



Apr 12 2011
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ORIGINAL FILED
 APR 11 2011
 LOS ANGELES
 SUPERIOR COURT

9 Attorneys for Plaintiff Farbod Nasser, on behalf
 of himself and others similarly situated
 10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST DISTRICT**
 13

14 FARBOD NASSERI, an Individual, on behalf
 of himself and others similarly situated,
 15
 Plaintiff,
 16
 vs.
 17
 18 CYTOSPORT, INC., a California Corporation,
 and DOES 1 through 100, inclusive,
 19
 Defendants.

CASE NO. BC439181

CLASS ACTION

**STIPULATION & [PROPOSED] ORDER
 REGARDING THE FILING OF
 PLAINTIFF'S SECOND AMENDED
 COMPLAINT**

Assigned to the Honorable Carl J. West
 (CCW-Dept. 322)

[Complaint Filed: June 4, 2010]

Trial Date: None

23 Plaintiff Farbod Nasser ("Plaintiff") and Defendant Cytosport, Inc. ("Cytosport"), through
 24 their respective counsel of record, hereby stipulate as follows:

25 WHEREAS the parties agree that the filing of Plaintiff's Second Amended Complaint is
 26 necessary to add additional named plaintiffs, and change the class definition in this action.

27 WHEREAS Plaintiff's proposed Second Amended Complaint is attached hereto at Exhibit
 28 "A."

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1 The parties stipulate and agree as follows:

2 The Second Amended Complaint shall be deemed filed and served on Cytosport as of the
3 date of entry of the Court's Order.

4
5 DATED: April 8, 2011

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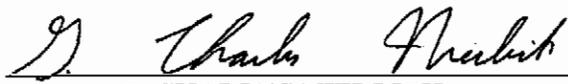
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7
8 By: 

DANIEL L. WARSHAW

9 Attorneys for Plaintiff Farbod Nasser, on behalf of
10 himself and others similarly situated

11 DATED: April 8, 2011

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G. CHARLES NIERLICH
VANESSA C. ADRIANCE
TIMOTHY LOOSE

12
13
14
15 By: 

G. CHARLES NIERLICH

16 Attorneys for Defendant CytoSport, Inc.

17
18 **ORDER**

19 **GOOD CAUSE HAVING BEEN SHOWN** the Court hereby orders as follows:

20 1. Plaintiff's Second Amended Complaint, attached hereto as Exhibit "A," shall be
21 deemed filed and served upon the date of entry of this Order.

22 **IT IS SO ORDERED:**

23
24 4/11, 2011

CARL J. WEST

Hon. Carl J. West
Los Angeles Superior Court Judge

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R. Romero, and Kevin G. Peters, on behalf of
10 themselves and others similarly situated

11 (Additional Counsel Listed on Signature Page)

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 FARBOD NASSERI, an Individual, on
behalf of himself and others similarly
15 situated,

16 Plaintiff,

17 vs.

18 CYTOSPORT, INC., a California
Corporation, and DOES 1 through 100,
19 inclusive,

20 Defendants.

CASE NO. BC439181

CLASS ACTION

**PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR:**

1. **NEGLIGENT MISREPRESENTATION;**
2. **FRAUDULENT CONCEALMENT;**
3. **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1750 *ET SEQ.*);**
4. **UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*); and**
5. **VIOLATION OF PROPOSITION 65 (CAL. HEALTH & SAFETY CODE §§ 25249.5 *ET SEQ.*)**

DEMAND FOR JURY TRIAL

Assigned to the Honorable Carl J. West
(CCW-Dept. 322)

1 Individual and Representative Plaintiffs FARBOD NASSERI, MICHAEL R.
2 ROMERO and KEVIN G. PETERS on behalf of themselves and all other similarly
3 situated, complain as follows:

4 **INTRODUCTION**

5 1. Defendant CYTOSPORT, INC. (hereinafter "CYTOSPORT") is one of the
6 leading manufacturers, sellers and distributors of popular protein beverages, protein bars,
7 capsules and other dietary supplements in the United States ("Products"). During the four
8 years prior to the filing of this complaint, CYTOSPORT marketed and sold its Products to
9 thousands of California consumers under various recognizable brand names such as
10 "Muscle Milk," "Monster Milk," "Cytomax," and "Mighty Milk." Utilizing several
11 superstar athletes such as NFL running back Adrian Peterson and NBA stars Brandon Roy
12 and Shaquille O'Neal as celebrity spokespersons, CYTOSPORT marketed its Products as a
13 safe and effective means to obtain a "healthy sustained source of energy" that helps
14 consumers become "stronger," "bigger," "healthier," and "leaner."

