially false and misleading nature of the statements made, although such facts  
13 were readily available to Defendants. Said acts and omissions of Defendants were  
14 committed willfully or with reckless disregard for the truth. In addition, each  
15 defendant knew or recklessly disregarded that material facts were being  
16 misrepresented or omitted as described above.

17         52. Defendants were personally motivated to make false statements and omit  
18 material information necessary to make the statements not misleading in order to  
19 personally benefit from the sale of Primero securities from their personal portfolios.

20         53. Information showing that Defendants acted knowingly or with reckless  
21 disregard for the truth is peculiarly within Defendants' knowledge and control. As the  
22 senior managers and/or directors of Primero, the Individual Defendants had  
23 knowledge of the details of Primero's internal affairs.

24         54. The Individual Defendants are liable both directly and indirectly for the  
25 wrongs complained of herein. Because of their positions of control and authority, the  
26 Individual Defendants were able to and did, directly or indirectly, control the content  
27 of the statements of Primero. As officers and/or directors of a publicly-held company,  
28 the Individual Defendants had a duty to disseminate timely, accurate, and truthful

1 information with respect to Primero's businesses, operations, future financial  
2 condition and future prospects. As a result of the dissemination of the aforementioned  
3 false and misleading reports, releases and public statements, the market price of  
4 Primero securities was artificially inflated throughout the Class Period. In ignorance  
5 of the adverse facts concerning Primero's business and financial condition which  
6 were concealed by Defendants, Plaintiff and the other members of the Class  
7 purchased or otherwise acquired Primero securities at artificially inflated prices and  
8 relied upon the price of the securities, the integrity of the market for the securities  
9 and/or upon statements disseminated by Defendants, and were damaged thereby.

10       55. During the Class Period, Primero securities were traded on an active and  
11 efficient market. Plaintiff and the other members of the Class, relying on the  
12 materially false and misleading statements described herein, which the Defendants  
13 made, issued or caused to be disseminated, or relying upon the integrity of the  
14 market, purchased or otherwise acquired shares of Primero securities at prices  
15 artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other  
16 members of the Class known the truth, they would not have purchased or otherwise  
17 acquired said securities, or would not have purchased or otherwise acquired them at  
18 the inflated prices that were paid. At the time of the purchases and/or acquisitions by  
19 Plaintiff and the Class, the true value of Primero securities was substantially lower  
20 than the prices paid by Plaintiff and the other members of the Class. The market price  
21 of Primero securities declined sharply upon public disclosure of the facts alleged  
22 herein to the injury of Plaintiff and Class members.

23       56. By reason of the conduct alleged herein, Defendants knowingly or  
24 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and  
25 Rule 10b-5 promulgated thereunder.

26       57. As a direct and proximate result of Defendants' wrongful conduct,  
27 Plaintiff and the other members of the Class suffered damages in connection with  
28 their respective purchases, acquisitions and sales of the Company's securities during

1 the Class Period, upon the disclosure that the Company had been disseminating  
2 misrepresented financial statements to the investing public.

## 3 **COUNT II**

### 4 **Violations of Section 20(a) of The Exchange Act** 5 **Against The Individual Defendants**

6 58. Plaintiff repeats and realleges each and every allegation contained in the  
7 foregoing paragraphs as if fully set forth herein.

8 59. During the Class Period, the Individual Defendants participated in the  
9 operation and management of Primero, and conducted and participated, directly and  
10 indirectly, in the conduct of Primero's business affairs. Because of their senior  
11 positions, they knew the adverse non-public information about Primero's current  
12 financial position and future business prospects.

13 60. As officers and/or directors of a publicly owned company, the Individual  
14 Defendants had a duty to disseminate accurate and truthful information with respect  
15 to Primero's business practices, and to correct promptly any public statements issued  
16 by Primero which had become materially false or misleading.

17 61. Because of their positions of control and authority as senior officers, the  
18 Individual Defendants were able to, and did, control the contents of the various  
19 reports, press releases and public filings which Primero disseminated in the  
20 marketplace during the Class Period concerning the Company's business, operational  
21 and accounting policies. Throughout the Class Period, the Individual Defendants  
22 exercised their power and authority to cause Primero to engage in the wrongful acts  
23 complained of herein. The Individual Defendants therefore, were "controlling  
24 persons" of Primero within the meaning of Section 20(a) of the Exchange Act. In this  
25 capacity, they participated in the unlawful conduct alleged which artificially inflated  
26 the market price of Primero securities.

27 62. Each of the Individual Defendants, therefore, acted as a controlling  
28 person of Primero. By reason of their senior management positions and/or being

1 directors of Primero, each of the Individual Defendants had the power to direct the  
2 actions of, and exercised the same to cause, Primero to engage in the unlawful acts  
3 and conduct complained of herein. Each of the Individual Defendants exercised  
4 control over the general operations of Primero and possessed the power to control the  
5 specific activities which comprise the primary violations about which Plaintiff and  
6 the other members of the Class complain.

7 63. By reason of the above conduct, the Individual Defendants are liable  
8 pursuant to Section 20(a) of the Exchange Act for the violations committed by  
9 Primero.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

12 A. Determining that the instant action may be maintained as a class action  
13 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the  
14 Class representative;

15 B. Requiring Defendants to pay damages sustained by Plaintiff and the  
16 Class by reason of the acts and transactions alleged herein;

17 C. Awarding Plaintiff and the other members of the Class prejudgment and  
18 post-judgment interest, as well as her reasonable attorneys' fees, expert fees and other  
19 costs; and

20 D. Awarding such other and further relief as this Court may deem just and  
21 proper.

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