15 2. Contrary to CYTOSPORT'S representations and unbeknownst to
16 California consumers, CYTOSPORT'S Products are contaminated with dangerous heavy
17 metals, such as mercury, arsenic, cadmium and lead, which pose serious health risks and
18 are found on the Proposition 65 list of "Chemicals Known to the State to Cause Cancer or
19 Reproductive Toxicity." Despite having actual knowledge of the dangerous and
20 contaminated nature of its Products, CYTOSPORT has failed to disclose and concealed the
21 risks and dangers associated with its Products, in an effort to boost its own sales at the
22 expense of the health and safety of consumers.

23 3. Plaintiffs FARBOD NASSERI, MICHAEL R. ROMERO, and KEVIN G.
24 PETERS (hereinafter collectively "Plaintiffs") are among the thousands of consumers in
25 the United States who purchased and used CYTOSPORT'S Products during the four years
26 prior to the filing of this action ("Class Period"). Plaintiffs are filing this case as a class
27 action on behalf of themselves and all similarly situated consumers in the United States
28 who purchased one or more Products manufactured, sold or distributed by CYTOSPORT

1 during the class period (the “Class”). Plaintiffs also bring this action in the public interest.
2 Through this lawsuit, Plaintiffs are seeking restitution, injunctive relief and damages for
3 the class arising from the sale, marketing and distribution of CYTOSPORT’S
4 contaminated Products.

5 **THE PARTIES**

6 **A. The Plaintiffs:**

7 4. Plaintiff FARBOD NASSERI, at all material times herein, was and still is a
8 resident of Los Angeles County, California. During the Class Period, Mr. NASSERI
9 purchased multiple “Muscle Milk” ready to drink protein beverages and “Monster Milk”
10 powdered protein beverages.

11 5. Plaintiff MICHAEL R. ROMERO, at all material times herein, was and
12 still is a resident of Broward County, Florida. During the Class Period, Mr. ROMERO
13 purchased one or more or CYTOSPORT’S contaminated Products.

14 6. Plaintiff KEVIN G. PETERS, at all material times herein, was and still is a
15 resident of Broward County, Florida. During the Class Period, Mr. PETERS purchased
16 one or more or CYTOSPORT’S contaminated Products.

17 7. In choosing to purchase the Products, each of the Plaintiffs relied on
18 Defendants’ material misrepresentations relating to purported health benefits of its
19 Products and concealments of material fact its Products contain dangerous contaminants
20 and pose serious health risks to consumers. Plaintiffs would not have purchased the
21 Products if they had known that they contained lead, mercury, arsenic or cadmium.

22 **B. The Defendants:**

23 8. Defendant CYTOSPORT, INC. is a California corporation with its
24 principal place of business located at 4795 Industrial Way, Benicia, CA 94510. At all
25 times relevant herein, CYTOSPORT has advertised, marketed, distributed and sold its
26 Products in Los Angeles County and throughout the State of California.

27 9. Plaintiffs do not know the true names and/or capacities, whether individual,
28 corporate, associate or otherwise, of Defendants DOES 1 through 100, inclusive, and

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1 therefore sues them by such fictitious names. Plaintiffs will seek leave to amend this
2 Complaint to show their true names and/or capacities when the same have been
3 ascertained. Plaintiffs are further informed and believe, and based thereon allege, that each
4 of the fictitiously named Defendants is, in some manner, responsible for the events and
5 happenings herein referred to, either contractually or tortuously, and caused damages to the
6 Plaintiffs as herein alleged.

7 10. At all times herein mentioned, Defendants, and each of them, were
8 members of, and engaged in, a joint venture, partnership and common enterprise, and
9 acting within the course and scope of, and in pursuance of, said joint venture, partnership
10 and common enterprise.

11 11. At all times herein mentioned, the acts and omissions of various
12 Defendants, and each of them, contributed to the various acts and omissions of each and all
13 of the other Defendants in proximately causing the injuries and damages as herein alleged.

14 12. At all times herein mentioned, Defendants, and each of them, ratified each
15 and every act or omission complained of herein. At all times herein mentioned,
16 Defendants, and each of them, aided and abetted the acts and omissions of each and all of
17 the other Defendants in proximately causing the damages as herein alleged.

18 13. Defendants CYTOSPORT and DOES 1 through 100 shall collectively be
19 referred to herein as "Defendants."

20 **II. JURISDICTION AND VENUE**

21 14. This Court has jurisdiction over this action pursuant to California Code of
22 Civil Procedure § 410.10.

23 15. The venue is proper in this Court pursuant to California Code of Civil
24 Procedure §§ 395 and 395.5 in that the acts, events and occurrences giving rise to this
25 litigation took place in the County of Los Angeles.

26
27 **III. FACTUAL ALLEGATIONS**

28 16. CYTOSPORT is a multi-million dollar corporation that specializes in the

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1 sale of Products, protein bars and other Products to consumers. CYTOSPORT'S Products
2 are marketed to California consumers under highly recognizable brand names such as
3 "Muscle Milk," "Monster Milk" and "Cytomax," and are readily available at supermarkets,
4 convenience stores, nutritional stores and other retailers throughout the State of California.

5 17. CYTOSPORT'S marketing and sale of its Products is focused on the
6 promotion of "healthy living." CYTOSPORT'S advertisement campaign features a crop
7 of high profile professional athletes who allegedly benefit from the use of its Products.
8 These sponsored athletes include, but are not limited to: National Football League running
9 back Adrian Peterson; Major League Baseball player Ryan Braun; National Basketball
10 Association stars Brandon Roy and Shaquille O'Neal; marathon runner Ryan Hall;
11 professional surfer Dustin Barca; and ironwoman Chrissie Wellington.

12 18. CYTOSPORT promotes its Products as a "healthy sustained source of
13 energy" that can be consumed throughout the day as a meal replacement, workout
14 supplement and snack alternative. CYTOSPORT contends its Products help consumers
15 build lean muscle, increase "endurance, fat-burning, and strength," and become "bigger,"
16 "stronger," "healthier," and "leaner."

17 19. In furtherance of its claims of increased health to users, CYTOSPORT
18 states on its website:

19
20 "YOU ARE WHAT YOU EAT. AND OUR PRODUCTS PROVIDE A
21 FUNCTIONAL BLEND OF SCIENCE AND SATISFACTION THAT
22 KEEP YOUR BODY IN MOTION AND YOUR LIFE IN BALANCE.
23 HEALTHY SHOULD TASTE GOOD."¹

24
25 20. CYTOSPORT also makes representations concerning the safety and
26

27 ¹ See Healthier, available at <http://www.cytosport.com/goals/healthier>.
28

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1 quality of its Products and offers consumers, “peace of mind knowing the safety, efficacy,
2 and authenticity of the CytoSport brands is a given.” CYTOSPORT further represents
3 that:

4
5 “CytoSport products are a completely safe, effective, and legal alternative
6 trusted by athletes worldwide who demand the highest level of
7 performance from themselves and from the nutritional support products
8 they use.”²

9
10 21. Contrary to these representations, CYTOSPORT’S Products are
11 contaminated with hazardous heavy metals which pose serious health and safety risks to
12 consumers. According to a recent expose published in the July 2010 issue of Consumer
13 Reports entitled “Alert: Protein Drinks,” CYTOSPORT’S Muscle Milk brand Products
14 contain elevated levels of arsenic, cadmium, and lead that pose the threat of serious health
15 problems. The Consumer Reports article states in relevant part:

16
17 “The samples of Muscle Milk Chocolate powder we tested contained all
18 four heavy metals, and levels of three metals in the product were among
19 the highest of all in our tests. Average cadmium levels of 5.6 µg in three
20 daily servings slightly exceeded the [U.S. Pharmacopeia] USP limit of 5
21 µg per day, and the average lead level of 13.5 µg also topped the USP
22 limit of 10 µg per day. The average arsenic level of 12.2 µg was
23 approaching the USP limit of 15 µg per day, and the average for mercury
24 was 0.7 µg, well below the USP’s 15 µg-per-day limit. Three daily
25 servings of Muscle Milk Vanilla Crème contained 12.2 µg of lead,

26
27 ² See Behind Our Product, available at <http://www.cytosport.com/about/history>.

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exceeding lead limits, and 11.2 µg of arsenic. A fourth product, Muscle Milk Nutritional Shake Chocolate (liquid), provided an average of 14.3 µg of arsenic per day from three servings, approaching the proposed USP limit.

Cadmium raises special concern because it accumulates in and can damage the kidneys, the same organs that can be damaged by excessive protein consumption. And it can take 20 years for the body to eliminate even half the cadmium absorbed today.

‘This is a highly toxic metal, and while there are some cases where decisions have to be weighed against relative risks, accepting that you have to be exposed to any cadmium at all in your protein drink after your workout is definitely not one of them,’ says Michael Harbut, M.D., director of the Environmental Cancer Initiative at the Karmanos Cancer Institute in Royal Oak, Mich. When these toxic heavy metals are combined in a product that is marketed for daily use, that raises serious public health concerns, especially for pregnant women, children, and young adults,’ says [Kathy] Burns, who has been a toxicology consultant to state and federal government agencies.”

22. During the class period, CYTOSPORT knowingly and purposely concealed the material fact that its Products contain dangerous toxic chemicals that pose serious health risks to Plaintiffs and similarly situated consumers. Furthermore, CYTOSPORT has failed and refused to disclose or warn consumers that its Products contain heavy metals and can be dangerous.

23. Despite actual knowledge that its Products contained dangerous toxic contaminants and pose serious health risks to consumers, CYTOSPORT marketed and sold

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1 its Products as being a safe, effective and healthy part of a daily diet.

2 24. Plaintiffs relied on Defendants' material misrepresentations relating to
3 purported health benefits of its Products and concealments of material fact that its Products
4 contained dangerous contaminants and posed serious health risks to consumers. Plaintiffs
5 would not have purchased the Products if they had known that they contained lead,
6 mercury, arsenic or cadmium.

7 25. Furthermore, CYTOSPORT has failed to provide Proposition 65 warnings
8 on its Products despite the fact that mercury, arsenic, cadmium, and lead are all included in
9 the list of "Chemicals Known to the State to Cause Cancer or Reproductive Toxicity"
10 under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety
11 Code §§ 25249.5 *et seq.*). On June 4, 2010, Plaintiff NASSERI sent CYTOSPORT and all
12 relevant public agencies a Notice of Violation of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986 (hereinafter "Proposition 65") pursuant to Health & Safety Code
14 ("H&S Code") § 25249.7(d).

15 26. Plaintiffs are informed, believe, and thereon allege that neither the
16 Attorney General, nor any applicable district attorney or city attorney, is diligently and
17 effectively prosecuting an action for the violations as alleged in Plaintiff NASSERI'S
18 notice in conformity with the alleged violation of applicable warning statutes based on the
19 supporting facts and for the relevant time period.

20 27. As a direct and proximate result of Defendants' conduct alleged herein,
21 Plaintiffs and the Class have suffered injuries, including but not limited to, money spent on
22 contaminated Products manufactured and sold by Defendants. Defendants' conduct
23 alleged herein presents a material danger to Plaintiff and similarly situated consumers.
24 Through this action Plaintiff and the Class seek an injunction against Defendants'
25 continuing this harmful conduct, restitution of all money utilized to purchase Defendants'
26 contaminated Products, and monetary damages as permitted under the law.

27 **CLASS ACTION ALLEGATIONS**

28 28. Plaintiff brings this action individually and as a class action on behalf of

1 the following Class:

2 All individuals in the United States who purchased one or more products
3 manufactured by or on behalf of Defendant, including but not limited to all
4 Muscle Milk®, Monster Milk®, CytoMax®, and Mighty Milk® varieties
5 in any form, including powder beverages, ready-to-drink beverages, bars or
6 capsules between June 4, 2006 and April 7, 2011. Excluded from the Class
7 are Defendant, its parent companies, subsidiaries and affiliates, any alleged
8 co-conspirators, distributors or sellers of the Products or their subsidiaries
9 and affiliates, all governmental entities, and any Judges or Justices assigned
10 to hear any aspect of this action or their families.

11 29. This action is brought and may properly be maintained as a class action
12 pursuant to California Civil Code § 1781, California Code of Civil Procedure § 382 and
13 California Rules of Court, 3.760 *et seq.* This action satisfies the numerosity, typicality,
14 adequacy, predominance and superiority requirements of those provisions.

15 30. The Class is so numerous that the individual joinder of all of its members is
16 impracticable. The exact number and identities of Class members are unknown to
17 Plaintiffs at this time and can only be ascertained through appropriate discovery.

18 31. Common questions of law and fact exist as to all members of the Class
19 which predominate over any questions affecting only individual members of the Class.
20 These common legal and factual questions, which do not vary from Class member to Class
21 member, and which may be determined without reference to the individual circumstances
22 of any Class member include, but are not limited to, the following:

- 23 a. Whether Defendants misrepresented the safety, efficacy and dangers
24 of their Products;
- 25 b. Whether Defendants' Products are contaminated with heavy metals
26 and other toxins;
- 27 c. Whether Defendants have engaged in conduct which constitutes
28 negligent misrepresentation;

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1 d. Whether Defendants have engaged in conduct which constitutes
2 fraudulent concealment;

3 e. Whether Defendants' conduct constitutes an unfair, unlawful and/or
4 fraudulent business practice (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);

5 f. Whether Defendants' conduct constitutes a violation of the Consumer
6 Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*);

7 g. Whether Defendants have engaged in conduct which constitutes a
8 violation of Proposition 65;

9 h. Whether Plaintiffs and the Class are entitled to compensatory
10 damages, and if so, the nature of such damages;

11 i. Whether Plaintiffs and the Class are entitled to restitutionary relief;
12 and

13 j. Whether Plaintiffs and the Class are entitled to injunctive relief.

14 32. Plaintiffs' claims are typical of the claims of the members of the Class, and
15 the representative Plaintiffs' interests coincide with and are not antagonistic to those of the
16 other Class members they seek to represent. Plaintiffs and all members of the Class have
17 sustained damages and are facing irreparable harm arising out of Defendants' common
18 course of conduct as complained of herein. The damages of each member of the Class
19 were caused directly by Defendants' wrongful conduct as alleged herein.

20 33. Plaintiffs will fairly and adequately protect the interests of the members of
21 the Class. Plaintiffs have retained attorneys experienced in the prosecution of class
22 actions, including complex employment, consumer and product defect class actions, and
23 Plaintiffs intend to prosecute this action vigorously.

24 34. A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy, since individual litigation of the claims of all
26 Class members is impracticable. Even if every Class member could afford individual
27 litigation, the court system could not. It would be unduly burdensome to the courts in
28 which individual litigations of numerous cases would proceed. Individualized litigation

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1 would also present the potential for varying, inconsistent, or contradictory judgments and
2 would magnify the delay and expense to all parties and to the court system resulting from
3 multiple trials of the same complex factual issues. By contrast, the conduct of this action
4 as a class action, with respect to some or all of the issues presented herein, presents fewer
5 management difficulties, conserves the resources of the parties and of the court system,
6 and protects the rights of each Class member.

7 35. The prosecution of separate actions by individual Class members may
8 create a risk of adjudications with respect to them that would, as a practical matter, be
9 dispositive of the interests of the other Class members not parties to such adjudications, or
10 that would substantially impair or impede the ability of such non-party Class members to
11 protect their interests.

12 36. Individual actions by Class members would establish incompatible
13 standards of conduct for Defendants.

14 37. Defendants have acted or refused to act in respects generally applicable to
15 the Class, thereby making appropriate final and injunctive relief with regard to the
16 members of the Class as a whole, as requested herein.

17 **FIRST CAUSE OF ACTION**

18 **NEGLIGENT MISREPRESENTATION**

19 **(Plaintiffs and the Class Against All Defendants)**

20 38. Plaintiffs and the Class incorporate by reference the allegations of the
21 preceding paragraphs of this Complaint as if set forth in full herein.

22 39. During the class period Defendants represented to California consumers
23 through the advertising, marketing and sale of their Products that their Products were safe,
24 healthy, and appropriate for consumption as part of a daily diet.

25 40. Defendants' representations regarding the characteristics of their Products
26 were false because their Products were contaminated with dangerous heavy metals and that
27 are unsafe for consumption.

28 41. Defendants' misrepresentations regarding the characteristics of their

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1 Products were material because a reasonable consumer would attach importance to them in
2 determining whether to purchase and consume Defendants' Products.

3 42. Defendants' material misrepresentations concerning the safety,
4 effectiveness and quality of their Products were false and made without reasonable
5 grounds for believing them to be true.

6 43. Defendants made material misrepresentations concerning the safety,
7 effectiveness and quality of their Products with the intent to induce Plaintiffs and the Class
8 to purchase and consume their Products.

9 44. Plaintiffs and the Class reasonably and materially relied on Defendants'
10 material misrepresentations in choosing to purchase and consume Defendants' Products.

11 45. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
12 Class have incurred damages in an amount to be proven at trial. Plaintiffs and the Class
13 are not seeking damages arising out of personal injuries.

14 **SECOND CAUSE OF ACTION**

15 **FRAUDULENT CONCEALMENT**

16 **(Plaintiffs and the Class Against All Defendants)**

17 46. Plaintiffs and the Class incorporate by reference the allegations of the
18 preceding paragraphs of this Complaint as if set forth in full herein.

19 47. As set forth herein above, Defendants had a duty to warn Plaintiffs and the
20 Class concerning the nature of the toxic substances in their Products. Defendants' failure
21 to warn constitutes a concealment of material information with the intent to deceive
22 Plaintiffs and the Class, and cause them to refrain from taking steps to protect themselves
23 and their families. Further, in failing to warn and thereby concealing the toxic nature of
24 their Products, Defendants intended that Plaintiffs and the Class would refrain from
25 reporting Defendants' conduct to relevant authorities or taking legal action for damages or
26 other relief.

27 48. Plaintiffs and the Class purchased Defendants' Products in reliance on
28 Defendants' failure to warn or apprise consumers of the extent of Defendants' conduct and

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1 the toxic nature of their Products, and based on the reasonable belief that it was safe to
2 consume Defendants' Products.

3 49. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
4 Class have incurred damages in an amount to be proven at trial. Plaintiffs and the Class
5 are not seeking damages arising out of personal injuries.

6 **THIRD CAUSE OF ACTION**
7 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**
8 **(CAL. CIV. CODE §§ 1750 ET SEQ.)**
9 **(Plaintiffs and the Class Against All Defendants)**

10 50. Plaintiffs and the Class incorporate by reference the allegations of the
11 preceding paragraphs of this Complaint as if set forth in full herein.

12 51. Defendants have engaged in and continue to engage in business practices
13 in violation of California Civil Code § 1750 *et seq.* (the "Consumer Legal Remedies Act")
14 by making false and unsubstantiated representations concerning the safety, effectiveness
15 and quality of their Products. These business practices are misleading and/or likely to
16 mislead consumers and should be enjoined.

17 52. Defendants have engaged in deceptive acts or practices intended to result
18 in the sale of their Products in violation of California Civil Code § 1770. Defendants knew
19 and/or should have known that their representations concerning the safety, efficacy and
20 quality of their Products were unsubstantiated and likely to mislead the public.

21 53. Defendants' conduct alleged herein violates the Consumers Legal
22 Remedies Act, including but not limited to, the following provision: (1) Using deceptive
23 representations in connection with goods or services in violation of California Civil Code
24 § 1770(a)(4); and/or (2) representing that goods have characteristics, uses or benefits
25 which they do not have in violation of Cal. Civ. Code § 1770(a)(5). As a direct and
26 proximate result of Defendants' conduct, as set forth herein, Defendants have received ill-
27 gotten gains and/or profits including, but not limited to, money. Therefore, said
28 Defendants have been unjustly enriched.

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1 meaning of the UCL insofar as Defendants' business practices alleged herein are immoral,
2 unethical, oppressive, unscrupulous and/or substantially injurious to consumers.

3 61. Defendants' conduct constitutes a "fraudulent" business practice within the
4 context of the UCL insofar as Defendants' misrepresentations regarding the safety,
5 efficacy and quality of their Products are likely to deceive members of the public.

6 62. The business acts and practices of Defendants are unlawful within the
7 meaning of the UCL in that such acts and practices violate the Consumer Legal Remedies
8 Act and Proposition 65.

9 63. These above-described unlawful, unfair and fraudulent business practices
10 and unfair competition by Defendants continue to present a threat to Plaintiffs and the
11 Class. Plaintiffs are informed and believe, and thereon allege, that Defendants have
12 systematically perpetrated deceptive and unfair practices upon members of the public and
13 have intentionally deceived Plaintiffs and the Class.

14 64. In addition, the dissemination of false and deceptive representations
15 through print and television media constitutes unfair competition and unfair, deceptive,
16 untrue or misleading advertising within the meaning of the UCL.

17 65. Defendants' refusal to stop making the aforementioned unsubstantiated
18 representations concerning the safety, risks and qualities of Defendants' Products
19 constitutes a continuing and ongoing unlawful activity prohibited by the UCL, and justifies
20 the issuance of an injunction requiring Defendants to act in accordance with the law.

21 66. As a direct and proximate result of Defendants' unlawful and unfair
22 business practices in violation of the UCL, Plaintiffs and the Class have suffered an injury
23 in fact and have suffered economic harm by losing money as a result of purchasing
24 Defendants' contaminated Products.

25 67. Defendants have been unjustly enriched as a result of money collected
26 through the sale of their dangerous and toxic Products. As a result of the aforementioned
27 conduct, Plaintiffs and the Class are entitled to monetary restitution and restitutionary
28 disgorgement of profits.

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FIFTH CAUSE OF ACTION
VIOLATION OF PROPOSITION 65
(CAL. HEALTH & SAFETY CODE §§ 25249.5 ET SEQ.)
(Plaintiff Farbod Nasser and the Class Against All Defendants)

68. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as though fully set forth herein.

69. CYTOSPORT'S Products are contaminated with dangerous heavy metals, including but not limited to, arsenic, cadmium, and lead, contained on the Proposition 65 list of "Chemicals Known to the State to Cause Cancer or Reproductive Toxicity." The amount of toxic chemicals in CYTOSPORT'S Products are in excess of any applicable "safe harbors" set forth by the California Office of Environmental Health Hazard Assessment ("OEHHA") and applicable no significant risk levels ("NSRL") and are subject to the warning and liability provisions of Proposition 65.

70. By committing the acts alleged above, Defendants have, in the course of doing business, knowingly and intentionally exposed individuals in California to chemicals known by the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individuals, as required by Health & Safety Code § 25249.6.

71. Defendants packaged their Products without the warnings required by California Code of Regulations Title 27 Article 6, which would have supplied the persons who ingested the Products and suffered exposure to lead, arsenic, and cadmium, with important health information required under California law. These exposures took place off of Defendants' property and away from any source of conspicuous warning such as a sign at the point of sale.

72. Plaintiff FARBOD NASSERI'S allegations concern a "consumer product exposure" which is an exposure that results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service. See Cal. Code Regs. Title 27 § 25602(c). The

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1 method of exposure is through ingestion.

2 73. Plaintiff FARBOD NASSERI'S has amended his Complaint to add this
3 claim for violation of Proposition 65 more than sixty (60) days after giving notice of the
4 alleged violations to CYTOSPORT, to the California Attorney General, and to applicable
5 district attorneys and city attorneys in whose jurisdictions these exposures are alleged to
6 have occurred.

7 74. Pursuant to Health & Safety Code § 25249.7 (b), said violations render
8 Defendants liable to Plaintiff FARBOD NASSERI and the class for civil penalties not to
9 exceed \$2,500 per day for each violation, in addition to any other penalty established by
10 law.

11 75. Plaintiff FARBOD NASSERI is seeking injunctive relief pursuant to Health
12 & Safety Code § 25249.7 (a), requiring CYTOSPORT to institute a recall of all of its
13 Products in the State of California; discontinue the manufacture, distribution and sale of all
14 of its Products in the State of California; and/or provide a clear and reasonable warning to
15 consumers concerning the presence of toxic chemicals in its Products.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs on behalf of themselves and all other similarly situated,
18 pray for relief and judgment against Defendants, and each of them, as follows:

- 19 1. For an order certifying the Class, and appointing Plaintiffs and his counsel to
20 represent the Class;
- 21 2. For damages suffered by Plaintiffs and the Class;
- 22 3. For restitution to Plaintiffs and the Class of all monies wrongfully obtained
23 by the Defendants;
- 24 4. For preliminary and injunctive relief requiring Defendants to accurately
25 represent the qualities of their Products;
- 26 5. For reasonable attorneys' fees as permitted under California Code of Civil
27 Procedure § 1021.5, California Civil Code § 1780 (e) or other applicable statutes;
- 28 6. For punitive damages (second cause of action only);

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- 7. For Plaintiffs' costs incurred;
- 8. For prejudgment interest; and
- 9. For such other and further relief which the court deems just and proper.

DATED: April 8th, 2011

By: *Daniel L. Warshaw*
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DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby request a jury trial on the claims so triable.

DATED: April 8th, 2011

By: Daniel Warshaw

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